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Chapter No. 514
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HOUSE BILL NO. 780

Originated in House  Clerk

HOUSE BILL NO. 780

AN ACT TO AMEND SECTION 93-21-5, MISSISSIPPI CODE OF 1972, TO REVISE VENUE OF A DOMESTIC ABUSE PETITION; TO AMEND SECTION 93-21-7, MISSISSIPPI CODE OF 1972, TO CLARIFY AND REVISE JURISDICTION OF DOMESTIC ABUSE PETITIONS; TO AMEND SECTION 93-21-13, MISSISSIPPI CODE OF 1972, TO CLARIFY AND REVISE THE USE OF STANDARDIZED FORMS FOR EMERGENCY DOMESTIC ABUSE PROTECTION ORDERS AND THE ENTRY OF SUCH ORDERS INTO THE PROTECTION ORDER REGISTRY; TO AMEND SECTION 93-21-15, MISSISSIPPI CODE OF 1972, TO CLARIFY AND REVISE THE USE OF STANDARDIZED FORMS FOR DOMESTIC ABUSE PROTECTION ORDERS AND TO REVISE ENTRY OF ORDERS IN THE PROTECTION ORDER REGISTRY; TO AMEND SECTION 93-21-21, MISSISSIPPI CODE OF 1972, TO CLARIFY AND REVISE THE IMPOSITION OF SANCTIONS, WHETHER CIVIL OR CRIMINAL, FOR A KNOWING VIOLATION OF A PROTECTION ORDER; TO AMEND SECTIONS 93-21-25 AND 93-22-9, MISSISSIPPI CODE OF 1972, TO REVISE THE DUTY OF ENTERING INFORMATION INTO THE PROTECTION ORDER REGISTRY AND THE EFFECT OF REGISTERING OR NOT REGISTERING FOREIGN ORDERS; TO AMEND SECTIONS 97-3-7 AND 99-3-7, MISSISSIPPI CODE OF 1972, TO CLARIFY THE RELATIONSHIPS TRIGGERING DOMESTIC VIOLENCE DESIGNATION FOR SIMPLE AND AGGRAVATED ASSAULT; TO AMEND SECTION 99-5-37, MISSISSIPPI CODE OF 1972, TO CLARIFY WHAT ACTS OF DOMESTIC VIOLENCE REQUIRE PERSONAL APPEARANCE BEFORE A JUDGE BEFORE BAIL IS SET AND TO REQUIRE THAT BOND CONDITIONS IMPOSED ARE ENTERED INTO THE CORRESPONDING OFFENSE REPORT; TO AMEND SECTION 99-5-11, MISSISSIPPI CODE OF 1972, TO REQUIRE JUDGES TO CHECK THE ATTORNEY GENERAL'S PROTECTIVE ORDER REGISTRY BEFORE GRANTING BAIL ON CERTAIN OTHER CHARGES; TO AMEND SECTION 99-15-26, MISSISSIPPI CODE OF 1972, TO PROVIDE A PRETRIAL DIVERSION FOR COUNSELING OPTION IN CERTAIN DOMESTIC ABUSE PROSECUTIONS; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 93-21-5, Mississippi Code of 1972, is amended as follows:

93-21-5. (1) The municipal justice, county or chancery court shall have jurisdiction over proceedings under this chapter as provided in this chapter. The petitioner's right to relief under this chapter shall not be affected by his leaving the residence or household to avoid further abuse.

(2) Venue shall be proper in any county or municipality where the respondent resides or in any county or municipality where the alleged abusive act or acts occurred.

(3) If a petition for an order for protection from domestic abuse is filed in a court lacking proper venue, the court, upon objection of the respondent, shall transfer the action to the appropriate venue pursuant to other applicable law.

(4) A record shall be made of any proceeding in justice or municipal court that involves domestic abuse.

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

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

(2) A petition seeking a domestic abuse protection order may be filed in any of the following courts: municipal, justice, county or chancery. A chancery court shall not prohibit the filing of a petition which does not seek emergency relief on the basis that the petitioner did not first seek or obtain temporary relief in another court. A petition requesting emergency relief pending a hearing shall not be filed in * * * chancery court unless specifically permitted by the chancellor under the circumstances or as a separate pleading in an ongoing chancery action between the parties. Nothing in this section shall:

(a) Be construed to require consideration of emergency relief by a chancery court; or

(b) Preclude a chancery court from entering an order of emergency relief.

