

By: Senator(s) Dawkins, Williamson,
Chassaniol, Hyde-Smith

To: Judiciary, Division B

SENATE BILL NO. 3036
(As Sent to Governor)

1 AN ACT TO REVISE VARIOUS PROVISIONS OF THE LAW DEALING WITH
2 DOMESTIC VIOLENCE; TO AMEND SECTION 93-21-3, MISSISSIPPI CODE OF
3 1972, TO REVISE DEFINITIONS; TO AMEND SECTION 93-21-7, MISSISSIPPI
4 CODE OF 1972, TO REVISE PETITION PROVISIONS; TO AMEND SECTION
5 93-21-11, MISSISSIPPI CODE OF 1972, TO REVISE NOTICE AND TEMPORARY
6 ORDERS; TO AMEND SECTION 93-21-13, MISSISSIPPI CODE OF 1972, TO
7 REVISE TEMPORARY RELIEF IN MUNICIPAL AND JUSTICE COURTS; TO AMEND
8 SECTION 93-21-15, MISSISSIPPI CODE OF 1972, TO REVISE PROTECTIVE
9 ORDERS; TO AMEND SECTION 93-21-16, MISSISSIPPI CODE OF 1972, TO
10 REVISE FULL FAITH AND CREDIT; TO AMEND SECTION 93-21-17,
11 MISSISSIPPI CODE OF 1972, TO CLARIFY THAT ONLY THE COURT MAY AMEND
12 PROTECTIVE ORDERS; TO AMEND SECTION 93-21-25, MISSISSIPPI CODE OF
13 1972, TO AUTHORIZE THE CREATION OF A PROTECTIVE ORDER REGISTRY; TO
14 AMEND SECTION 93-21-113, MISSISSIPPI CODE OF 1972, TO INCLUDE
15 MUNICIPAL PROSECUTORS AS A PROSECUTOR REQUIRED TO FILE DOMESTIC
16 VIOLENCE CHARGES; TO AMEND SECTION 97-3-7, MISSISSIPPI CODE OF
17 1972, TO REVISE DOMESTIC VIOLENCE PROVISIONS AND TO REVISE SIMPLE
18 ASSAULT TO INCLUDE NONCONSENSUAL SEXUAL TOUCHING WITHOUT NECESSITY
19 OF FEAR OR ALARM ON THE PART OF THE VICTIM; TO AMEND SECTION
20 99-5-37, MISSISSIPPI CODE OF 1972, TO REVISE CONDITIONS TO BE
21 CONSIDERED IN DOMESTIC VIOLENCE CASES; TO AMEND SECTIONS 99-19-351
22 AND 99-19-355, MISSISSIPPI CODE OF 1972, TO INCLUDE DISABLED
23 PERSONS IN THE LAW WHICH PROVIDES FOR ENHANCED PENALTIES WHEN
24 CRIMES ARE COMMITTED AGAINST SUCH PERSONS; AND FOR RELATED
25 PURPOSES.

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

27 **SECTION 1.** Section 93-21-3, Mississippi Code of 1972, is
28 amended as follows:

29 93-21-3. As used in this chapter, unless the context
30 otherwise requires:

31 (a) "Abuse" means the occurrence of one or more of the
32 following acts between family or household members who reside
33 together or who formerly resided together or between individuals
34 who have a current dating relationship:

35 (i) Attempting to cause or intentionally,
36 knowingly or recklessly causing bodily injury or serious bodily
37 injury with or without a deadly weapon;

38 (ii) Placing, by physical menace or threat,
39 another in fear of imminent serious bodily injury; * * *

40 (iii) Criminal sexual conduct committed against a
41 minor within the meaning of Section 97-5-23;

42 (iv) Stalking within the meaning of Section
43 97-3-107;

44 (v) Cyberstalking within the meaning of Section
45 97-45-15; or

46 (vi) Sexual offenses within the meaning of Section
47 97-3-65 or 97-3-95.

48 (b) "Adult" means any person eighteen (18) years of age
49 or older, or any person under eighteen (18) years of age who has
50 been emancipated by marriage.

51 (c) "Court" means the chancery court, circuit
52 court, * * * justice court * * * or county court.

53 (d) "Dating relationship" means a social relationship
54 of a romantic or intimate nature.

