

By: Senator(s) Ross

To: Judiciary, Division A

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 2543

1 AN ACT TO AMEND SECTIONS 97-3-7, 97-3-19 AND 97-3-53,
2 MISSISSIPPI CODE OF 1972, TO REVISE THE CRIMES OF ASSAULT, MURDER
3 AND KIDNAPPING WHEN COMMITTED AGAINST A WITNESS IN A CRIMINAL
4 PROCEEDING; TO CREATE SECTION 99-7-26, MISSISSIPPI CODE OF 1972,
5 TO REVISE INDICTMENT FOR ASSAULT AND KIDNAPPING WHEN THE VICTIM IS
6 A WITNESS IN A CRIMINAL PROCEEDING; TO CREATE THE MISSISSIPPI
7 WITNESS PROTECTION PROGRAM STUDY COMMITTEE; TO SPECIFY THE
8 MEMBERSHIP THEREOF; TO SET FORTH THE PURPOSE OF THE STUDY
9 COMMITTEE; TO PROVIDE FOR THE ELECTION OF A CHAIRPERSON AND OTHER
10 OFFICERS; TO PROVIDE FOR MEETINGS OF THE COMMITTEE; TO REQUIRE THE
11 DEPARTMENT OF PUBLIC SAFETY TO PROVIDE ADMINISTRATIVE SUPPORT TO
12 THE COMMITTEE; TO SET FORTH ADDITIONAL DUTIES AND POWERS OF THE
13 COMMITTEE; TO REQUIRE STATE AND LOCAL GOVERNMENT AGENCIES TO
14 ASSIST THE COMMITTEE; TO AUTHORIZE THE COMMITTEE TO ENLIST THE
15 SERVICE OF OTHER AGENCIES, ASSOCIATIONS AND ORGANIZATIONS TO
16 ASSIST THE COMMITTEE; TO AUTHORIZE THE COMMITTEE TO EMPLOY SUPPORT
17 PERSONNEL; TO AUTHORIZE PER DIEM PAYMENT AND TRAVEL EXPENSES; TO
18 AUTHORIZE EXPENDITURE OF APPROPRIATED FUNDS; AND FOR RELATED
19 PURPOSES.

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

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

23 97-3-7. (1) A person is guilty of simple assault if he (a)
24 attempts to cause or purposely, knowingly or recklessly causes
25 bodily injury to another; or (b) negligently causes bodily injury
26 to another with a deadly weapon or other means likely to produce
27 death or serious bodily harm; or (c) attempts by physical menace
28 to put another in fear of imminent serious bodily harm; and, upon
29 conviction, he shall be punished by a fine of not more than Five
30 Hundred Dollars (\$500.00) or by imprisonment in the county jail
31 for not more than six (6) months, or both. However, a person
32 convicted of simple assault (a) upon a statewide elected official,
33 law enforcement officer, fireman, emergency medical personnel,
34 public health personnel, social worker or family protection
35 specialist or family protection worker employed by the Department

36 of Human Services or another agency, superintendent, principal,
37 teacher or other instructional personnel, school attendance
38 officer, school bus driver, or a judge of a circuit, chancery,
39 county, justice, municipal or youth court or a judge of the Court
40 of Appeals or a justice of the Supreme Court, district attorney,
41 legal assistant to a district attorney, county prosecutor,
42 municipal prosecutor, court reporter employed by a court, court
43 administrator, clerk or deputy clerk of the court, or public
44 defender, while such statewide elected official, judge or justice,
45 law enforcement officer, fireman, emergency medical personnel,
46 public health personnel, social worker, family protection
47 specialist, family protection worker, superintendent, principal,
48 teacher or other instructional personnel, school attendance
49 officer, school bus driver, district attorney, legal assistant to
50 a district attorney, county prosecutor, municipal prosecutor,
51 court reporter employed by a court, court administrator, clerk or
52 deputy clerk of the court, or public defender is acting within the
53 scope of his duty, office or employment; * * * (b) upon a
54 legislator while the Legislature is in regular or extraordinary
55 session or while otherwise acting within the scope of his duty,
56 office or employment; or (c) upon a witness in a pending criminal
57 proceeding as those terms are defined in Section 97-3-19, if the
58 person at the time of the offense was a defendant or suspect in
59 the criminal proceeding or was acting at the request of a
60 defendant or suspect in the criminal proceeding or was aiding and
61 abetting or acting in concert with a defendant or suspect, shall
62 be punished by a fine of not more than One Thousand Dollars
63 (\$1,000.00) or by imprisonment for not more than five (5) years,
64 or both.