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

* * *

SECTION 3. Section 93-21-13, Mississippi Code of 1972, is amended as follows:

93-21-13. (1) (a) The * * * court in which a petition seeking emergency relief pending a hearing is filed must consider all such requests in an expedited manner. The court may issue an emergency domestic abuse protection order without prior notice to the respondent upon good cause shown by the petitioner. Immediate and present danger of abuse to the petitioner, any minor children or any person alleged to be incompetent shall constitute good cause for issuance of an emergency domestic abuse protection order. The respondent shall be provided with notice of the entry of any emergency domestic abuse protection order issued by the court by personal service of process.

(b) A court granting an emergency domestic abuse protection order may grant relief as provided in Section 93-21-15(1)(a).

(c) An emergency domestic abuse protection order shall be effective for ten (10) days, or until a hearing may be held, whichever occurs first. If a hearing under this subsection (1) is continued, the court may grant or extend the emergency order as it deems necessary for the protection of the abused person. A continuance under this subsection (1)(c) shall be valid for no longer than twenty (20) days.

(2) The Attorney General, in cooperation with the Mississippi Supreme Court and the Mississippi Judicial College, shall develop standardized forms for emergency domestic abuse protection orders. Use of the standardized forms in protection order proceedings pursuant to this chapter shall be fully implemented by all courts no later than July 1, 2015. However, in any criminal prosecution or contempt proceeding for a violation of a domestic abuse protection order, it shall not be a defense that the order was not issued on the standardized form.

(3) Upon issuance of any protection order by the court, the order shall be entered into the Mississippi Protection Order Registry by the clerk of the court pursuant to Section 93-21-25, and a copy provided to the sheriff's department in the county of the court of issuance.

(4) Any person aggrieved by the decision of a municipal or justice court judge to issue an emergency domestic abuse protection order or to deny issuance of an emergency domestic protection order shall be entitled to request a de novo review by the chancery or county court. All parties shall be advised of the procedure for seeking a de novo hearing.

* * *

SECTION 4. Section 93-21-15, Mississippi Code of 1972, is amended as follows:

93-21-15. (1) (a) After a hearing is held as provided in Section 93-21-11 for which notice and opportunity to be heard has been granted to the respondent, and upon a finding that the

petitioner has proved the existence of abuse by a preponderance of the evidence, the municipal and justice courts shall be empowered to grant a temporary domestic abuse protection order to bring about a cessation of abuse of the petitioner, any minor children, or any person alleged to be incompetent. The relief the court may provide includes, but is not limited to, the following:

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

(ii) Prohibiting or limiting respondent's physical proximity to the abused or other household members as designated by the court, including residence and place of work;

(iii) Prohibiting or limiting contact by the respondent with the abused or other household members designated by the court, whether in person, by telephone or by other electronic communication;

(iv) Granting possession to the petitioner of the residence or household to the exclusion of the respondent by evicting the respondent or restoring possession to the petitioner, or both; or

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

(b) The duration of any temporary domestic abuse protection order issued by a municipal or justice court shall not exceed thirty (30) days.

(c) Any person aggrieved by the decision of a municipal or justice court judge to issue a temporary domestic abuse protection order or to deny such an order shall be entitled to request a de novo review by the chancery or county court. All parties shall be advised of the procedure for seeking a de novo hearing.

