

By: Senator(s) Fillingane, Caughman

To: Judiciary, Division A

SENATE BILL NO. 2212

1 AN ACT TO AMEND SECTION 97-3-7, MISSISSIPPI CODE OF 1972, TO
2 PROVIDE THAT SIMPLE AND AGGRAVATED ASSAULT JUSTIFY AN ENHANCED
3 PENALTY WHEN COMMITTED ON EDUCATIONAL PROPERTY OR AT A PLACE OF
4 WORSHIP; TO AMEND SECTION 97-3-19, MISSISSIPPI CODE OF 1972, TO
5 PROVIDE THAT MURDER COMMITTED AT A PLACE OF WORSHIP IS A CAPITAL
6 OFFENSE; TO AMEND SECTION 99-19-101, MISSISSIPPI CODE OF 1972, TO
7 REVISE THE AGGRAVATING FACTORS FOR CAPITAL MURDER IN CONFORMITY;
8 AND FOR RELATED PURPOSES.

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

10 **SECTION 1.** Section 97-3-7, Mississippi Code of 1972, is
11 amended as follows:

12 97-3-7. (1) (a) A person is guilty of simple assault if he
13 (i) attempts to cause or purposely, knowingly or recklessly causes
14 bodily injury to another; (ii) negligently causes bodily injury to
15 another with a deadly weapon or other means likely to produce
16 death or serious bodily harm; or (iii) attempts by physical menace
17 to put another in fear of imminent serious bodily harm; and, upon
18 conviction, he shall be punished by a fine of not more than Five
19 Hundred Dollars (\$500.00) or by imprisonment in the county jail
20 for not more than six (6) months, or both.



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

26 (2) (a) A person is guilty of aggravated assault if he (i)
27 attempts to cause serious bodily injury to another, or causes such
28 injury purposely, knowingly or recklessly under circumstances
29 manifesting extreme indifference to the value of human life; (ii)
30 attempts to cause or purposely or knowingly causes bodily injury
31 to another with a deadly weapon or other means likely to produce
32 death or serious bodily harm; or (iii) causes any injury to a
33 child who is in the process of boarding or exiting a school bus in
34 the course of a violation of Section 63-3-615; and, upon
35 conviction, he shall be punished by imprisonment in the county
36 jail for not more than one (1) year or in the Penitentiary for not
37 more than twenty (20) years.

38 (b) However, a person convicted of aggravated assault
39 upon any of the persons listed in subsection (14) of this section
40 under the circumstances enumerated in subsection (14) shall be
41 punished by a fine of not more than Five Thousand Dollars
42 (\$5,000.00) or by imprisonment for not more than thirty (30)
43 years, or both.

44 (3) (a) When the offense is committed against a current or
45 former spouse of the defendant or a child of that person, a person



46 living as a spouse or who formerly lived as a spouse with the
47 defendant or a child of that person, a parent, grandparent, child,
48 grandchild or someone similarly situated to the defendant, a
49 person who has a current or former dating relationship with the
50 defendant, or a person with whom the defendant has had a
51 biological or legally adopted child, a person is guilty of simple
52 domestic violence who:

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

55 (ii) Negligently causes bodily injury to another
56 with a deadly weapon or other means likely to produce death or
57 serious bodily harm; or

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

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

63 (b) **Simple domestic violence: third.** A person is
64 guilty of the felony of simple domestic violence third who commits
65 simple domestic violence as defined in this subsection (3) and
66 who, at the time of the commission of the offense in question, has
67 two (2) prior convictions, whether against the same or another
68 victim, within seven (7) years, for any combination of simple
69 domestic violence under this subsection (3) or aggravated domestic
70 violence as defined in subsection (4) of this section or



71 substantially similar offenses under the law of another state, of
72 the United States, or of a federally recognized Native American
73 tribe. Upon conviction, the defendant shall be sentenced to a
74 term of imprisonment not less than five (5) nor more than ten (10)
75 years.

