

By: Representatives Watson, Scott (80th)

To: Judiciary B

HOUSE BILL NO. 868

1 AN ACT TO AMEND SECTION 99-3-7, MISSISSIPPI CODE OF 1972, TO
2 REVISE THE DOMESTIC VIOLENCE PROVISIONS OF THE WARRANTLESS ARREST
3 STATUTE; AND FOR RELATED PURPOSES.

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

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

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

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

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

43 (b) If a law enforcement officer has probable cause to
44 believe that two (2) or more persons committed a misdemeanor which
45 is an act of domestic violence, or if two (2) or more persons make
46 a complaint to the officer, the officer shall attempt to determine
47 who was the principal aggressor. The officer shall presume that
48 arrest is not the appropriate response for the person or persons
49 who were not the principal aggressor. If the officer believes
50 that all parties are equally responsible, the officer shall
51 exercise such officer's best judgment in determining probable
52 cause.

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

56 (i) The history of domestic abuse between the
57 parties;

58 (ii) The relative severity of the injuries
59 inflicted on each person;

60 (iii) Evidence from the persons involved in the
61 domestic abuse;

62 (iv) The likelihood of future injury to each
63 person;

64 (v) Whether one (1) of the persons acted in
65 self-defense; and

66 (vi) Evidence from witnesses of the domestic
67 violence.

68 (d) A law enforcement officer shall not:

69 (i) Threaten, suggest or otherwise indicate the
70 possible arrest of all parties to discourage future requests for
71 intervention by law enforcement personnel; or

72 (ii) Base the decision of whether to arrest on:

73 1. The consent or request of the victim; or

74 2. The officer's perception of the

75 willingness of the victim or of a witness to the domestic abuse to
76 testify or participate in a judicial proceeding.

77 (4) (a) Any person authorized by a court of law to
78 supervise or monitor a convicted offender who is under an
79 intensive supervision program may arrest the offender when the
80 offender is in violation of the terms or conditions of the
81 intensive supervision program, without having a warrant, provided
82 that the person making the arrest has been trained at the Law
83 Enforcement Officers Training Academy established under Section
84 45-5-1 et seq. or at a course approved by the Board on Law
85 Enforcement Officer Standards and Training.

86 (b) For the purposes of this subsection, the term
87 "intensive supervision program" means an intensive supervision
88 program of the Department of Corrections as described in Section
89 47-5-1001 et seq., or any similar program authorized by a court
90 for offenders who are not under jurisdiction of the Department of
91 Corrections.

92 (5) As used in subsection (3) of this section, the phrase
93 "misdemeanor which is an act of domestic violence" shall mean one
94 or more of the following acts between family or household members
95 who reside together or formerly resided together, current or
96 former spouses, persons who have or have had a dating
97 relationship, or persons who have a biological or legally adopted
98 child together:

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

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

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

104 (6) Any arrest made pursuant to subsection (3) of this
105 section shall be designated as domestic assault or domestic
106 violence on both the arrest docket and the incident report.

107 SECTION 2. This act shall take effect and be in force from
108 and after July 1, 2001.