

By: Representative Bain

To: Judiciary B

HOUSE BILL NO. 908

1 AN ACT TO AMEND SECTION 93-21-13, MISSISSIPPI CODE OF 1972,  
 2 TO PROVIDE FOR WIDE-RANGING APPLICATION OF EMERGENCY DOMESTIC  
 3 ABUSE PROTECTION ORDERS; TO AMEND SECTION 93-21-15, MISSISSIPPI  
 4 CODE OF 1972, TO PROVIDE FOR WIDE-RANGING APPLICATION OF OTHER  
 5 DOMESTIC ABUSE PROTECTION ORDERS; TO CREATE NEW SECTION  
 6 93-21-15.1, MISSISSIPPI CODE OF 1972, TO PROVIDE APPELLATE  
 7 PROCEDURES FOR APPEALS OF DOMESTIC ABUSE PROTECTION ORDERS, AND TO  
 8 SPECIFY WHEN SUCH APPEALS ARE ON THE RECORD OR ARE DE NOVO; AND  
 9 FOR RELATED PURPOSES.

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

11 **SECTION 1.** Section 93-21-13, Mississippi Code of 1972, is  
 12 amended as follows:

13 93-21-13. (1) (a) The court in which a petition seeking  
 14 emergency relief pending a hearing is filed must consider all such  
 15 requests in an expedited manner. The court may issue an emergency  
 16 domestic abuse protection order without prior notice to the  
 17 respondent upon good cause shown by the petitioner. Immediate and  
 18 present danger of abuse to the petitioner, any minor children or  
 19 any person alleged to be incompetent shall constitute good cause  
 20 for issuance of an emergency domestic abuse protection order. The  
 21 respondent shall be provided with notice of the entry of any



22 emergency domestic abuse protection order issued by the court by  
23 personal service of process.

24 (b) A court granting an emergency domestic abuse  
25 protection order may grant relief as provided in Section  
26 93-21-15(1) (a) .

27 (c) An emergency domestic abuse protection order shall  
28 be effective for ten (10) days, or until a hearing may be held,  
29 whichever occurs first. If a hearing under this subsection (1) is  
30 continued, the court may grant or extend the emergency order as it  
31 deems necessary for the protection of the abused person. A  
32 continuance under this subsection (1) (c) shall be valid for no  
33 longer than twenty (20) days.

34 (2) The Attorney General, in cooperation with the  
35 Mississippi Supreme Court and the Mississippi Judicial College,  
36 shall develop standardized forms for emergency domestic abuse  
37 protection orders. Use of the standardized forms in protection  
38 order proceedings pursuant to this chapter shall be fully  
39 implemented by all courts no later than July 1, 2015. However, in  
40 any criminal prosecution or contempt proceeding for a violation of  
41 a domestic abuse protection order, it shall not be a defense that  
42 the order was not issued on the standardized form.

43 (3) Upon issuance of any protection order by the court, the  
44 order shall be entered into the Mississippi Protection Order  
45 Registry by the clerk of the court pursuant to Section 93-21-25,



46 and a copy provided to the sheriff's department in the county of  
47 the court of issuance.

48 (4) \* \* \* An emergency domestic abuse protection order  
49 issued under this section is effective in this state, in all other  
50 states, and in United States territories and tribal lands. A  
51 court shall not limit the scope of a protection order to the  
52 boundaries of the State of Mississippi or to the boundaries of a  
53 municipality or county within the State of Mississippi.

54 **SECTION 2.** Section 93-21-15, Mississippi Code of 1972, is  
55 amended as follows:

56 93-21-15. (1) (a) After a hearing is held as provided in  
57 Section 93-21-11 for which notice and opportunity to be heard has  
58 been granted to the respondent, and upon a finding that the  
59 petitioner has proved the existence of abuse by a preponderance of  
60 the evidence, the municipal and justice courts shall be empowered  
61 to grant a temporary domestic abuse protection order to bring  
62 about a cessation of abuse of the petitioner, any minor children,  
63 or any person alleged to be incompetent. The relief the court may  
64 provide includes, but is not limited to, the following:

