

By: Senator(s) Wiggins

To: Judiciary, Division A;  
Appropriations

SENATE BILL NO. 2132  
(As Passed the Senate)

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 AND FOR RELATED PURPOSES.

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

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

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

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



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

21 The board shall consist of:

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

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

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

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

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

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

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



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

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



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

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

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

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

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

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

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

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



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



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



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

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

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

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

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

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

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

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

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

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



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

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

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

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





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

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

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

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

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

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

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

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



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

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

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



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

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

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



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

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

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



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

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

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



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

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

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

332 25-41-3. For purposes of this chapter, the following words  
333 shall have the meaning ascribed herein, to wit:

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



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

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

349 (ii) Law enforcement officials;

350 (iii) The military;

351 (iv) The State Probation and Parole Board;

352 (v) The Workers' Compensation Commission;

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

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

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

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

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

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



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

370           **SECTION 14.** This act shall take effect and be in force from  
371 and after July 1, 2016, and shall stand repealed on June 30, 2016.