76 (4) (a) When the offense is committed against a current or
77 former spouse of the defendant or a child of that person, a person
78 living as a spouse or who formerly lived as a spouse with the
79 defendant or a child of that person, a parent, grandparent, child,
80 grandchild or someone similarly situated to the defendant, a
81 person who has a current or former dating relationship with the
82 defendant, or a person with whom the defendant has had a
83 biological or legally adopted child, a person is guilty of
84 aggravated domestic violence who:

85 (i) Attempts to cause serious bodily injury to
86 another, or causes such an injury purposely, knowingly or
87 recklessly under circumstances manifesting extreme indifference to
88 the value of human life;

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

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

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



96 (b) **Aggravated domestic violence; third.** A person is
97 guilty of aggravated domestic violence third who, at the time of
98 the commission of that offense, commits aggravated domestic
99 violence as defined in this subsection (4) and who has two (2)
100 prior convictions within the past seven (7) years, whether against
101 the same or another victim, for any combination of aggravated
102 domestic violence under this subsection (4) or simple domestic
103 violence third as defined in subsection (3) of this section, or
104 substantially similar offenses under the laws of another state, of
105 the United States, or of a federally recognized Native American
106 tribe. Upon conviction for aggravated domestic violence third,
107 the defendant shall be sentenced to a term of imprisonment of not
108 less than ten (10) nor more than twenty (20) years.

109 (5) **Sentencing for fourth or subsequent domestic violence**
110 **offense.** Any person who commits an offense defined in subsection
111 (3) or (4) of this section, and who, at the time of the commission
112 of that offense, has at least three (3) previous convictions,
113 whether against the same or different victims, for any combination
114 of offenses defined in subsections (3) and (4) of this section or
115 substantially similar offenses under the law of another state, of
116 the United States, or of a federally recognized Native American
117 tribe, shall, upon conviction, be sentenced to imprisonment for
118 not less than fifteen (15) years nor more than twenty (20) years.

119 (6) In sentencing under subsections (3), (4) and (5) of this
120 section, the court shall consider as an aggravating factor whether



the crime was committed in the physical presence or hearing of a child under sixteen (16) years of age who was, at the time of the offense, living within either the residence of the victim, the residence of the perpetrator, or the residence where the offense occurred.

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

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

(9) For the purposes of this section:

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

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

(10) Every conviction under subsection (3), (4) or (5) of this section may require as a condition of any suspended sentence that the defendant participate in counseling or treatment to bring about the cessation of domestic abuse. The defendant may be required to pay all or part of the cost of the counseling or treatment, in the discretion of the court.



145 (11) (a) Upon conviction under subsection (3), (4) or (5)
146 of this section, the court shall be empowered to issue a criminal
147 protection order prohibiting the defendant from any contact with
148 the victim. The court may include in a criminal protection order
149 any other condition available under Section 93-21-15. The
150 duration of a criminal protection order shall be based upon the
151 seriousness of the facts before the court, the probability of
152 future violations, and the continued safety of the victim or
153 another person. However, municipal and justice courts may issue
154 criminal protection orders for a maximum period of time not to
155 exceed one (1) year. Circuit and county courts may issue a
156 criminal protection order for any period of time deemed necessary.
157 Upon issuance of a criminal protection order, the clerk of the
158 issuing court shall enter the order in the Mississippi Protection
159 Order Registry within twenty-four (24) hours of issuance with no
160 exceptions for weekends or holidays, pursuant to Section 93-21-25.

161 (b) A criminal protection order shall not be issued
162 against the defendant if the victim of the offense, or the
163 victim's lawful representative where the victim is a minor or
164 incompetent person, objects to its issuance, except in
165 circumstances where the court, in its discretion, finds that a
166 criminal protection order is necessary for the safety and
167 well-being of a victim who is a minor child or incompetent adult.



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

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

176 (12) When investigating allegations of a violation of
177 subsection (3), (4), (5) or (11) of this section, whether or not
178 an arrest results, law enforcement officers shall utilize the form
179 prescribed for such purposes by the Office of the Attorney General
180 in consultation with the sheriff's and police chief's
181 associations. However, failure of law enforcement to utilize the
182 uniform offense report shall not be a defense to a crime charged
183 under this section. The uniform offense report shall not be
184 required if, upon investigation, the offense does not involve
185 persons in the relationships specified in subsections (3) and (4)
186 of this section.