65 (i) Directing the respondent to refrain from  
66 abusing the petitioner, any minor children, or any person alleged  
67 to be incompetent;

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



71 (iii) Prohibiting or limiting contact by the  
72 respondent with the abused or other household members designated  
73 by the court, whether in person, by telephone or by other  
74 electronic communication;

75 (iv) Granting possession to the petitioner of the  
76 residence or household to the exclusion of the respondent by  
77 evicting the respondent or restoring possession to the petitioner,  
78 or both; or

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

82 (b) The duration of any temporary domestic abuse  
83 protection order issued by a municipal or justice court shall not  
84 exceed thirty (30) days. However, if the party to be protected  
85 and the respondent do not have minor children in common, the  
86 duration of the temporary domestic abuse protection order may  
87 exceed thirty (30) days but shall not exceed one (1) year.

88 (c) \* \* \* Procedures for an appeal of the issuance of a  
89 temporary domestic abuse protection order are set forth in Section  
90 93-21-15.1.

91 (2) (a) After a hearing is held as provided in Section  
92 93-21-11 for which notice and opportunity to be heard has been  
93 granted to the respondent, and upon a finding that the petitioner  
94 has proved the existence of abuse by a preponderance of the  
95 evidence, the chancery or county court shall be empowered to grant



96 a final domestic abuse protection order or approve any consent  
97 agreement to bring about a cessation of abuse of the petitioner,  
98 any minor children, or any person alleged to be incompetent. In  
99 granting a final domestic abuse protection order, the chancery or  
100 county court may provide for relief that includes, but is not  
101 limited to, the following:

102 (i) Directing the respondent to refrain from  
103 abusing the petitioner, any minor children, or any person alleged  
104 to be incompetent;

105 (ii) Granting possession to the petitioner of the  
106 residence or household to the exclusion of the respondent by  
107 evicting the respondent or restoring possession to the petitioner,  
108 or both;

109 (iii) When the respondent has a duty to support  
110 the petitioner, any minor children, or any person alleged to be  
111 incompetent living in the residence or household and the  
112 respondent is the sole owner or lessee, granting possession to the  
113 petitioner of the residence or household to the exclusion of the  
114 respondent by evicting the respondent or restoring possession to  
115 the petitioner, or both, or by consent agreement allowing the  
116 respondent to provide suitable, alternate housing;

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



120 (v) If the respondent is legally obligated to  
121 support the petitioner, any minor children, or any person alleged  
122 to be incompetent, ordering the respondent to pay temporary  
123 support for the petitioner, any minor children, or any person  
124 alleged to be incompetent;

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

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

134 (viii) Prohibiting or limiting respondent's  
135 physical proximity to the abused or other household members  
136 designated by the court, including residence, school and place of  
137 work;

138 (ix) Prohibiting or limiting contact by the  
139 respondent with the abused or other household members designated  
140 by the court whether in person, by telephone or by electronic  
141 communication; \* \* \*

142 (x) Ordering counseling or professional medical  
143 treatment for the respondent, including counseling or treatment  
144 designed to bring about the cessation of domestic abuse \* \* \* and



145                   (xi) Any other relief the court deems appropriate.

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

151                   (c) Temporary provisions addressing temporary custody,  
152 visitation or support of minor children contained in a final  
153 domestic abuse protection order issued by a chancery or county  
154 court shall be effective for one hundred eighty (180) days. A  
155 party seeking relief beyond that period must initiate appropriate  
156 proceedings in the chancery court of appropriate jurisdiction. If  
157 at the end of the one-hundred-eighty-day period, neither party has  
158 initiated such proceedings, the custody, visitation or support of  
159 minor children will revert to the chancery court order addressing  
160 such terms that was in effect at the time the domestic abuse  
161 protection order was granted. The chancery court in which  
162 custody, visitation or support proceedings have been initiated may  
163 provide for any temporary provisions addressing custody,  
164 visitation or support as the court deems appropriate.