(2) (a) After a hearing is held as provided in Section 93-21-11 for which notice and opportunity to be heard has been granted to the respondent, and upon a finding that the petitioner has proved the existence of abuse by a preponderance of the evidence, the chancery or county court shall be empowered to grant a final domestic abuse protection order or approve any consent agreement to bring about a cessation of abuse of the petitioner, any minor children, or any person alleged to be incompetent. In granting a final domestic abuse protection order, the chancery or county court may provide for relief that includes, but is not limited to, the following:

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

(ii) Granting possession to the petitioner of the residence or household to the exclusion of the respondent by evicting the respondent or restoring possession to the petitioner, or both;

(iii) When the respondent has a duty to support the petitioner, any minor children, or any person alleged to be incompetent living in the residence or household and the respondent is the sole owner or lessee, granting possession to the petitioner of the residence or household to the exclusion of the respondent by evicting the respondent or restoring possession to the petitioner, or both, or by consent agreement allowing the respondent to provide suitable, alternate housing;

(iv) Awarding temporary custody of or establishing temporary visitation rights with regard to any minor children or any person alleged to be incompetent, or both;

(v) If the respondent is legally obligated to support the petitioner, any minor children, or any person alleged to be incompetent, ordering the respondent to pay temporary

support for the petitioner, any minor children, or any person alleged to be incompetent;

(vi) Ordering the respondent to pay to the abused person monetary compensation for losses suffered as a direct result of the abuse, including, but not limited to, medical expenses resulting from such abuse, loss of earnings or support, out-of-pocket losses for injuries sustained, moving expenses, a reasonable attorney's fee, or any combination of the above;

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

(viii) Prohibiting or limiting respondent's physical proximity to the abused or other household members designated by the court, including residence, school and place of work;

(ix) Prohibiting or limiting contact by the respondent with the abused or other household members designated by the court whether in person, by telephone or by electronic communication; and

(x) Ordering counseling or professional medical treatment for the respondent, including counseling or treatment designed to bring about the cessation of domestic abuse.

(b) Except as provided below, a final domestic abuse protection order issued by a chancery or county court under the provisions of this chapter shall be effective for such time period as the court deems appropriate. The expiration date of the order shall be clearly stated in the order.

(c) Temporary provisions addressing temporary custody, visitation or support of minor children contained in a final domestic abuse protection order issued by a chancery or county court shall be effective for one hundred eighty (180) days. A party seeking relief beyond that period must initiate appropriate proceedings in the chancery court of appropriate jurisdiction. If

at the end of the one-hundred-eighty-day period, neither party has initiated such proceedings, the custody, visitation or support of minor children will revert to the chancery court order addressing such terms that was in effect at the time the domestic abuse protection order was granted. The chancery court in which custody, visitation or support proceedings have been initiated may provide for any temporary provisions addressing custody, visitation or support as the court deems appropriate.

(3) Every domestic abuse protection order issued pursuant to this section shall set forth the reasons for its issuance, shall contain specific findings of fact regarding the existence of abuse, shall be specific in its terms and shall describe in reasonable detail the act or acts to be prohibited. No mutual protection order shall be issued unless that order is supported by an independent petition by each party requesting relief pursuant to this chapter, and the order contains specific findings of fact regarding the existence of abuse by each party as principal aggressor, and a finding that neither party acted in self-defense.

(4) The Attorney General, in cooperation with the Mississippi Supreme Court and the Mississippi Judicial College, shall develop standardized forms for temporary and final domestic abuse protection orders. The use of standardized forms in protection order proceedings pursuant to this chapter shall be fully implemented by all courts no later than July 1, 2015. However, in any criminal prosecution or contempt proceeding for a violation of a domestic abuse protection order, it shall not be a defense that the order was not issued on the standardized form.

(5) Upon issuance of any protection order by the court, the order shall be entered in the Mississippi Protection Order Registry by the clerk of the court pursuant to Section 93-21-25, and a copy shall be provided to the sheriff's department in the county of the court of issuance.

(6) Upon subsequent petition by either party and following a hearing of which both parties have received notice and an opportunity to be heard, the court may modify, amend, or dissolve a domestic abuse protection order previously issued by that court.

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

93-21-21. (1) Upon a knowing violation of (a) a protection order or court-approved consent agreement issued pursuant to this chapter, (b) a similar order issued by a foreign court of competent jurisdiction for the purpose of protecting a person from domestic abuse, or (c) a bond condition imposed pursuant to Section 99-5-37, the person violating the order or condition commits a misdemeanor punishable by imprisonment in the county jail for not more than six (6) months or a fine of not more than One Thousand Dollars (\$1,000.00), or both.

