

By: Representatives Gipson, Campbell, Sykes, To: Judiciary B
Dixon, Clark, Hines

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 599

1 AN ACT TO CREATE A WITNESS PROTECTION PROGRAM IN THE STATE OF
2 MISSISSIPPI; TO PROVIDE FOR THE APPOINTMENT OF THE WITNESS
3 PROTECTION BOARD; TO REQUIRE WITNESS PROTECTION AGREEMENTS; TO
4 AMEND SECTION 25-41-3, MISSISSIPPI CODE OF 1972, TO CLARIFY THE
5 EXCLUSION OF WITNESS PROTECTION AGREEMENTS FROM THE PUBLIC RECORD;
6 TO PROVIDE PENALTIES FOR HARASSMENT AND MURDER OF A WITNESS; AND
7 FOR RELATED PURPOSES.

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

9 **SECTION 1.** (1) This act shall be known as the Mississippi
10 Witness Protection Act.

11 (2) It is the policy of this state that truthful witness
12 testimony is an essential and vital part of enforcing the laws of
13 the State of Mississippi and to ensure the integrity of the
14 criminal justice system. Witnesses who are in danger as a result
15 of providing a statement to law enforcement or testifying at a
16 legal proceeding concerning knowledge of a crime of violence, as
17 defined by Section 97-3-2, shall be protected and provided
18 assistance to ensure their safety and attendance at trial.

19 **SECTION 2.** (1) There is established a Witness Protection
20 Board (hereinafter referred to as "the board") within the



21 executive branch of the government of the State of Mississippi.

22 The board shall consist of:

23 (a) A member appointed by the Governor of the State of
24 Mississippi to serve a four-year term beginning July 1, 2016;

25 (b) A member appointed by the Lieutenant Governor of
26 the State of Mississippi to serve a four-year term beginning July
27 1, 2016;

28 (c) A member appointed by the Attorney General to serve
29 a one-year term beginning July 1, 2016;

30 (d) A member appointed by the Board of Directors of the
31 Mississippi Prosecutors Association to serve a two-year term
32 beginning July 1, 2016; and

33 (e) A member appointed by the Mississippi Sheriff's
34 Association to serve a three-year term beginning July 1, 2016.

35 At the expiration of the initial terms, all subsequent
36 appointments shall be for a term of four (4) years.

37 (2) The board shall oversee the State of Mississippi's
38 Witness Protection Program (hereinafter referred to as "the
39 program") and coordinate the efforts of state, county and
40 municipal law enforcement agencies to protect the health, safety
41 and welfare of essential witnesses. The board shall promulgate
42 rules and regulations for the administration of the program,
43 establish policies and procedures to ensure efficiency, proper use
44 of state funds, and to maximize and obtain federal funds to
45 support the program.



46 (3) The board shall meet once every quarter as its regular
47 meeting and other times as needed either by telephone, video or in
48 person, and shall keep minutes of the actions of the board and the
49 expenditure of public funds. Each year the board shall provide a
50 confidential and nonpublic report to the Office of the State
51 Auditor, the Governor, the Lieutenant Governor, the Chairman of
52 the Judiciary A Committee of the House of Representatives, and the
53 Chairman of the Judiciary Committee Subdivision "B" of the Senate,
54 explaining the board's expenditure of state funds; the report
55 shall not mention any identifying information of participants in
56 the program. All documents of the board, minutes of the board,
57 witness protection agreements, audits and end-of-year reports
58 prepared by the board shall not be public records and shall not be
59 available for public inspection under the Mississippi Public
60 Records Act of 1983. The board shall take steps to ensure that
61 the identity and location of individuals in the Witness Protection
62 Program is kept confidential at all times.