55 (e) "Family or household member" means spouses, former
56 spouses, persons living as spouses, parents and children, or other
57 persons related by consanguinity or affinity.

58 **SECTION 2.** Section 93-21-7, Mississippi Code of 1972, is
59 amended as follows:

60 93-21-7. (1) Any person may seek relief under this chapter
61 for himself by filing a petition with the court alleging abuse by
62 the respondent. Any parent, adult household member, or next
63 friend of the abused person may seek relief under this chapter on
64 behalf of any minor children or any person alleged to be
65 incompetent by filing a petition with the court alleging abuse by
66 the respondent. Cases seeking relief under this chapter shall be
67 priority cases on the court's docket and the judge shall be
68 immediately notified when a case is filed in order to provide for
69 expedited proceedings.

70 (2) The petitioner in an action brought pursuant to this
71 chapter shall not bear the costs associated with its filing or the
72 costs associated with the issuance or service of any notice of a
73 hearing to the respondent, issuance or service of an order of
74 protection on the respondent, or issuance or service of a warrant
75 or witness subpoena. If the court finds that the petitioner is
76 entitled to an order protecting the petitioner from abuse, the
77 court shall be authorized to assess all costs including attorney's
78 fees of the proceedings to the respondent. The court may assess
79 costs including attorney's fees to the petitioner if the
80 allegations of abuse are determined to be without merit and the
81 court finds that the petitioner is not a victim of abuse as
82 defined by Section 93-21-3.

83 (3) (a) For every order of protection that is issued under
84 this chapter, the amount of One Dollar (\$1.00) shall be assessed
85 as additional costs of court to be used by the Office of the
86 Attorney General for expenses in developing and providing forms to
87 the courts.

88 (b) There is hereby created in the State Treasury a
89 special fund designated as the Domestic Violence Court Forms Fund.
90 The fund shall be administered by the Attorney General. Money
91 remaining in the fund at the end of a fiscal year shall not lapse
92 into the State General Fund, and any interest earned from the
93 investment of monies in the fund shall be deposited to the credit
94 of the fund. Monies appropriated to the fund shall be used by the
95 Attorney General for expenses in developing and providing domestic
96 violence forms to the courts.

97 (c) The clerks of the various courts shall remit the
98 proceeds of the cost of court created under this subsection to the
99 Department of Finance and Administration as is done generally for
100 other fees collected by the clerks.

101 **SECTION 3.** Section 93-21-11, Mississippi Code of 1972, is
102 amended as follows:

103 93-21-11. (1) Within ten (10) days of filing of a petition
104 under the provisions of this act, the court shall hold a hearing,
105 at which time the petitioner must prove the allegation of abuse by
106 a preponderance of the evidence. The respondent shall be given
107 notice by service of process as otherwise provided by law.

108 (2) * * * The court may, prior to the date set for the
109 hearing, enter such temporary ex parte order as it deems necessary
110 to protect from abuse the petitioner, any minor children, or any
111 person alleged to be incompetent. Immediate and present danger of
112 abuse to the petitioner, any minor children, or any person alleged
113 to be incompetent, shall constitute good cause for issuance of a
114 temporary ex parte order. A temporary ex parte order shall last
115 no longer than ten (10) days and upon issuance of a temporary ex
116 parte order, the respondent shall be served with a copy of the
117 order and given notice of a hearing to be held within ten (10)
118 days as provided in subsection (1).

119 (3) If a hearing under subsection (1) of this section is
120 continued, the court may make or extend such temporary ex parte
121 orders under subsection (2) of this section as it deems necessary.
122 A continuance under this subsection shall last no longer than
123 twenty (20) days.

124 (4) Any temporary ex parte protective order to bring about a
125 cessation of abuse of the petitioner, any minor children, or any
126 person alleged to be incompetent, may include the following
127 relief:

128 (a) Directing the defendant to refrain from abusing the
129 petitioner, any minor children, or any person alleged to be
130 incompetent;

131 (b) Granting possession to the petitioner of the
132 residence or household to the exclusion of the defendant by
133 evicting the defendant or restoring possession to the petitioner
134 or both;

135 (c) Prohibiting or limiting respondent's physical
136 proximity to the abused, including residence and place of work;

137 (d) Prohibiting or limiting contact with the abused by
138 the respondent, whether in person, by telephone or by electronic
139 communication; and

140 (e) Prohibiting the transferring, encumbering or
141 otherwise disposing of property mutually owned or leased by the
142 parties, except when in the ordinary course of business.

