

By: Senator(s) Ross

To: Judiciary, Division A

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; AND FOR RELATED PURPOSES.

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

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

10 97-3-7. (1) A person is guilty of simple assault if he (a)
11 attempts to cause or purposely, knowingly or recklessly causes
12 bodily injury to another; or (b) negligently causes bodily injury
13 to another with a deadly weapon or other means likely to produce
14 death or serious bodily harm; or (c) attempts by physical menace
15 to put another in fear of imminent serious bodily harm; and, upon
16 conviction, he shall be punished by a fine of not more than Five
17 Hundred Dollars (\$500.00) or by imprisonment in the county jail
18 for not more than six (6) months, or both. However, a person
19 convicted of simple assault (a) upon a statewide elected official,
20 law enforcement officer, fireman, emergency medical personnel,
21 public health personnel, social worker or family protection
22 specialist or family protection worker employed by the Department
23 of Human Services or another agency, superintendent, principal,
24 teacher or other instructional personnel, school attendance
25 officer, school bus driver, or a judge of a circuit, chancery,
26 county, justice, municipal or youth court or a judge of the Court
27 of Appeals or a justice of the Supreme Court, district attorney,
28 legal assistant to a district attorney, county prosecutor,
29 municipal prosecutor, court reporter employed by a court, court

30 administrator, clerk or deputy clerk of the court, or public
31 defender, while such statewide elected official, judge or justice,
32 law enforcement officer, fireman, emergency medical personnel,
33 public health personnel, social worker, family protection
34 specialist, family protection worker, superintendent, principal,
35 teacher or other instructional personnel, school attendance
36 officer, school bus driver, district attorney, legal assistant to
37 a district attorney, county prosecutor, municipal prosecutor,
38 court reporter employed by a court, court administrator, clerk or
39 deputy clerk of the court, or public defender is acting within the
40 scope of his duty, office or employment; * * * (b) upon a
41 legislator while the Legislature is in regular or extraordinary
42 session or while otherwise acting within the scope of his duty,
43 office or employment; or (c) upon a witness in a pending criminal
44 prosecution as those terms are defined in Section 97-3-19, and the
45 person was at the time of the offense a defendant or suspect in
46 the criminal proceeding or was acting at the request of a
47 defendant or suspect in the criminal proceeding or was aiding and
48 abetting or acting in concert with a defendant or suspect, as
49 determined by the court, sitting without a jury, after a trial or
50 plea, shall be punished by a fine of not more than One Thousand
51 Dollars (\$1,000.00) or by imprisonment for not more than five (5)
52 years, or both.

53 (2) A person is guilty of aggravated assault if he (a)
54 attempts to cause serious bodily injury to another, or causes such
55 injury purposely, knowingly or recklessly under circumstances
56 manifesting extreme indifference to the value of human life; or
57 (b) attempts to cause or purposely or knowingly causes bodily
58 injury to another with a deadly weapon or other means likely to
59 produce death or serious bodily harm; and, upon conviction, he
60 shall be punished by imprisonment in the county jail for not more
61 than one (1) year or in the Penitentiary for not more than twenty
62 (20) years. However, a person convicted of aggravated assault (a)

63 upon a statewide elected official, law enforcement officer,
64 fireman, emergency medical personnel, public health personnel,
65 social worker, family protection specialist, family protection
66 worker employed by the Department of Human Services or another
67 agency, superintendent, principal, teacher or other instructional
68 personnel, school attendance officer, school bus driver, or a
69 judge of a circuit, chancery, county, justice, municipal or youth
70 court or a judge of the Court of Appeals or a justice of the
71 Supreme Court, district attorney, legal assistant to a district
72 attorney, county prosecutor, municipal prosecutor, court reporter
73 employed by a court, court administrator, clerk or deputy clerk of
74 the court, or public defender, while such statewide elected
75 official, judge or justice, law enforcement officer, fireman,
76 emergency medical personnel, public health personnel, social
77 worker, family protection specialist, family protection worker,
78 superintendent, principal, teacher or other instructional
79 personnel, school attendance officer, school bus driver, district
80 attorney, legal assistant to a district attorney, county
81 prosecutor, municipal prosecutor, court reporter employed by a
82 court, court administrator, clerk or deputy clerk of the court, or
83 public defender is acting within the scope of his duty, office or
84 employment; * * * (b) upon a legislator while the Legislature is
85 in regular or extraordinary session or while otherwise acting
86 within the scope of his duty, office or employment; or (c) upon a
87 witness in a pending criminal prosecution as those terms are
88 defined in Section 97-3-19, and the person was at the time of the
89 offense a defendant or suspect in the criminal proceeding or was
90 acting at the request of a defendant or suspect in the criminal
91 proceeding or was aiding and abetting or acting in concert with a
92 defendant or suspect, as determined by the court, sitting without
93 a jury, after a trial or plea, shall be punished by a fine of not
94 more than Five Thousand Dollars (\$5,000.00) or by imprisonment for
95 not more than thirty (30) years, or both.