187 (13) In any conviction under subsection (3), (4), (5) or
188 (11) of this section, the sentencing order shall include the
189 designation "domestic violence." The court clerk shall enter the
190 disposition of the matter into the corresponding uniform offense
191 report.



192 (14) Assault upon any of the following listed persons is an
193 aggravating circumstance for charging under subsections (1)(b) and
194 (2)(b) of this section:

195 (a) When acting within the scope of his duty, office or
196 employment at the time of the assault: a statewide elected
197 official; law enforcement officer; fireman; emergency medical
198 personnel; public health personnel; social worker, family
199 protection specialist or family protection worker employed by the
200 Department of Human Services or another agency; Division of Youth
201 Services personnel; any county or municipal jail officer;
202 superintendent, principal, teacher or other instructional
203 personnel, school attendance officer or school bus driver; any
204 member of the Mississippi National Guard or United States Armed
205 Forces; a judge of a circuit, chancery, county, justice, municipal
206 or youth court or a judge of the Court of Appeals or a justice of
207 the Supreme Court; district attorney or legal assistant to a
208 district attorney; county prosecutor or municipal prosecutor;
209 court reporter employed by a court, court administrator, clerk or
210 deputy clerk of the court; public defender; or utility worker;

211 (b) A legislator while the Legislature is in regular or
212 extraordinary session or while otherwise acting within the scope
213 of his duty, office or employment; * * *

214 (c) A person who is sixty-five (65) years of age or
215 older or a person who is a vulnerable person, as defined in
216 Section 43-47-5 * * *;



(d) A student or teacher when present on educational property as defined in Section 97-37-17; or

(e) A person attending a service at a place of worship as defined in Section 45-9-171.

SECTION 2. Section 97-3-19, Mississippi Code of 1972, is amended as follows:

97-3-19. (1) The killing of a human being without the authority of law by any means or in any manner shall be murder in the following cases:

(a) When done with deliberate design to effect the death of the person killed, or of any human being, shall be first-degree murder;

(b) When done in the commission of an act eminently dangerous to others and evincing a depraved heart, regardless of human life, although without any premeditated design to effect the death of any particular individual, shall be second-degree murder;

(c) When done without any design to effect death by any person engaged in the commission of any felony other than rape, kidnapping, burglary, arson, robbery, sexual battery, unnatural intercourse with any child under the age of twelve (12), or nonconsensual unnatural intercourse with mankind, or felonious abuse and/or battery of a child in violation of subsection (2) of Section 97-5-39, or in any attempt to commit such felonies, shall be first-degree murder;



(d) When done with deliberate design to effect the death of an unborn child, shall be first-degree murder.

(2) The killing of a human being without the authority of law by any means or in any manner shall be capital murder in the following cases:

(a) Murder which is perpetrated by killing a peace officer or fireman while such officer or fireman is acting in his official capacity or by reason of an act performed in his official capacity, and with knowledge that the victim was a peace officer or fireman. For purposes of this paragraph, the term "peace officer" means any state or federal law enforcement officer, including, but not limited to, a federal park ranger, the sheriff of or police officer of a city or town, a conservation officer, a parole officer, a judge, senior status judge, special judge, district attorney, legal assistant to a district attorney, county prosecuting attorney or any other court official, an agent of the Alcoholic Beverage Control Division of the Department of Revenue, an agent of the Bureau of Narcotics, personnel of the Mississippi Highway Patrol, and the employees of the Department of Corrections who are designated as peace officers by the Commissioner of Corrections pursuant to Section 47-5-54, and the superintendent and his deputies, guards, officers and other employees of the Mississippi State Penitentiary;

(b) Murder which is perpetrated by a person who is under sentence of life imprisonment;



266 (c) Murder which is perpetrated by use or detonation of
267 a bomb or explosive device;