143 (5) The court may amend its order or agreement at any time
144 upon subsequent petition by either party.

145 (6) No temporary ex parte protective order shall be issued
146 unless supported by an independent petition requesting relief
147 pursuant to this chapter. Every order granting a temporary ex
148 parte protective order pursuant to this section shall set forth
149 the reasons for its issuance, shall contain specific findings of
150 fact regarding the existence of abuse, shall be specific in its
151 terms and shall describe in reasonable detail the act or acts to
152 be restrained. The Attorney General shall develop and distribute
153 uniform forms for temporary ex parte protective orders.

154 (7) In issuing temporary ex parte protective orders pursuant
155 to this section, the court may utilize the uniform form developed,
156 approved and distributed by the Attorney General.

157 **SECTION 4.** Section 93-21-13, Mississippi Code of 1972, is
158 amended as follows:

159 93-21-13. (1) After a hearing for which notice and
160 opportunity to be heard has been provided to the respondent, * * *
161 the justice court * * * shall be empowered to grant temporary
162 relief * * * to bring about a cessation of abuse of the
163 petitioner, any minor children, or any person alleged to be
164 incompetent, which relief may include:

165 (a) Directing the respondent to refrain from abusing
166 the petitioner, any minor children, or any person alleged to be
167 incompetent;

168 (b) Prohibiting or limiting respondent's physical
169 proximity to the abused, including residence and place of work;

170 (c) Prohibiting or limiting contact with the abused by
171 the respondent, whether in person, by telephone or by electronic
172 communication;

173 (d) Granting possession to the petitioner of the
174 residence or household to the exclusion of the respondent by
175 evicting the respondent * * * or restoring possession to the
176 petitioner, or both; and

177 * * *

178 (e) Prohibiting the transferring, encumbering or
179 otherwise disposing of property mutually owned or leased by the
180 parties, except when in the ordinary course of business.

181 (2) The duration of any temporary order issued by a justice
182 court * * * shall not exceed ten (10) days, with no more than one
183 (1) ten-day renewal, or the date of the hearing in chancery,
184 circuit or county court, whichever occurs first.

185 (3) The court may amend its order or agreement at any time
186 upon subsequent petition by either party.

187 * * *

188 (4) Every order granting temporary relief pursuant to this
189 section shall be based upon an independent petition for relief,
190 shall set forth the reasons for its issuance, shall contain
191 specific findings of fact regarding the existence of abuse, shall
192 be specific in its terms and shall describe in reasonable detail
193 the act or acts to be restrained. The court may utilize the form
194 developed by the Mississippi Attorney General's Office in issuing
195 any order for temporary relief.

196 **SECTION 5.** Section 93-21-15, Mississippi Code of 1972, is
197 amended as follows:

198 93-21-15. (1) After a hearing for which notice and
199 opportunity to be heard has been provided to the respondent, the
200 chancery, circuit or county court shall be empowered to grant any

201 protective order or approve any consent agreement to bring about a
202 cessation of abuse of the petitioner, any minor children, or any
203 person alleged to be incompetent, which relief may include:

204 (a) Directing the defendant to refrain from abusing the
205 petitioner, any minor children, or any person alleged to be
206 incompetent;

207 (b) Granting possession to the petitioner of the
208 residence or household to the exclusion of the defendant by
209 evicting the defendant and/or restoring possession to the
210 petitioner;

211 (c) When the defendant has a duty to support the
212 petitioner, any minor children, or any person alleged to be
213 incompetent living in the residence or household and the defendant
214 is the sole owner or lessee, granting possession to the petitioner
215 of the residence or household to the exclusion of the defendant by
216 evicting the defendant and/or restoring possession to the
217 petitioner, or by consent agreement allowing the defendant to
218 provide suitable, alternate housing;

219 (d) Awarding temporary custody of and/or establishing
220 temporary visitation rights with regard to any minor children or
221 any person alleged to be incompetent;