(2) Alternatively, upon a knowing violation of a protection order or court-approved consent agreement issued pursuant to this chapter or a bond condition issued pursuant to Section 99-5-37, the issuing court may hold the person violating the order or bond condition in contempt, the contempt to be punishable as otherwise provided by applicable law. A person shall not be both convicted of a misdemeanor and held in contempt for the same violation of an order or bond condition. * * *

(3) When investigating allegations of a violation under subsection (1) of this section, law enforcement officers shall utilize the uniform offense report prescribed for this purpose by the Office of the Attorney General in consultation with the sheriff's and police chief's associations. However, failure of law enforcement to utilize the uniform offense report shall not be a defense to a crime charged under subsection (1) of this section.

(4) In any conviction for a violation of a domestic abuse protection order as described in subsection (1) of this section,

the court shall enter the disposition of the matter into the corresponding uniform offense report.

(5) Nothing in this section shall be construed to interfere with the court's authority, if any, to address bond condition violations in a more restrictive manner.

SECTION 6. Section 93-21-25, Mississippi Code of 1972, is amended as follows:

93-21-25. (1) In order to provide a statewide registry for protection orders and to aid law enforcement, prosecutors and courts in handling such matters, the Attorney General is authorized to create and administer a Mississippi Protection Order Registry. The Attorney General's office shall implement policies and procedures governing access to the registry by authorized users, which shall include provisions addressing the confidentiality of any information which may tend to reveal the location or identity of a victim of domestic abuse.

(2) All orders issued pursuant to this chapter will be maintained in the Mississippi Protection Order Registry. It shall be the duty of the clerk of the issuing court to enter all domestic abuse protection orders, including any modifications, amendments or dismissals of such orders, into the Mississippi Protection Order Registry within twenty-four (24) hours of issuance with no exceptions for weekends or holidays. A separate copy of any order shall be provided to the sheriff's department of the county of the issuing court. The copy may be provided in electronic format. Each qualifying protection order submitted to the Mississippi Protection Order Registry shall be automatically transmitted to the National Criminal Information Center Protection Order File. Failure of the clerk to enter the order into the registry or to provide a copy of the order to law enforcement shall have no effect on the validity or enforcement of an otherwise valid protection order.

* * *

* * * Any information regarding the registration of a domestic violence protection order, the filing of a petition for a domestic violence protection order, or the issuance of a domestic violence protection order which is maintained in the Mississippi Protection Order Registry which would tend to reveal the identity or location of the protected person(s) shall not constitute a public record and shall be exempt from disclosure pursuant to the Mississippi Public Records Act of 1983. This information may be disclosed to appropriate law enforcement, prosecutors or courts for protection order enforcement purposes.

SECTION 7. Section 93-22-9, Mississippi Code of 1972, is amended as follows:

93-22-9. (1) It is not required that any foreign protection order be registered in Mississippi; however, any individual may register a foreign protection order in this state on behalf of the individual or any protected person. To register a foreign protection order, an individual shall * * * present a certified copy of the order to the chancery clerk's office of any county in this state. * * *

* * *

(2) Upon presentation of a protection order, the chancery clerk shall enter the order into the Mississippi Domestic Abuse Protection Order Registry as provided in Section 93-21-25. * * *

* * *

(3) At the time of registration, an individual registering a foreign protection order shall file an affidavit by the protected individual that, to the best of the individual's knowledge, the order is in effect at the time of the registration.

* * *

(4) The failure to register a foreign protection order pursuant to the provisions of this section shall have no effect on the validity or enforceability of the order by Mississippi law enforcement or courts.