63 (4) The Attorney General shall appoint a Director of the
64 Witness Protection Program, subject to majority approval of the
65 Witness Protection Board, and upon approval by the board, then
66 with the advice and consent of the Senate. The Director of the
67 Witness Protection Program shall run the day-to-day operations of
68 the program and coordinate the activities of state, county and
69 municipal law enforcement to ensure that the policy and provisions
70 of this act are enforced. The board shall promulgate job



71 descriptions, rules and regulations regarding the daily activities
72 and work to be performed by the Director of the Witness Protection
73 Program.

74 The director shall account to the board the activities of the
75 program at each of the regularly scheduled or emergency scheduled
76 meetings of the board. The director shall be responsible for the
77 following:

78 (a) Training for state, county, municipal and other law
79 enforcement in witness protection issues;

80 (b) Coordination of the activities of government
81 agencies to ensure the protection of an essential witness and the
82 appearance of the witness at any necessary criminal proceeding;

83 (c) Management of the budget of the Witness Protection
84 Program, including obtaining the necessary funding for all
85 activities;

86 (d) Ensuring that a proper witness protection plan is
87 developed and executed for an essential witness in an ongoing
88 criminal investigation or criminal proceeding;

89 (e) Development of policies and procedures to ensure
90 the day-to-day operations of the Witness Protection Program.

91 **SECTION 3.** In any criminal investigation or proceeding
92 involving a crime of violence as defined in Section 97-3-2, the
93 district attorney having jurisdiction over the investigation or
94 proceeding may file a petition with the board requesting witness
95 protection services for an essential witness who is necessary to



96 complete the collection of competent evidence during a criminal
97 investigation or criminal proceeding. The district attorney shall
98 certify the witness's participation in the investigation or
99 criminal proceeding, the reasons the witness is at risk of harm, a
100 witness protection services agreement signed by the witness, and a
101 proposed plan for protective services. The plan for protective
102 services shall include, but is not limited to, housing if
103 necessary, public education for the witness or any child of the
104 essential witness if the witness has legal custody of the child,
105 the projected costs of the protective services plan, the method of
106 police protection if any, and the duration of witness protection
107 services. The board members shall review the petition as soon as
108 possible and either in a meeting or a telephone conference, by a
109 vote of three (3) or more members, may grant the petition and
110 ratify the plan or modify the plan in accordance with the rules
111 and regulations established by the board. The board shall
112 authorize the placement of the essential witness into the program
113 and notify the district attorney in writing of the board's
114 actions. Once the board authorizes the placement of a witness in
115 the program, the director shall coordinate state, county, and
116 municipal law enforcement agencies to secure and enforce the
117 witness protection services plan, and finalize necessary
118 arrangements to ensure the witness is protected and available for
119 testimony when required.



120 SECTION 4. If the district attorney having jurisdiction over
121 the investigation or criminal proceeding determines that exigent
122 circumstances exist regarding an imminent threat to the safety of
123 an essential witness, the district attorney may take appropriate
124 temporary action to protect the safety of the essential witness
125 without prior approval of the Witness Protection Board. The
126 district attorney may incur costs associated with the temporary
127 emergency action and shall inform the board of the action taken
128 and related costs within ten (10) days of incurring the costs.
129 Any costs incurred by the district attorney shall be submitted to
130 the board for reimbursement and shall be paid by the board and
131 reimbursed to the district attorney's office account or the county
132 which paid for the temporary services. The district attorney, in
133 making the determination of exigent circumstances, shall obtain an
134 affidavit from a criminal investigation detective or chief of
135 police or other law enforcement officer detailing that the
136 participant is an essential witness to the investigation or
137 prosecution of a criminal proceeding, that an imminent threat
138 exists regarding the safety of the essential witness, and that the
139 temporary action was necessary for the protection of the
140 individual and the integrity of the investigation. The affidavit
141 shall be attached to any request for reimbursement to the board
142 for the temporary services authorized by the district attorney.
143 The provisions of this section allow the temporary expenditure of
144 funds for emergency action for not more than ten (10) days.



