

By: Representatives Rogers (61st), Hopkins

To: Military Affairs

HOUSE BILL NO. 742

1 AN ACT TO AMEND SECTION 97-3-7, MISSISSIPPI CODE OF 1972, TO
2 PROVIDE THAT AN ASSAULT UPON ANY MEMBER OF THE MISSISSIPPI
3 NATIONAL GUARD OR UNITED STATES ARMED FORCES IS AN AGGRAVATING
4 CIRCUMSTANCE FOR SIMPLE AND AGGRAVATED ASSAULT; AND FOR RELATED
5 PURPOSES.

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

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

9 97-3-7. (1) (a) A person is guilty of simple assault if he
10 (i) attempts to cause or purposely, knowingly or recklessly causes
11 bodily injury to another; (ii) negligently causes bodily injury to
12 another with a deadly weapon or other means likely to produce
13 death or serious bodily harm; or (iii) attempts by physical menace
14 to put another in fear of imminent serious bodily harm; and, upon
15 conviction, he shall be punished by a fine of not more than Five
16 Hundred Dollars (\$500.00) or by imprisonment in the county jail
17 for not more than six (6) months, or both.

18 (b) However, a person convicted of simple assault upon
19 any of the persons listed in subsection (14) of this section under



20 the circumstances enumerated in subsection (14) shall be punished
21 by a fine of not more than One Thousand Dollars (\$1,000.00) or by
22 imprisonment for not more than five (5) years, or both.

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

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

41 (3) (a) When the offense is committed against a current or
42 former spouse of the defendant or a child of that person, a person
43 living as a spouse or who formerly lived as a spouse with the
44 defendant or a child of that person, a parent, grandparent, child,



45 grandchild or someone similarly situated to the defendant, a
46 person who has a current or former dating relationship with the
47 defendant, or a person with whom the defendant has had a
48 biological or legally adopted child, a person is guilty of simple
49 domestic violence who:

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

52 (ii) Negligently causes bodily injury to another
53 with a deadly weapon or other means likely to produce death or
54 serious bodily harm; or

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

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

60 (b) **Simple domestic violence: third.** A person is
61 guilty of the felony of simple domestic violence third who commits
62 simple domestic violence as defined in this subsection (3) and
63 who, at the time of the commission of the offense in question, has
64 two (2) prior convictions, whether against the same or another
65 victim, within seven (7) years, for any combination of simple
66 domestic violence under this subsection (3) or aggravated domestic
67 violence as defined in subsection (4) of this section or
68 substantially similar offenses under the law of another state, of
69 the United States, or of a federally recognized Native American



70 tribe. Upon conviction, the defendant shall be sentenced to a
71 term of imprisonment not less than five (5) nor more than ten (10)
72 years.

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

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

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

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

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

93 (b) **Aggravated domestic violence; third.** A person is
94 guilty of aggravated domestic violence third who, at the time of



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

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

116 (6) In sentencing under subsections (3), (4) and (5) of this
117 section, the court shall consider as an aggravating factor whether
118 the crime was committed in the physical presence or hearing of a
119 child under sixteen (16) years of age who was, at the time of the



120 offense, living within either the residence of the victim, the
121 residence of the perpetrator, or the residence where the offense
122 occurred.

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

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

129 (9) For the purposes of this section:

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

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

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

142 (11) (a) Upon conviction under subsection (3), (4) or (5)
143 of this section, the court shall be empowered to issue a criminal
144 protection order prohibiting the defendant from any contact with



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

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

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

168 (d) It shall be a misdemeanor to knowingly violate any
169 condition of a criminal protection order. Upon conviction for a



170 violation, the defendant shall be punished by a fine of not more
171 than Five Hundred Dollars (\$500.00) or by imprisonment in the
172 county jail for not more than six (6) months, or both.

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

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

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

192 (a) When acting within the scope of his duty, office or
193 employment at the time of the assault: a statewide elected
194 official; law enforcement officer; fireman; emergency medical



195 personnel; public health personnel; social worker, family
196 protection specialist or family protection worker employed by the
197 Department of Human Services or another agency; Division of Youth
198 Services personnel; any county or municipal jail officer;
199 superintendent, principal, teacher or other instructional
200 personnel, school attendance officer or school bus driver; any
201 member of the Mississippi National Guard or United States Armed
202 Forces; a judge of a circuit, chancery, county, justice, municipal
203 or youth court or a judge of the Court of Appeals or a justice of
204 the Supreme Court; district attorney or legal assistant to a
205 district attorney; county prosecutor or municipal prosecutor;
206 court reporter employed by a court, court administrator, clerk or
207 deputy clerk of the court; public defender; or utility worker;

208 (b) A legislator while the Legislature is in regular or
209 extraordinary session or while otherwise acting within the scope
210 of his duty, office or employment; or

211 (c) A person who is sixty-five (65) years of age or
212 older or a person who is a vulnerable person, as defined in
213 Section 43-47-5.

214 **SECTION 2.** This act shall take effect and be in force from
215 and after July 1, 2016.