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

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

(b) However, a person convicted of simple assault (i) upon a statewide elected official, law enforcement officer, fireman, emergency medical personnel, public health personnel, social worker or family protection specialist or family protection worker employed by the Department of Human Services or another agency, youth detention center personnel, training school juvenile care worker, any county or municipal jail officer, superintendent, principal, teacher or other instructional personnel, school attendance officer, school bus driver, or a judge of a circuit, chancery, county, justice, municipal or youth court or a judge of the Court of Appeals or a justice of the Supreme Court, district attorney, legal assistant to a district attorney, county prosecutor, municipal prosecutor, court reporter employed by a court, court administrator, clerk or deputy clerk of the court, or public defender, while such statewide elected official, judge or justice, law enforcement officer, fireman, emergency medical personnel, public health personnel, social worker, family protection specialist, family protection worker, youth detention center personnel, training school juvenile care worker, any county or municipal jail officer, superintendent, principal, teacher or other instructional personnel, school attendance officer, school bus driver, district attorney, legal assistant to a district

attorney, county prosecutor, municipal prosecutor, court reporter employed by a court, court administrator, clerk or deputy clerk of the court, or public defender is acting within the scope of his duty, office or employment; (ii) upon a legislator while the Legislature is in regular or extraordinary session or while otherwise acting within the scope of his duty, office or employment; or (iii) upon a person who is sixty-five (65) years of age or older or a person who is a vulnerable adult, as defined in Section 43-47-5, shall be punished by a fine of not more than One Thousand Dollars (\$1,000.00) or by imprisonment for not more than five (5) years, or both.

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

(b) However, a person convicted of aggravated assault (i) upon a statewide elected official, law enforcement officer, fireman, emergency medical personnel, public health personnel, social worker, family protection specialist, family protection worker employed by the Department of Human Services or another agency, youth detention center personnel, training school juvenile care worker, any county or municipal jail officer, superintendent, principal, teacher or other instructional personnel, school attendance officer, school bus driver, or a judge of a circuit, chancery, county, justice, municipal or youth court or a judge of

the Court of Appeals or a justice of the Supreme Court, district attorney, legal assistant to a district attorney, county prosecutor, municipal prosecutor, court reporter employed by a court, court administrator, clerk or deputy clerk of the court, or public defender, while such statewide elected official, judge or justice, law enforcement officer, fireman, emergency medical personnel, public health personnel, social worker, family protection specialist, family protection worker, youth detention center personnel, training school juvenile care worker, any county or municipal jail officer, superintendent, principal, teacher or other instructional personnel, school attendance officer, school bus driver, district attorney, legal assistant to a district attorney, county prosecutor, municipal prosecutor, court reporter employed by a court, court administrator, clerk or deputy clerk of the court, or public defender is acting within the scope of his duty, office or employment; (ii) upon a legislator while the Legislature is in regular or extraordinary session or while otherwise acting within the scope of his duty, office or employment; or (iii) upon a person who is sixty-five (65) years of age or older or a person who is a vulnerable adult, as defined in Section 43-47-5, shall be punished by a fine of not more than Five Thousand Dollars (\$5,000.00) or by imprisonment for not more than thirty (30) years, or both.

(3) A person is guilty of simple domestic violence who commits simple assault as described in subsection (1) of this section against a current or former spouse of the defendant or a child of that person, a person living as a spouse or who formerly lived as a spouse with the defendant or a child of that person, a parent, grandparent, child, grandchild or someone similarly situated to the defendant, a person who has a current or former dating relationship with the defendant, or a person with whom the defendant has had a biological or legally adopted child and, upon conviction, the defendant shall be punished as provided under

subsection (1) of this section; however, upon a third or subsequent conviction of simple 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 not less than five (5) nor more than ten (10) 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.

(4) A person is guilty of aggravated domestic violence who commits aggravated assault as described in subsection (2) of this section against, or who strangles, or attempts to strangle, a current or former spouse of the defendant or a child of that person, a person living as a spouse or who formerly lived as a spouse with the defendant or a child of that person, a parent, grandparent, child, grandchild or someone similarly situated to the defendant, a person who has a current or former dating relationship with the defendant, or a person with whom the defendant has had a biological or legally adopted child. Upon conviction, the defendant shall be punished by imprisonment in the custody of the Department of Corrections for not less than two (2) years nor more than twenty (20) years; however, upon a third or subsequent conviction of 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 ten (10) 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). A person convicted of aggravated domestic violence shall not be eligible for parole under the provisions of Section 47-7-3(1)(c) until he shall have served one (1) year of his sentence.