165                   (3) Every domestic abuse protection order issued pursuant to  
166 this section shall set forth the reasons for its issuance, shall  
167 contain specific findings of fact regarding the existence of  
168 abuse, shall be specific in its terms and shall describe in  
169 reasonable detail the act or acts to be prohibited. No mutual



170 protection order shall be issued unless that order is supported by  
171 an independent petition by each party requesting relief pursuant  
172 to this chapter, and the order contains specific findings of fact  
173 regarding the existence of abuse by each party as principal  
174 aggressor, and a finding that neither party acted in self-defense.

175 (4) The Attorney General, in cooperation with the  
176 Mississippi Supreme Court and the Mississippi Judicial College,  
177 shall develop standardized forms for temporary and final domestic  
178 abuse protection orders. The use of standardized forms in  
179 protection order proceedings pursuant to this chapter shall be  
180 fully implemented by all courts no later than July 1, 2015.

181 However, in any criminal prosecution or contempt proceeding for a  
182 violation of a domestic abuse protection order, it shall not be a  
183 defense that the order was not issued on the standardized form.

184 (5) Upon issuance of any protection order by the court, the  
185 order shall be entered in the Mississippi Protection Order  
186 Registry by the clerk of the court pursuant to Section 93-21-25,  
187 and a copy shall be provided to the sheriff's department in the  
188 county of the court of issuance.

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

193 (7) A domestic abuse protection order issued under this  
194 section is effective in this state, in all other states, and in





195 United States territories and tribal lands. A court shall not  
196 limit the scope of a protection order to the boundaries of the  
197 State of Mississippi or to the boundaries of a municipality or  
198 county within the State of Mississippi.

199 (8) Procedures for an appeal of the issuance or denial of a  
200 final domestic abuse protection order are set forth in Section  
201 93-21-15.1.

202 **SECTION 3.** The following shall be codified as Section  
203 93-21-15.1, Mississippi Code of 1972:

204 93-21-15.1. (1) (a) **De novo appeal.** Any party aggrieved  
205 by the decision of a municipal or justice court judge to issue a  
206 temporary domestic abuse protection order has the right of a trial  
207 de novo on appeal in the chancery court having jurisdiction. The  
208 trial de novo shall be held within ten (10) days of the filing of  
209 a notice of appeal, unless for good cause the matter cannot be set  
210 on the docket within that time frame. All appeals by trial de  
211 novo shall be priority cases and the judge shall be immediately  
212 notified when an appeal is filed in order to provide for expedited  
213 proceedings. The appeal will proceed as if a petition for an  
214 order of protection from domestic abuse had been filed in the  
215 chancery court. Following the trial de novo, if the petitioner  
216 has proved the existence of abuse by a preponderance of the  
217 evidence, the chancery court may grant a final domestic abuse  
218 protection order. In granting a final domestic abuse protection



219 order, the chancery court may provide for relief that includes,  
220 but is not limited to, the relief set out in Section 93-21-15(2).

221 (b) **Notice of appeal.** The party desiring to appeal a  
222 decision from municipal or justice court must file a written  
223 notice of appeal with the chancery court clerk within ten (10)  
224 days of the issuance of a domestic abuse protection order. In all  
225 de novo appeals, the notice of appeal and payment of costs must be  
226 simultaneously filed and paid with the chancery clerk. Costs for  
227 an appeal by trial de novo shall be calculated as specified in  
228 subsection (4) of this section. The written notice of appeal must  
229 specify the party or parties taking the appeal and must designate  
230 the judgment or order from which the appeal is taken. A copy of  
231 the notice of appeal must be provided to all parties or their  
232 attorneys of record and to the clerk of the court from which the  
233 appeal is taken. A certificate of service must accompany the  
234 written notice of appeal. Upon receipt by the municipal or  
235 justice court of the notice of appeal, the clerk of the court  
236 shall immediately provide the entire court file to the chancery  
237 clerk.

238 (2) (a) **Appeals on the record.** Any party aggrieved by the  
239 decision of a county court to issue a final domestic abuse  
240 protection order or to deny such an order shall be entitled to an  
241 appeal on the record in the chancery court having jurisdiction.  
242 If the county court has issued a domestic abuse protection order  
243 as a temporary order instead of a final order as contemplated by



244 Section 93-21-15(2), the chancery court shall permit the appeal on  
245 the record and shall treat the temporary order issued by the  
246 county court as a final order on the matter. The chancery court  
247 shall treat the appeal as a priority matter and render a decision  
248 as expeditiously as possible.