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

114 (4) A person is guilty of aggravated domestic violence who
115 commits aggravated assault as described in subsection (2) of this
116 section against a family or household member who resides with the
117 defendant or who formerly resided with the defendant, or a current
118 or former spouse, a person who has a current dating relationship
119 with the defendant, or a person with whom the defendant has had a
120 biological or legally adopted child and upon conviction, the
121 defendant shall be punished as provided under subsection (2) of
122 this section; however, upon a third or subsequent offense of
123 aggravated domestic violence, whether against the same or another
124 victim and within five (5) years, the defendant shall be guilty of
125 a felony and sentenced to a term of imprisonment of not less than
126 five (5) nor more than twenty (20) years. In sentencing, the
127 court shall consider as an aggravating factor whether the crime
128 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;

(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;

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

(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 State Tax Commission,
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;

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

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

195 (e) When done with or without any design to effect
196 death, by any person engaged in the commission of the crime of
197 rape, burglary, kidnapping, arson, robbery, sexual battery,
198 unnatural intercourse with any child under the age of twelve (12),
199 or nonconsensual unnatural intercourse with mankind, or in any
200 attempt to commit such felonies;

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

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

208 (h) Murder which is perpetrated by the killing of any
209 elected official of a county, municipal, state or federal
210 government with knowledge that the victim was such public
211 official;

212 (i) Murder which is perpetrated by the killing a
213 witness in a pending criminal proceeding by a defendant or suspect
214 in the proceeding or by any other person at the request of a
215 defendant or suspect in the criminal proceeding or was aiding and
216 abetting or acting in concert with a defendant or suspect. For
217 purposes of this subsection, the following terms shall have the
218 meanings ascribed:

219 (i) "Witness" means any person, whether ever
220 subpoenaed or called to testify in a trial or hearing, who has, or
221 is believed to have, knowledge relevant to a criminal proceeding,
222 which knowledge may include, but shall not be limited to,
223 allegedly being present at the time or the scene of the offense,
224 possessing documentary or other evidence as to the offense or the
225 person who committed the offense, or having heard the defendant
226 discussing the offense either before or after the offense
227 occurred, which person is identified in one or more police reports

or discovery provided by the prosecution to the defendant or his attorney;

(ii) "Pending criminal proceeding" means any felony prosecution that has been commenced by an arrest, indictment or an investigation by a duly authorized law enforcement agency of the state or a subdivision of the state.

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

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

97-3-53. Any person who, without lawful authority and with or without intent to secretly confine, shall forcibly seize and confine any other person, or shall inveigle or kidnap any other person with intent to cause such person to be confined or imprisoned against his or her will, or without lawful authority shall forcibly seize, inveigle or kidnap any child under the age of sixteen (16) years against the will of the parents or guardian or person having the lawful custody of the child, upon conviction, shall be imprisoned for life in the custody of the Department of Corrections if the punishment is so fixed by the jury in its verdict. If the jury fails to agree on fixing the penalty at imprisonment for life, the court shall fix the penalty at not less than one (1) year nor more than thirty (30) years in the custody of the Department of Corrections; provided, that where the person 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 was at the time of the offense 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

261 penalty at not less than five (5) years nor more than life in
262 prison, with the determination to be made by the court, sitting
263 without a jury, after a trial or plea.

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

266 **SECTION 4.** The following shall be codified as Section
267 99-7-26, Mississippi Code of 1972:

268 99-7-26. An indictment for assault under Section 97-3-7 or
269 kidnapping under Section 97-3-53, wherein the victim is alleged to
270 be a witness in a criminal proceeding as defined by Section
271 97-3-19 shall include such allegation, which shall be treated for
272 all purposes as an element of the crime to be determined by the
273 jury, notwithstanding the power of the court to sentence without
274 involvement of the jury in the sentencing process.

275 **SECTION 5.** This act shall take effect and be in force from
276 and after July 1, 2007.