145 Reimbursement beyond the ten-day emergency-authorization period
146 shall be by approval of the board only.

147 **SECTION 5.** Protective services provided to an essential
148 witness may include, but are not limited to, the following:

149 (a) Armed protection or escort, marked or unmarked
150 surveillance, periodic visits or contact by law enforcement
151 officials before, during or after conclusion of an ongoing
152 criminal investigation or criminal proceeding;

153 (b) Expenses associated with physical relocation to
154 alternate housing or shelter, public housing or other residence;

155 (c) Payment of a reasonable housing expense if no
156 public housing is available;

157 (d) Transportation or storage of personal possessions
158 during the term of temporary relocation;

159 (e) Basic daily living expenses not to exceed Thirty
160 Dollars (\$30.00) per day;

161 (f) Any other necessary services to be provided through
162 the Department of Human Services, Youth Court, public housing
163 agency or any other state or federal agency;

164 (g) Any other provisions necessary for the proper
165 protection of the essential witness, as determined by the district
166 attorney or the board.

167 **SECTION 6.** (1) Before witness protection services are
168 provided to an essential witness under this act, except where it
169 is determined that a temporary protective service is necessary



170 under Section 4 of this act, the district attorney or the Director
171 of the Witness Protection Program shall enter into a written
172 memorandum of understanding with the essential witness detailing
173 the witness protection services plan. If temporary protective
174 services have been provided under Section 4 of this act, a written
175 memorandum of understanding shall be entered into as soon as
176 practicable.

177 (2) The written memorandum of understanding between the
178 state and the essential witness shall be signed by the district
179 attorney or his designee, the witness to be afforded protective
180 services, the law enforcement agency involved in the criminal
181 investigation or criminal prosecution, the witness's attorney if
182 he has one, and the witness's guardian if the witness is a minor.
183 The written memorandum of understanding shall not be considered a
184 grant of immunity for a criminal act performed by an essential
185 witness before, during or after the written memorandum of
186 understanding. The written memorandum of understanding shall
187 include, but not be limited to, the following:

188 (a) The responsibilities agreed to by the essential
189 witness while receiving protective services;

190 (b) That the essential witness shall provide complete
191 and truthful information to all law enforcement officials related
192 to all relevant investigations and to testify completely and
193 truthfully in all appropriate proceedings;



194 (c) That the essential witness shall not commit any
195 criminal activity or violate any law of the United States or any
196 other state;

197 (d) That the essential witness shall take all necessary
198 precautions to avoid making known to others his participation in
199 the program or the provision of protective services under the
200 program;

201 (e) That the essential witness shall comply with any
202 legal obligations or civil judgments against the essential
203 witness;

204 (f) That the essential witness shall cooperate with all
205 reasonable requests of state and local officers and employees who
206 are providing protective services under this act;

207 (g) That the essential witness shall not disclose any
208 probation or parole conditions, obligations, or responsibilities;

209 (h) That the essential witness shall regularly inform
210 the investigating agency or district attorney's office of places
211 of employment and current address of the witness;

212 (i) A written explanation of the services offered, the
213 manner in which the services are to be rendered, and the level of
214 protection afforded by law enforcement; and

215 (j) An express statement affirming the essential
216 witness's understanding and agreement that should the witness
217 violate any term of the witness protection services plan, then the



218 plan shall be null and void and any further assistance shall cease
219 immediately without court order or board approval.

220 SECTION 7. Notwithstanding any law to the contrary, or any
221 regulation, rule, or ordinance, if a petition and plan and
222 agreement for witness protection services are approved by the
223 board and the essential witness requires relocation within the
224 state to a public housing facility, the relocation shall be
225 effectuated without regard to any impediment, including, but not
226 limited to, any existing waiting list, any income qualifications,
227 or any other reason prohibiting the relocation. Any witness
228 assigned to the Witness Protection Program shall be afforded
229 immediate housing in any other areas of the state without being
230 subjected to a waiting list or other qualification requirements
231 imposed on those seeking public housing who are not in a witness
232 protection program.