For the purposes of this section, "strangle" means to restrict the flow of oxygen or blood by intentionally applying pressure on the neck or throat of another person by any means or to intentionally block the nose or mouth of another person by any means.

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

(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) When investigating allegations of a violation of subsection (3) or (4) of this section, law enforcement officers shall utilize the form prescribed for such purposes by the Office of the Attorney General in consultation with the sheriff's and police chief's associations. However, failure of law enforcement to utilize the uniform offense report shall not be a defense to a crime charged under subsection (3) or (4) of this section.

(8) 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." The court clerk shall enter the disposition of the matter into the corresponding uniform offense report.

SECTION 9. Section 99-3-7, Mississippi Code of 1972, is amended as follows:

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

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

(3) (a) Any law enforcement officer shall arrest a person with or without a warrant when he has probable cause to believe that the person has, within twenty-four (24) hours of such arrest, knowingly committed a misdemeanor which is an act of domestic violence or knowingly violated provisions of an ex parte protective order, protective order after hearing or court-approved consent agreement entered by a chancery, circuit, county, justice or municipal court pursuant to the Protection from Domestic Abuse Law, Sections 93-21-1 through 93-21-29, Mississippi Code of 1972, or a restraining order entered by a foreign court of competent jurisdiction to protect an applicant from domestic violence * * *.

(b) If a law enforcement officer has probable cause to believe that two (2) or more persons committed a misdemeanor which is an act of domestic violence as defined herein, or if two (2) or more persons make complaints to the officer, the officer shall attempt to determine who was the principal aggressor. The term principal aggressor is defined as the party who poses the most serious ongoing threat, or who is the most significant, rather than the first, aggressor. The officer shall presume that arrest is not the appropriate response for the person or persons who were not the principal aggressor. If the officer affirmatively finds more than one (1) principal aggressor was involved, the officer shall document those findings.

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

(i) Evidence from the persons involved in the domestic abuse;

(ii) The history of domestic abuse between the parties, the likelihood of future injury to each person, and the intent of the law to protect victims of domestic violence from continuing abuse;

(iii) Whether one (1) of the persons acted in self-defense; and

(iv) Evidence from witnesses of the domestic violence.

(d) A law enforcement officer shall not base the decision of whether to arrest on the consent or request of the victim.

(e) A law enforcement officer's determination regarding the existence of probable cause or the lack of probable cause shall not adversely affect the right of any party to independently seek appropriate remedies.

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

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

(5) As used in subsection (3) of this section, the phrase "misdemeanor which is an act of domestic violence" shall mean one or more of the following acts between current or former spouses or a child of current or former spouses, persons living as spouses or who formerly lived as spouses or a child of persons living as spouses or who formerly lived as spouses, a parent, grandparent, child, grandchild or someone similarly situated to the defendant, persons who have a current or former dating relationship, or persons who have a biological or legally adopted child together:

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

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

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

(6) Any arrest made pursuant to subsection (3) of this section shall be designated as domestic assault or domestic violence on both the arrest docket and the incident report. Any officer investigating a complaint of a misdemeanor crime of

domestic violence who finds probable cause that such an offense has occurred within the past twenty-four (24) hours shall file an affidavit on behalf of the victim(s) of the crime, regardless of whether an arrest is made within that time period. If the crime is reported or investigated outside of that twenty-four-hour period, the officer may file the affidavit on behalf of the victim. In the event the officer does not file an affidavit on behalf of the victim, the officer shall instruct the victim of the procedure for filing on his or her own behalf.

(7) A law enforcement officer shall not be held liable in any civil action for an arrest based on probable cause and in good faith pursuant to subsection (3) of this section, or failure, in good faith, to make an arrest pursuant to subsection (3) of this section.

SECTION 10. Section 99-5-37, Mississippi Code of 1972, is amended as follows:

99-5-37. (1) In any arrest for (a) a misdemeanor that is an act of domestic violence as defined in Section 99-3-7(5); (b) aggravated domestic violence as defined in Section 97-3-7(4); (c) aggravated stalking as defined in Section 97-3-107(2); (d) a knowing violation of a condition of bond imposed pursuant to this section; or (e) a knowing violation of a domestic abuse protection order issued pursuant to Section 93-21-1 et seq., or a similar order issued by a foreign court of competent jurisdiction for the purpose of protecting a person from domestic abuse, no bail shall be granted until the person arrested has appeared before a judge of the court of competent jurisdiction. * * * The appearance may be by telephone. Nothing in this section shall be construed to interfere with the defendant's right to an initial appearance or preliminary hearing.