222 (e) If the defendant is legally obligated to support
223 the petitioner, any minor children, or any person alleged to be
224 incompetent, ordering the defendant to pay temporary support for
225 the petitioner, any minor children, or any person alleged to be
226 incompetent;

227 (f) Ordering the defendant to pay to the abused person
228 monetary compensation for losses suffered as a direct result of
229 the abuse, including, but not limited to, medical expenses
230 resulting from such abuse, loss of earnings or support,
231 out-of-pocket losses for injuries sustained, moving expenses, a
232 reasonable attorney's fee, and/or ordering counseling or

233 professional medical treatment for the defendant and/or the abused
234 person; * * *

235 (g) Prohibiting the transferring, encumbering, or
236 otherwise disposing of property mutually owned or leased by the
237 parties, except when in the ordinary course of business;

238 (h) Prohibiting or limiting respondent's physical
239 proximity to the abused, including residence and place of work;
240 and

241 (i) Prohibiting or limiting contact with the abused by
242 the respondent, whether in person, by telephone or by electronic
243 communication.

244 (2) No protective order shall be issued unless supported by
245 an independent petition requesting relief pursuant to this
246 chapter. Every order granting a protective order pursuant to this
247 section shall set forth the reasons for its issuance, shall
248 contain specific findings of fact regarding the existence of
249 abuse, shall be specific in its terms and shall describe in
250 reasonable detail the act or acts to be prohibited.

251 (3) In issuing protective orders pursuant to this section,
252 the court may utilize the uniform form developed, approved and
253 distributed by the Attorney General.

254 (4) Upon issuance of any protective order by the court, the
255 order shall be forwarded to the sheriff for enforcement and entry
256 into the National Criminal Information Center's Protection Order
257 File.

258 **SECTION 6.** Section 93-21-16, Mississippi Code of 1972, is
259 amended as follows:

260 93-21-16. (1) A protective order from another jurisdiction
261 issued to protect the applicant from abuse as defined in Section
262 93-21-3, or a protection order as defined in Section 93-22-3,
263 issued by a tribunal of another state shall be accorded full faith
264 and credit by the courts of this state and enforced in this state

265 as provided for in the Uniform Interstate Enforcement of Domestic
266 Violence Protection Orders Act.

267 (2) For purposes of enforcement by Mississippi law
268 enforcement officers, a protective order from another
269 jurisdiction, or a protection order as defined in Section 93-22-3
270 and issued by a tribunal of another state, is presumed to be valid
271 if it meets the requirements of Section 93-22-7.

272 (3) For purposes of judicial enforcement of a protective
273 order issued in another jurisdiction, or a protection order as
274 defined in Section 93-22-3 and issued by a tribunal of another
275 state, an order is presumed valid if it meets the requirements of
276 Section 93-22-5(4). It is an affirmative defense in any action
277 seeking enforcement of a protective order issued in another
278 jurisdiction, or a protection order as defined in Section 93-22-3
279 and issued by a tribunal of another state, that any criteria for
280 the validity of the order is absent.

281 **SECTION 7.** Section 93-21-17, Mississippi Code of 1972, is
282 amended as follows:

283 93-21-17. (1) The granting of any relief authorized under
284 this chapter shall not preclude any other relief provided by law.

285 (2) * * * The court may amend its order or agreement at any
286 time upon subsequent petition filed by either party. Protective
287 orders issued under the provisions of this chapter may only be
288 amended by approval of the court.

289 (3) No order or agreement under this chapter shall in any
290 manner affect title to any real property.

291 **SECTION 8.** Section 93-21-25, Mississippi Code of 1972, is
292 amended as follows:

293 93-21-25. (1) In order to provide a statewide registry for
294 protective orders and to aid law enforcement, prosecutors and
295 courts in handling such matters, the Attorney General is
296 authorized to create and administer a Mississippi Protective Order
297 Registry. The Attorney General's Office shall collect the data

298 transmitted to it from the courts and enter it into the
299 Mississippi Protective Order Registry.

300 (2) All orders issued pursuant to this chapter will be
301 maintained in the Mississippi Protective Order Registry.