268 (d) Murder which is perpetrated by any person who has
269 been offered or has received anything of value for committing the
270 murder, and all parties to such a murder, are guilty as
271 principals;

272 (e) When done with or without any design to effect
273 death, by any person engaged in the commission of the crime of
274 rape, burglary, kidnapping, arson, robbery, sexual battery,
275 unnatural intercourse with any child under the age of twelve (12),
276 or nonconsensual unnatural intercourse with mankind, or in any
277 attempt to commit such felonies;

278 (f) When done with or without any design to effect
279 death, by any person engaged in the commission of the crime of
280 felonious abuse and/or battery of a child in violation of
281 subsection (2) of Section 97-5-39, or in any attempt to commit
282 such felony;

283 (g) Murder which is perpetrated on educational property
284 as defined in Section 97-37-17;

285 (h) Murder which is perpetrated at a place of worship
286 as defined in Section 45-9-171;

287 (* * *i) Murder which is perpetrated by the killing of
288 any elected official of a county, municipal, state or federal
289 government with knowledge that the victim was such public
290 official;



291 (* * *j) Murder of three (3) or more persons who are
292 killed incident to one (1) act, scheme, course of conduct or
293 criminal episode;

294 (* * *k) Murder of more than three (3) persons within
295 a three-year period;

296 (* * *l) Murder which is perpetrated by the killing of
297 a person who: (i) is or would be a witness for the state or
298 federal government in a criminal trial; (ii) is a confidential
299 informant for any agency of the state or federal government; or
300 (iii) is any other person who was cooperating or assisting the
301 state or federal government or was suspected of cooperation or
302 assistance to the state or federal government, if the motive for
303 the killing was either the person's status as a witness, potential
304 witness or informant, or was to prevent the cooperation or
305 assistance to the prosecution. It shall not be a defense to a
306 killing under this subsection that the defendant erroneously
307 suspected or believed the victim to have cooperated or assisted
308 the state or federal government.

309 (3) An indictment for murder or capital murder shall serve
310 as notice to the defendant that the indictment may include any and
311 all lesser included offenses thereof, including, but not limited
312 to, manslaughter.

313 **SECTION 3.** Section 99-19-101, Mississippi Code of 1972, is
314 amended as follows:



315 99-19-101. (1) Upon conviction or adjudication of guilt of
316 a defendant of capital murder or other capital offense, the court
317 shall conduct a separate sentencing proceeding to determine
318 whether the defendant should be sentenced to death, life
319 imprisonment without eligibility for parole, or life imprisonment.
320 The proceeding shall be conducted by the trial judge before the
321 trial jury as soon as practicable. If, through impossibility or
322 inability, the trial jury is unable to reconvene for a hearing on
323 the issue of penalty, having determined the guilt of the accused,
324 the trial judge may summon a jury to determine the issue of the
325 imposition of the penalty. If the trial jury has been waived, or
326 if the defendant pleaded guilty, the sentencing proceeding shall
327 be conducted before a jury impaneled for that purpose or may be
328 conducted before the trial judge sitting without a jury if both
329 the State of Mississippi and the defendant agree thereto in
330 writing. In the proceeding, evidence may be presented as to any
331 matter that the court deems relevant to sentence, and shall
332 include matters relating to any of the aggravating or mitigating
333 circumstances. However, this subsection shall not be construed to
334 authorize the introduction of any evidence secured in violation of
335 the Constitution of the United States or of the State of
336 Mississippi. The state and the defendant and the defendant's
337 counsel shall be permitted to present arguments for or against the
338 sentence of death.



(2) After hearing all the evidence, the jury shall deliberate on the following matters:

(a) Whether sufficient factors exist as enumerated in subsection (7) of this section;

(b) Whether sufficient aggravating circumstances exist as enumerated in subsection (5) of this section;

(c) Whether sufficient mitigating circumstances exist as enumerated in subsection (6) of this section, which outweigh the aggravating circumstances found to exist; and

(d) Based on these considerations, whether the defendant should be sentenced to life imprisonment, life imprisonment without eligibility for parole, or death.