233 SECTION 8. Notwithstanding any law to the contrary, or any
234 regulation, rule or ordinance, if a petition and plan and
235 agreement for witness protection services are approved by the
236 board and the essential witness requires relocation within the
237 state to a public school district, the relocation shall be
238 effectuated without regard to any impediment, including, but not
239 limited to, any existing waiting list, any income qualifications,
240 or any other reason prohibiting the relocation. A witness placed
241 with the Witness Protection Program shall be afforded immediate
242 placement in any public school district in any area of the state



243 without being subjected to a waiting list or other qualification
244 requirements imposed on those seeking placement who are not in a
245 witness protection program.

246 **SECTION 9.** Nothing in this act shall be construed to provide
247 an essential witness with a cause of action or legal right of
248 claim against any individual involved in the program. Further,
249 the witness will agree, as part of the witness protection services
250 agreement, to hold harmless the State of Mississippi and any of
251 its agents or officers for any acts of a third person related to
252 any damage inflicted upon the essential witness.

253 **SECTION 10.** (1) Records, minutes, and documents of the
254 board and all records relating to petitions provided to the board
255 shall be confidential, shall not be public records, and shall not
256 be produced in discovery in any criminal proceedings. The
257 district attorney shall provide to the defense attorney in the
258 particular criminal proceeding notice advising that a witness
259 involved in the ongoing criminal proceeding has been declared an
260 essential witness and due to imminent threats has been placed in
261 the program. The district attorney shall give notice that an
262 essential witness is in the Witness Protection Program and may
263 give the transcribed testimony of the essential witness only if
264 doing so will not reveal the location of the essential witness.
265 The district attorney shall not provide nor shall be ordered by
266 any court to disclose the witness protection services plan, the
267 relocation services provided, the security services provided, or



268 any other actual services provided to an essential witness in the
269 program.

270 (2) The district attorney shall not disclose in discovery or
271 any other manner the location of any essential witness in the
272 program, or any provision of the witness protection services plan
273 for the essential witness. The court with jurisdiction of the
274 criminal proceeding in which an essential witness is in the
275 program may authorize limited discovery, if a motion is filed by
276 the defense attorney objecting to the nondisclosure by the
277 district attorney. The court, after hearing the arguments of the
278 attorneys in a nonpublic hearing, may order the production of any
279 plea agreements with the essential witness, any resolution of
280 criminal charges against the essential witness, and the criminal
281 history of the essential witness. A court may require the
282 production of information relating to an essential witness in the
283 program only if the information can be provided without revealing
284 the location of the witness and without exposing the essential
285 witness to potential reprisals or harm.

286 (3) If an essential witness is in the program, either party
287 to the legal proceeding may move for a video deposition or
288 stenographic deposition, or both, to preserve the testimony of the
289 witness or to ensure discovery by the defense due to the limited
290 nature of discovery due to the essential witness's participation
291 in the program. The court shall order the deposition at a
292 mutually convenient time and place in a manner to ensure the



293 safety of the witness and the security of the defendant. The
294 party requesting the deposition shall pay all costs associated
295 with the deposition. The court shall allow no more than one (1)
296 deposition of the witness.

297 **SECTION 11.** Protective services provided under the witness
298 services agreement may not be provided for longer than one (1)
299 year or until the risk and threat giving rise to the need for
300 protective services has diminished, whichever occurs first. The
301 district attorney, at the end of the first year, may petition for
302 an additional year of services for the essential witness if the
303 risk of harm or imminent threat is still present. No individual
304 shall remain in the Witness Protection Program or receive
305 protective services for longer than two (2) years.