65 (2) A person is guilty of aggravated assault if he (a)
66 attempts to cause serious bodily injury to another, or causes such
67 injury purposely, knowingly or recklessly under circumstances
68 manifesting extreme indifference to the value of human life; or

69 (b) attempts to cause or purposely or knowingly causes bodily
70 injury to another with a deadly weapon or other means likely to
71 produce death or serious bodily harm; and, upon conviction, he
72 shall be punished by imprisonment in the county jail for not more
73 than one (1) year or in the Penitentiary for not more than twenty
74 (20) years. However, a person convicted of aggravated assault (a)
75 upon a statewide elected official, law enforcement officer,
76 fireman, emergency medical personnel, public health personnel,
77 social worker, family protection specialist, family protection
78 worker employed by the Department of Human Services or another
79 agency, superintendent, principal, teacher or other instructional
80 personnel, school attendance officer, school bus driver, or a
81 judge of a circuit, chancery, county, justice, municipal or youth
82 court or a judge of the Court of Appeals or a justice of the
83 Supreme Court, district attorney, legal assistant to a district
84 attorney, county prosecutor, municipal prosecutor, court reporter
85 employed by a court, court administrator, clerk or deputy clerk of
86 the court, or public defender, while such statewide elected
87 official, judge or justice, law enforcement officer, fireman,
88 emergency medical personnel, public health personnel, social
89 worker, family protection specialist, family protection worker,
90 superintendent, principal, teacher or other instructional
91 personnel, school attendance officer, school bus driver, district
92 attorney, legal assistant to a district attorney, county
93 prosecutor, municipal prosecutor, court reporter employed by a
94 court, court administrator, clerk or deputy clerk of the court, or
95 public defender is acting within the scope of his duty, office or
96 employment; * * * (b) upon a legislator while the Legislature is
97 in regular or extraordinary session or while otherwise acting
98 within the scope of his duty, office or employment; or (c) upon a
99 witness in a pending criminal proceeding as those terms are
100 defined in Section 97-3-19, if the person at the time of the
101 offense was a defendant or suspect in the criminal proceeding or

102 was acting at the request of a defendant or suspect in the
103 criminal proceeding or was aiding and abetting or acting in
104 concert with a defendant or suspect, shall be punished by a fine
105 of not more than Five Thousand Dollars (\$5,000.00) or by
106 imprisonment for not more than thirty (30) years, or both.

107 (3) A person is guilty of simple domestic violence who
108 commits simple assault as described in subsection (1) of this
109 section against a family or household member who resides with the
110 defendant or who formerly resided with the defendant, a current or
111 former spouse, a person who has a current dating relationship with
112 the defendant, or a person with whom the defendant has had a
113 biological or legally adopted child and upon conviction, the
114 defendant shall be punished as provided under subsection (1) of
115 this section; however, upon a third or subsequent conviction of
116 simple domestic violence, whether against the same or another
117 victim and within five (5) years, the defendant shall be guilty of
118 a felony and sentenced to a term of imprisonment not less than
119 five (5) nor more than ten (10) years. In sentencing, the court
120 shall consider as an aggravating factor whether the crime was
121 committed in the physical presence or hearing of a child under
122 sixteen (16) years of age who was, at the time of the offense,
123 living within either the residence of the victim, the residence of
124 the perpetrator, or the residence where the offense occurred.

125 (4) A person is guilty of aggravated domestic violence who
126 commits aggravated assault as described in subsection (2) of this
127 section against a family or household member who resides with the
128 defendant or who formerly resided with the defendant, or a current
129 or former spouse, a person who has a current dating relationship
130 with the defendant, or a person with whom the defendant has had a
131 biological or legally adopted child and upon conviction, the
132 defendant shall be punished as provided under subsection (2) of
133 this section; however, upon a third or subsequent offense of
134 aggravated domestic violence, whether against the same or another

victim and within five (5) years, the defendant shall be guilty of a felony and sentenced to a term of imprisonment of not less than five (5) nor more than twenty (20) years. In sentencing, 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. Reasonable discipline of a child, such as spanking, is not an offense under this subsection (4).

(5) "Dating relationship" means a social relationship of a romantic or intimate nature.

(6) Every conviction of domestic violence 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.