(3) For the jury to impose a sentence of death, it must unanimously find in writing the following:

(a) That sufficient factors exist as enumerated in subsection (7) of this section;

(b) That sufficient aggravating circumstances exist as enumerated in subsection (5) of this section; and

(c) That there are insufficient mitigating circumstances, as enumerated in subsection (6), to outweigh the aggravating circumstances.

In each case in which the jury imposes the death sentence, the determination of the jury shall be supported by specific written findings of fact based upon the circumstances in subsections (5) and (6) of this section and upon the records of



the trial and the sentencing proceedings. If, after the trial of the penalty phase, the jury does not make the findings requiring the death sentence or life imprisonment without eligibility for parole, or is unable to reach a decision, the court shall impose a sentence of life imprisonment.

(4) The judgment of conviction and sentence of death shall be subject to automatic review by the Supreme Court of Mississippi within sixty (60) days after certification by the sentencing court of the entire record, unless the time is extended for an additional period by the Supreme Court for good cause shown. The review by the Supreme Court shall have priority over all other cases and shall be heard in accordance with rules promulgated by the Supreme Court.

(5) Aggravating circumstances shall be limited to the following:

(a) The capital offense was committed by a person under sentence of imprisonment.

(b) The defendant was previously convicted of another capital offense or of a felony involving the use or threat of violence to the person.

(c) The defendant knowingly created a great risk of death to many persons.

(d) The capital offense was committed while the defendant was engaged, or was an accomplice, in the commission of, or an attempt to commit, or flight after committing or attempting



389 to commit, any robbery, rape, arson, burglary, kidnapping,
390 aircraft piracy, sexual battery, unnatural intercourse with any
391 child under the age of twelve (12), or nonconsensual unnatural
392 intercourse with mankind, or felonious abuse or battery of a child
393 in violation of subsection (2) of Section 97-5-39, or the unlawful
394 use or detonation of a bomb or explosive device.

395 (e) The capital offense was committed for the purpose
396 of avoiding or preventing a lawful arrest or effecting an escape
397 from custody.

398 (f) The capital offense was committed for pecuniary
399 gain.

400 (g) The capital offense was committed to disrupt or
401 hinder the lawful exercise of any governmental function or the
402 enforcement of laws.

403 (h) The capital offense was committed to influence the
404 policy of a governmental entity by intimidation or coercion, or to
405 affect the conduct of a governmental entity by mass destruction or
406 assassination.

407 (i) The capital offense was especially heinous,
408 atrocious or cruel.

409 (j) The capital offense was committed to intimidate or
410 coerce a civilian population.

411 (k) The capital offense was committed on educational
412 property as defined in Section 97-37-17 or at a place of worship
413 as defined in Section 45-9-171.



414 (6) Mitigating circumstances shall be the following:

415 (a) The defendant has no significant history of prior
416 criminal activity.

417 (b) The offense was committed while the defendant was
418 under the influence of extreme mental or emotional disturbance.

419 (c) The victim was a participant in the defendant's
420 conduct or consented to the act.

421 (d) The defendant was an accomplice in the capital
422 offense committed by another person and his participation was
423 relatively minor.

424 (e) The defendant acted under extreme duress or under
425 the substantial domination of another person.

426 (f) The capacity of the defendant to appreciate the
427 criminality of his conduct or to conform his conduct to the
428 requirements of law was substantially impaired.

429 (g) The age of the defendant at the time of the crime.

430 (7) In order to return and impose a sentence of death the
431 jury must make a written finding of one or more of the following:

432 (a) The defendant actually killed;

433 (b) The defendant attempted to kill;

434 (c) The defendant intended that a killing take place;

435 (d) The defendant contemplated that lethal force would
436 be employed.



437 (8) For the purposes of this section, to "intimidate" or
438 "coerce" do not include peaceful picketing, boycotts or other
439 nonviolent action.

440 **SECTION 4.** This act shall take effect and be in force from
441 and after July 1, 2019.