249 (b) **Notice of appeal and filing the record.** The party  
250 desiring to appeal a decision from county court must file a  
251 written notice of appeal with the chancery court clerk within ten  
252 (10) days of the issuance of a domestic abuse protection order.  
253 In all appeals, the notice of appeal and payment of costs, where  
254 costs are applicable, shall be simultaneously filed and paid with  
255 the chancery clerk. Costs shall be calculated as specified in  
256 subsection (4) of this section. The written notice of appeal must  
257 specify the party or parties taking the appeal and must designate  
258 the judgment or order from which the appeal is taken. A copy of  
259 the notice of appeal must be provided to all parties or their  
260 attorneys of record and to the clerk of the court from which the  
261 appeal is taken. A certificate of service must accompany the  
262 written notice of appeal. In all appeals in which the appeal is  
263 solely on the record, the record from the county court must be  
264 filed with the chancery clerk within thirty (30) days of filing of  
265 the notice of appeal. However, in cases involving a transcript,  
266 the court reporter or county court may request an extension of  
267 time. The court, on its own motion or on application of any  
268 party, may compel the compilation and transmission of the record



269 of proceedings. Failure to file the record with the court clerk  
270 or to request the assistance of the court in compelling the same  
271 within thirty (30) days of the filing of the written notice of  
272 appeal may be deemed an abandonment of the appeal and the court  
273 may dismiss the same with costs to the appealing party or parties,  
274 unless a party or parties is exempt from costs as specified in  
275 subsection (4) of this section.

276 (c) **Briefs on appeals on the record.** Briefs filed in  
277 an appeal on the record must conform to the practice in the  
278 Supreme Court as to form and time of filing and service, except  
279 that the parties should file only an original and one (1) copy of  
280 each brief. The consequences of failure to timely file a brief  
281 will be the same as in the Supreme Court.

282 (3) **Supersedeas.** The perfecting of an appeal, whether on  
283 the record or by trial de novo, does not act as a supersedeas.  
284 Any domestic abuse protection order issued by a municipal, justice  
285 or county court shall remain in full force and effect for the  
286 duration of the appeal, unless the domestic abuse protection order  
287 otherwise expires due to the passage of time.

288 (4) **Cost Bond.** In all appeals under this section, unless  
289 the court allows an appeal in forma pauperis or the appellant  
290 otherwise qualifies for exemption as specified in this subsection  
291 (4), the appellant shall pay all court costs incurred below and  
292 likely to be incurred on appeal as estimated by the chancery  
293 clerk. In all cases where the appellant is appealing the denial



294 of an order of protection from domestic abuse by a county court,  
295 the appellant shall not be required to pay any costs associated  
296 with the appeal, including service of process fees, nor shall the  
297 appellant be required to appeal in forma pauperis. In such  
298 circumstances, the court may assess costs of the appeal to the  
299 appellant if the court finds that the allegations of abuse are  
300 without merit and the appellant is not a victim of abuse. Where  
301 the issuance of a mutual protection order is the basis of the  
302 appeal, the appellant may be entitled to reimbursement of  
303 appellate costs paid to the court as a matter of equity if the  
304 chancery court finds that the mutual order was issued by the lower  
305 court without regard to the requirements of Section 93-21-15(3).

306 (5) The appellate procedures set forth in this section shall  
307 control if there is a conflict with another statute or rule.

308 (6) Any party aggrieved by the issuance or denial of a final  
309 order of protection by a chancery court shall be entitled to  
310 appeal the decision. Notwithstanding the provisions of subsection  
311 (5) of this section, the appeal shall be governed by the  
312 Mississippi Rules of Appellate Procedure and any other applicable  
313 rules or statutes.

314 **SECTION 4.** This act shall take effect and be in force from  
315 and after July 1, 2018.