(7) In any conviction of assault as described in any subsection of this section which arises from an incident of domestic violence, the sentencing order shall include the designation "domestic violence."

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;

(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;

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

175 (d) When done with deliberate design to effect the
176 death of an unborn child.

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

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

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

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

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

206 (e) When done with or without any design to effect
207 death, by any person engaged in the commission of the crime of
208 rape, burglary, kidnapping, arson, robbery, sexual battery,
209 unnatural intercourse with any child under the age of twelve (12),
210 or nonconsensual unnatural intercourse with mankind, or in any
211 attempt to commit such felonies;

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

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

219 (h) Murder which is perpetrated by the killing of any
220 elected official of a county, municipal, state or federal
221 government with knowledge that the victim was such public
222 official;

223 (i) Murder which is perpetrated by the killing of a
224 witness in a pending criminal proceeding by a defendant or suspect
225 in the proceeding or by any other person at the request of a
226 defendant or suspect in the criminal proceeding or by a person who
227 was aiding and abetting or acting in concert with a defendant or
228 suspect in a criminal proceeding. For purposes of this paragraph,
229 the following terms shall have the meanings ascribed:

230 (i) "Witness" means any person, whether ever
231 subpoenaed or called to testify in a trial or hearing, who has, or
232 is believed to have, knowledge relevant to a criminal proceeding,

233 which knowledge may include, but shall not be limited to,
234 allegedly being present at the time or at the scene of the
235 offense, allegedly possessing documentary or other evidence as to
236 the offense or the person who committed the offense, or allegedly
237 having heard the defendant discussing the offense either before or
238 after the offense occurred, which person is identified in one or
239 more police reports or discovery provided by the prosecution to
240 the defendant or his attorney;

241 (ii) "Pending criminal proceeding" means any
242 felony prosecution that has been commenced by an arrest,
243 indictment or an investigation by a duly authorized law
244 enforcement agency.

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

249 **SECTION 3.** Section 97-3-53, Mississippi Code of 1972, is
250 amended as follows:

251 97-3-53. Any person who, without lawful authority and with
252 or without intent to secretly confine, shall forcibly seize and
253 confine any other person, or shall inveigle or kidnap any other
254 person with intent to cause such person to be confined or
255 imprisoned against his or her will, or without lawful authority
256 shall forcibly seize, inveigle or kidnap any child under the age
257 of sixteen (16) years against the will of the parents or guardian
258 or person having the lawful custody of the child, upon conviction,
259 shall be imprisoned for life in the custody of the Department of
260 Corrections if the punishment is so fixed by the jury in its
261 verdict. If the jury fails to agree on fixing the penalty at
262 imprisonment for life, the court shall fix the penalty at not less
263 than one (1) year nor more than thirty (30) years in the custody
264 of the Department of Corrections; provided, that where the person
265 seized, confined, inveigled or kidnapped in violation of this

section is a witness in a pending criminal proceeding as those terms are defined in Section 97-3-19, and the person at the time of the offense was a defendant or suspect in the criminal proceeding or was acting at the request of a defendant or suspect in the criminal proceeding or was aiding and abetting or acting in concert with a defendant or suspect, the court shall fix the penalty at not less than five (5) years nor more than life in prison, with the sentencing determination to be made by the court, sitting without a jury, after a trial or plea.

This section shall not be held to repeal, modify or amend any other criminal statute of this state.

SECTION 4. The following shall be codified as Section 99-7-26, Mississippi Code of 1972:

99-7-26. An indictment for kidnapping under Section 97-3-53, wherein the victim is alleged to be a witness in a pending criminal proceeding as defined by Section 97-3-19, shall include such allegation, which shall be treated for all purposes as an element of the crime to be determined by the jury, notwithstanding the power of the court to sentence without involvement of the jury in the sentencing process.

SECTION 5. (1) The Mississippi Witness Protection Program Study Committee is hereby created. It shall consist of eight (8) members who are to be selected as follows:

(a) The Commissioner of Public Safety, who shall chair the study committee.

(b) One (1) circuit judge appointed by the Conference of Circuit Judges.

(c) One (1) sheriff appointed by the Sheriffs' Association.

(d) One (1) police chief appointed by the Police Chiefs' Association.

297 (e) The President of the Mississippi Criminal Defense
298 Lawyers Association shall appoint one (1) member from its
299 membership.