302 (3) The clerk of the issuing court shall send a copy of the
303 order or any modification thereof to the Mississippi Protection
304 Order Registry as expeditiously as possible but no later than by
305 the end of the next business day after the order is filed with the
306 clerk of the court. Transmittal of the order may be by facsimile
307 transmission, mail or email.

308 (4) Upon formation, the registry shall immediately implement
309 a daily process for the entry of newly issued protective orders
310 and removal of records and names of the parties in all cases in
311 which a protective order expires by its own terms or is modified
312 or rescinded by the court.

313 **SECTION 9.** Section 93-21-113, Mississippi Code of 1972, is
314 amended as follows:

315 93-21-113. Domestic violence shelters through their
316 employees and officials shall, on every occasion other than the
317 initial request for assistance, report to the district attorney,
318 the county attorney, or the appropriate law enforcement official
319 or other state agencies any occurrence or instance coming to their
320 attention which would involve the commission of a crime or the
321 failure to perform or render a service or assistance to a victim
322 of domestic violence when required by law to do so.

323 Every municipal prosecutor, county attorney, district
324 attorney or other appropriate law enforcement official who, having
325 had reported to him a case of domestic violence, if the facts
326 submitted be sufficient, shall immediately file charges against
327 the offender on the behalf of the victim. Such prosecutor may in
328 plea bargaining with the offender enter into an agreement whereby
329 the offender shall receive counseling in lieu of further
330 prosecution, and if the offender shall successfully attend

331 counseling as agreed upon for the period of time agreed upon, the
332 municipal prosecutor, county attorney or district attorney, as the
333 case may be, shall pass such case to the file.

334 No municipal prosecutor, county attorney or district attorney
335 shall grant such right in plea bargaining to the same offender
336 more than once.

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

339 97-3-7. (1) A person is guilty of simple assault if he (a)
340 attempts to cause or purposely, knowingly or recklessly causes
341 bodily injury to another; or (b) negligently causes bodily injury
342 to another with a deadly weapon or other means likely to produce
343 death or serious bodily harm; or (c) attempts by physical menace
344 to put another in fear of imminent serious bodily harm; and, upon
345 conviction, he shall be punished by a fine of not more than Five
346 Hundred Dollars (\$500.00) or by imprisonment in the county jail
347 for not more than six (6) months, or both. However, a person
348 convicted of simple assault (a) upon a statewide elected official,
349 law enforcement officer, fireman, emergency medical personnel,
350 public health personnel, social worker or family protection
351 specialist or family protection worker employed by the Department
352 of Human Services or another agency, youth detention center
353 personnel, any county or municipal jail officer, superintendent,
354 principal, teacher or other instructional personnel, school
355 attendance officer, school bus driver, or a judge of a circuit,
356 chancery, county, justice, municipal or youth court or a judge of
357 the Court of Appeals or a justice of the Supreme Court, district
358 attorney, legal assistant to a district attorney, county
359 prosecutor, municipal prosecutor, court reporter employed by a
360 court, court administrator, clerk or deputy clerk of the court, or
361 public defender, while such statewide elected official, judge or
362 justice, law enforcement officer, fireman, emergency medical
363 personnel, public health personnel, social worker, family

364 protection specialist, family protection worker, youth detention
365 center personnel, any county or municipal jail officer,
366 superintendent, principal, teacher or other instructional
367 personnel, school attendance officer, school bus driver, district
368 attorney, legal assistant to a district attorney, county
369 prosecutor, municipal prosecutor, court reporter employed by a
370 court, court administrator, clerk or deputy clerk of the court, or
371 public defender is acting within the scope of his duty, office or
372 employment, or (b) upon a legislator while the Legislature is in
373 regular or extraordinary session or while otherwise acting within
374 the scope of his duty, office or employment, shall be punished by
375 a fine of not more than One Thousand Dollars (\$1,000.00) or by
376 imprisonment for not more than five (5) years, or both.