306 **SECTION 12.** (1) Any case on the docket of a court of this
307 state in which an essential witness has entered the program shall
308 receive priority status and shall not be continued from its trial
309 date unless good cause is shown in the discretion of the court.
310 The courts of this state shall endeavor, within their ability, to
311 comply with the fundamental constitutional rights of the defendant
312 and to bring to trial within one (1) year from the date of
313 arraignment any cause in which an essential witness is in the
314 program. If a court cannot provide a trial within one (1) year
315 from the date of arraignment, the court shall enter an order
316 setting out reasons for the delay that constitute good cause, and
317 the order shall serve as authority for the essential witness to



318 remain in the program until the trial is completed, the case
319 resolves by plea, or the charge is dismissed.

320 (2) If the court enters an order authorizing the delay or
321 continuance of the trial beyond one (1) year from the date of
322 arraignment on a case where an essential witness is in the
323 program, the court shall also specify in the order that further
324 costs associated with the continuation of the essential witness in
325 the program shall be reimbursed from the circuit court budget for
326 the length of the time of the continuance. A court is not
327 authorized to continue a case where an essential witness is in the
328 program one (1) year from the date of arraignment without also
329 paying for the costs of the continued protection services for the
330 essential witness.

331 **SECTION 13.** Section 25-41-3, Mississippi Code of 1972, is
332 amended as follows:

333 25-41-3. For purposes of this chapter, the following words
334 shall have the meaning ascribed herein, to wit:

335 (a) "Public body" means any executive or administrative
336 board, commission, authority, council, department, agency, bureau
337 or any other policymaking entity, or committee thereof, of the
338 State of Mississippi, or any political subdivision or municipal
339 corporation of the state, whether the entity be created by statute
340 or executive order, which is supported wholly or in part by public
341 funds or expends public funds, and any standing, interim or
342 special committee of the Mississippi Legislature. The term



343 "public body" includes the governing board of a charter school
344 authorized by the Mississippi Charter School Authorizer Board and
345 the board of trustees of a community hospital as defined in
346 Section 41-13-10. There shall be exempted from the provisions of
347 this chapter:

348 (i) The judiciary, including all jury
349 deliberations;

350 (ii) Law enforcement officials;

351 (iii) The military;

352 (iv) The State Probation and Parole Board;

353 (v) The Workers' Compensation Commission;

354 (vi) Legislative subcommittees and legislative
355 conference committees;

356 (vii) The arbitration council established in
357 Section 69-3-19;

358 (viii) License revocation, suspension and
359 disciplinary proceedings held by the Mississippi State Board of
360 Dental Examiners; * * *

361 (ix) Hearings and meetings of the Board of Tax
362 Appeals and of the hearing officers and the board of review of the
363 Department of Revenue as provided in Section 27-77-15 * * *; and

364 (x) The Witness Protection Board established in
365 Section 2 of this act.

366 (b) "Meeting" means an assemblage of members of a
367 public body at which official acts may be taken upon a matter over



368 which the public body has supervision, control, jurisdiction or
369 advisory power; "meeting" also means any assemblage through the
370 use of video or teleconference devices.

371 **SECTION 14.** (1) Any person who (a) threatens, harasses or
372 intimidates a witness or a person reasonably expected to be a
373 witness in a criminal prosecution in an effort to prevent such
374 witness from testifying, giving evidence or assisting law
375 enforcement in any way; or (b) solicits, encourages or requests a
376 witness to provide a false version of events in an effort to
377 defeat or defend another criminal charge, shall be guilty of a
378 Class 1 felony, and sentenced to imprisonment for a term of not
379 more than five (5) years or fined, not more than Five Thousand
380 Dollars (\$5,000.00), or both. It shall not be a defense to this
381 crime if the law enforcement prevented the actual completion of
382 the threat, harassment or intimidation.

383 (2) Murder, which is perpetuated by the killing of a state's
384 witness or a witness for the federal government, a confidential
385 informant for any agency of the state or federal government, or
386 any other person whose cooperation or assistance to the state or
387 federal government was the motive for the killing, shall be
388 capital murder and punished as provided by law.

389 **SECTION 15.** This act shall take effect and be in force from
390 and after July 1, 2016.