300 (f) Two (2) prosecutors appointed by the Prosecutors'
301 Association, at least one (1) of whom is a District Attorney or
302 employed by a District Attorney.

303 (g) The Chief Justice of the Supreme Court shall
304 appoint one (1) Public Defender.

305 Appointments and vacancies on the study committee shall be
306 filled by the respective selecting and appointing authorities.

307 (2) The purpose of the study committee shall be to make
308 recommendations to the Legislature and the Supreme Court as to the
309 need in Mississippi for a state-level Witness Protection Program,
310 including obtaining statistical information with reference to
311 cases in the various courts in Mississippi; conducting research
312 relating to improvement of the administration of justice; the
313 needs of law enforcement agencies in the State of Mississippi; and
314 making a comprehensive study of the potential usefulness to the
315 state of a Witness Protection Program. In addition, the study
316 committee is charged with the examination of the operational
317 needs, including budget, staffing, and the best placement
318 administratively, of any future Witness Protection Program, and
319 may make such policy recommendations as will promote the
320 administration of justice.

321 (3) (a) The chairman shall set and give notice of the time,
322 date and place of the initial meeting, at which time the study
323 committee shall elect a vice chairperson from its members and any
324 other officers which it considers necessary to carry out the
325 purpose of the committee. The chair shall not vote unless
326 necessary to break a tie vote of the committee. The committee may
327 form any committees from its membership in order to assist the
328 committee in accomplishing its purposes as provided in this act.

(b) The committee shall meet at least quarterly and at such other times as meetings may be called by the chair. A majority of the members shall constitute a quorum at any meeting. Any final action taken by the study committee shall require the affirmative vote of a majority.

(4) The Department of Public Safety shall provide such support of the Mississippi Witness Protection Program Study Committee as is necessary to accomplish the purposes of this act, including, but not limited to, research and clerical assistance.

(5) (a) In addition to the other duties specified, the committee shall file a report with the Legislature not later than December 15, 2007. The document shall report on the need, if any, for a state-level Witness Protection Program. The report shall also make specific recommendations for structure of any future Witness Protection Program as well as a projected cost for the program over the first five (5) years of operation, setting forth start-up costs separately from operating costs.

(b) The committee is authorized and empowered for the accomplishment of its purposes to undertake any studies, reviews, inquiries, hearings, examinations, surveys or analyses as it may deem pertinent, relevant and justified. The committee shall propose and prepare in detailed form for the consideration of the Legislature such amendments to existing law, such statutes, and such constitutional amendments as in the judgment of the committee will facilitate the operation of the Witness Protection Program and promote the administration of justice.

(6) The committee is authorized to call upon any and all existing courts, agencies, departments, divisions, officers, employees, boards, bureaus, commissions and institutions of the State of Mississippi, or any political subdivision thereof, to furnish such information, data and assistance as will enable it to carry out its powers and duties hereunder and all such agencies, departments, divisions, officers, employees, boards, bureaus,

commissions and institutions of the State of Mississippi and its political subdivisions are hereby directed to cooperate with the committee and render such information, data, aid and assistance as may be requested by the committee.

(7) The committee shall have the power to enlist the services of any agency, either public or private, or any individual or educational institution, bar association, research organization, foundation or educational or civic organization for assistance in accomplishing the purposes of this act, conducting research studies, gathering information or printing and publishing its reports. The committee is authorized to make and sign any agreements or contracts to do or perform any actions that may be necessary, desirable or proper to carry out the purposes and objectives of this act.

(8) The committee may employ any agents, clerks, researchers, counsel, consultants and other personnel necessary for the performance of the duties of the study committee and fix their respective rates of compensation, all subject to the approval of the State Personnel Board and within the amounts made available by appropriation therefor or received from other sources.

(9) Members of the committee shall receive a per diem as provided in Section 25-3-69 for actual attendance upon meetings of the study committee, together with reimbursement for traveling and subsistence expenses incurred as provided in Section 25-3-41, Mississippi Code of 1972, except that members of the study committee whose regular compensation is payable by the state or any political subdivision of the state shall not receive per diem for attendance upon meetings of the study committee.

(10) The committee is authorized and empowered to receive and expend any funds appropriated to it by the Legislature and any funds received by it from any other source in carrying out the objectives and purposes of this act.

395 **SECTION 6.** Sections 1 through 4 of this act shall take
396 effect and be in force from and after July 1, 2007, and the
397 remainder of this act shall take effect and be in force from and
398 after its passage.