377 (2) A person is guilty of aggravated assault if he (a)
378 attempts to cause serious bodily injury to another, or causes such
379 injury purposely, knowingly or recklessly under circumstances
380 manifesting extreme indifference to the value of human life; or
381 (b) attempts to cause or purposely or knowingly causes bodily
382 injury to another with a deadly weapon or other means likely to
383 produce death or serious bodily harm; and, upon conviction, he
384 shall be punished by imprisonment in the county jail for not more
385 than one (1) year or in the Penitentiary for not more than twenty
386 (20) years. However, a person convicted of aggravated assault (a)
387 upon a statewide elected official, law enforcement officer,
388 fireman, emergency medical personnel, public health personnel,
389 social worker, family protection specialist, family protection
390 worker employed by the Department of Human Services or another
391 agency, youth detention center personnel, any county or municipal
392 jail officer, superintendent, principal, teacher or other
393 instructional personnel, school attendance officer, school bus
394 driver, or a judge of a circuit, chancery, county, justice,
395 municipal or youth court or a judge of the Court of Appeals or a
396 justice of the Supreme Court, district attorney, legal assistant

397 to a district attorney, county prosecutor, municipal prosecutor,
398 court reporter employed by a court, court administrator, clerk or
399 deputy clerk of the court, or public defender, while such
400 statewide elected official, judge or justice, law enforcement
401 officer, fireman, emergency medical personnel, public health
402 personnel, social worker, family protection specialist, family
403 protection worker, youth detention center personnel, any county or
404 municipal jail officer, superintendent, principal, teacher or
405 other instructional personnel, school attendance officer, school
406 bus driver, district attorney, legal assistant to a district
407 attorney, county prosecutor, municipal prosecutor, court reporter
408 employed by a court, court administrator, clerk or deputy clerk of
409 the court, or public defender is acting within the scope of his
410 duty, office or employment, or (b) upon a legislator while the
411 Legislature is in regular or extraordinary session or while
412 otherwise acting within the scope of his duty, office or
413 employment, shall be punished by a fine of not more than Five
414 Thousand Dollars (\$5,000.00) or by imprisonment for not more than
415 thirty (30) years, or both.

416 (3) A person is guilty of simple domestic violence who
417 commits simple assault as described in subsection (1) of this
418 section against a family or household member who resides with the
419 defendant or who formerly resided with the defendant, a current or
420 former spouse, a person who has a current dating relationship with
421 the defendant, or a person with whom the defendant has had a
422 biological or legally adopted child and upon conviction, the
423 defendant shall be punished as provided under subsection (1) of
424 this section; however, upon a third or subsequent conviction of
425 simple domestic violence, whether against the same or another
426 victim and within five (5) years, the defendant shall be guilty of
427 a felony and sentenced to a term of imprisonment not less than
428 five (5) nor more than ten (10) years. In sentencing, the court
429 shall consider as an aggravating factor whether the crime was

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

434 (4) A person is guilty of aggravated domestic violence who
435 commits aggravated assault as described in subsection (2) of this
436 section against a family or household member who resides with the
437 defendant or who formerly resided with the defendant, or a current
438 or former spouse, a person who has a current dating relationship
439 with the defendant, or a person with whom the defendant has had a
440 biological or legally adopted child and upon conviction, the
441 defendant shall be punished as provided under subsection (2) of
442 this section; however, upon a third or subsequent offense of
443 aggravated domestic violence, whether against the same or another
444 victim and within five (5) years, the defendant shall be guilty of
445 a felony and sentenced to a term of imprisonment of not less than
446 five (5) nor more than twenty (20) years. In sentencing, the
447 court shall consider as an aggravating factor whether the crime
448 was committed in the physical presence or hearing of a child under
449 sixteen (16) years of age who was, at the time of the offense,
450 living within either the residence of the victim, the residence of
451 the perpetrator, or the residence where the offense occurred.
452 Reasonable discipline of a child, such as spanking, is not an
453 offense under this subsection (4).

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

456 (6) Every conviction of domestic violence may require as a
457 condition of any suspended sentence that the defendant participate
458 in counseling or treatment to bring about the cessation of
459 domestic abuse. The defendant may be required to pay all or part
460 of the cost of the counseling or treatment, in the discretion of
461 the court.

462 (7) When investigating allegations of a violation of
463 subsection (3) or (4) of this section, law enforcement officers
464 shall utilize the form prescribed for such purposes by the Office
465 of the Attorney General in consultation with the sheriff's and
466 police chief's associations. In cases in which the investigation
467 results in an arrest, a copy of the offense report shall be
468 provided to the Office of the Attorney General.

469 (8) In any conviction of assault as described in any
470 subsection of this section which arises from an incident of
471 domestic violence, the sentencing order shall include the
472 designation "domestic violence." The court shall forward a copy
473 of each sentencing order bearing the designation "domestic
474 violence" to the Office of the Attorney General.

475 **SECTION 11.** Section 99-5-37, Mississippi Code of 1972, is
476 amended as follows:

477 99-5-37. In any arrest for a misdemeanor which is an act of
478 domestic violence, as defined in Section 99-3-7(5), no bail shall
479 be granted until the person arrested has appeared before a judge
480 of the court of competent jurisdiction. The defendant shall be
481 brought before a judge at the first reasonable opportunity, not to
482 exceed twenty-four (24) hours from the time of the arrest. In
483 calculating the twenty-four (24) hours, weekends and holidays
484 shall be included. The appearance may be by telephone. Upon
485 setting bail in any case involving a misdemeanor which is an act
486 of domestic violence, the judge shall give particular
487 consideration to the exigencies of the case, including, but not
488 limited to, (a) the potential for further violence, (b) the past
489 history, if any, of violence between the defendant and alleged
490 victim, (c) the level of violence of the instant offense, (d) any
491 threats of further violence and (e) the existence of a domestic
492 violence protection order prohibiting the defendant from engaging
493 in abusive behavior, and shall impose any specific conditions as
494 he or she may deem necessary. Specific conditions which may be

495 imposed by the judge may include the issuance of an order
496 prohibiting the defendant from contacting the alleged victim prior
497 to trial, prohibiting the defendant from abusing or threatening
498 the alleged victim or requiring defendant to refrain from drug or
499 alcohol use. All such orders shall be reduced to writing.

500 **SECTION 12.** Section 99-19-351, Mississippi Code of 1972, is
501 amended as follows:

502 99-19-351. The penalty for any felony or misdemeanor which
503 is a crime of violence or the crime of burglary or breaking and
504 entering the dwelling of another shall be subject to enhancement
505 as provided in Sections 99-19-351 through 99-19-357 if the felony
506 or misdemeanor was committed against any victim who is sixty-five
507 (65) years of age or older or who is disabled as described in 42
508 USCS 12102.

509 **SECTION 13.** Section 99-19-355, Mississippi Code of 1972, is
510 amended as follows:

511 99-19-355. (1) Upon conviction or adjudication of guilt of
512 a defendant where notice has been duly given that an enhanced
513 penalty will be sought as provided in Sections 99-19-351 through
514 99-19-357, the court shall conduct a separate sentencing
515 proceeding to determine the sentence. The proceeding shall be
516 conducted by the trial judge before the trial jury as soon as
517 practicable. If, through impossibility or inability, the trial
518 jury is unable to reconvene for a hearing on the issue of penalty,
519 having determined the guilt of the accused, the trial judge shall
520 summon a jury to determine whether an enhanced penalty should be
521 imposed. If trial by jury has been waived, or if the defendant
522 pleaded guilty, the sentencing proceeding shall be conducted
523 before a jury impaneled for that purpose. If the defendant enters
524 a plea of guilty and waives trial by jury for the sentencing
525 proceeding, the sentencing proceeding shall be conducted before
526 the trial judge sitting without a jury. In the proceeding,
527 evidence may be presented as to any matter that the court deems

528 relevant to sentence. This subsection shall not be construed to
529 authorize the introduction of any evidence secured in violation of
530 the Constitution of the United States or of the State of
531 Mississippi. The state and the defendant, or his counsel, or both
532 defendant and counsel, shall be permitted to present arguments for
533 or against any sentence sought.

534 (2) In order to impose an enhanced penalty under the
535 provisions of Sections 99-19-351 through 99-19-357, the jury must
536 find beyond a reasonable doubt:

537 (a) That the defendant perceived, knew, or had
538 reasonable grounds to know or perceive that the victim was within
539 the class delineated; and

540 (b) That the defendant maliciously and with specific
541 intent committed the offense to any victim who is sixty-five (65)
542 years of age or older or who is disabled as described in 42 USCS
543 12102.

544 **SECTION 14.** This act shall take effect and be in force from
545 and after July 1, 2007.