(2) Upon setting bail * * *, the judge may impose on the arrested person a holding period not to exceed twenty-four (24) hours from the time of the initial appearance or setting of bail.

The judge also shall give particular consideration to the exigencies of the case, including, but not limited to, (a) the potential for further violence; (b) the past history, if any, of violence between the defendant and alleged victim; (c) the level of violence of the instant offense; (d) any threats of further violence; and (e) the existence of a domestic violence protection order prohibiting the defendant from engaging in abusive behavior, and shall impose any specific conditions on the bond as he or she may deem necessary. Specific conditions which may be imposed by the judge may include, but are not limited to, the issuance of an order prohibiting the defendant from contacting the alleged victim prior to trial, prohibiting the defendant from abusing or threatening the alleged victim or requiring defendant to refrain from drug or alcohol use.

(3) All bond conditions imposed by the court shall be entered into the corresponding Uniform Offense Report and written notice of the conditions shall be provided at no cost to the arrested person upon his or her release, to the appropriate law enforcement agency, and to the clerk of the court. Upon request, a copy of the written notice of conditions shall be provided at no cost to the victim. In any prosecution for violation of a bond condition imposed pursuant to this section, it shall not be a defense that the bond conditions were not entered into the corresponding Uniform Offense Report.

(4) Within twenty-four (24) hours of a violation of any bond conditions imposed pursuant to this section, any law enforcement officer having probable cause to believe that the violation occurred may make a warrantless arrest of the violator.

(5) Nothing in this section shall be construed to interfere with the judges' authority, if any, to deny bail or to otherwise lawfully detain a particular defendant.

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

99-5-11. (1) All justice court judges and all other conservators of the peace are authorized, whenever a person is brought before them charged with any offense not capital for which bail is allowed by law, to take the recognizance or bond of the person, with sufficient sureties, in such penalty as the justice court judge or conservator of the peace may require, for his appearance before the justice court judge or conservator of the peace for an examination of his case at some future day. And if the person thus recognized or thus giving bond fails to appear at the appointed time, it shall be the duty of the justice court judge or conservator of the peace to return the recognizance or bond, with his certificate of default, to the court having jurisdiction of the case, and a recovery may be had therein by scire facias, as in other cases of forfeiture. The justice court judge or other conservator of the peace shall also issue an alias warrant for the defaulter.

(2) In circumstances involving an offense against any of the following: (a) a current or former spouse of the accused or child of that person; (b) a person living as a spouse or who formerly lived as a spouse with the accused or a child of that person; (c) a parent, grandparent, child, grandchild or someone similarly situated to the accused; (d) a person who has a current or former dating relationship with the accused; or (e) a person with whom the accused has had a biological or legally adopted child, the justice court judge or other conservator of the peace shall check, or cause to be made a check, of the status of the person for whom recognizance or bond is taken before ordering bail in the Mississippi Protective Order Registry authorized under Section 93-21-25, and the existence of a domestic abuse protection order against the accused shall be considered when determining appropriate bail.

SECTION 12. Section 99-15-26, Mississippi Code of 1972, is amended as follows:

99-15-26. (1) (a) In all criminal cases, felony and misdemeanor, other than crimes against the person or a violation of Section 97-11-31, the circuit or county court shall be empowered, upon the entry of a plea of guilty by a criminal defendant, to withhold acceptance of the plea and sentence thereon pending successful completion of such conditions as may be imposed by the court pursuant to subsection (2) of this section.

(b) In all misdemeanor criminal cases, other than crimes against the person, the justice or municipal court shall be empowered, upon the entry of a plea of guilty by a criminal defendant, to withhold acceptance of the plea and sentence thereon pending successful completion of such conditions as may be imposed by the court pursuant to subsection (2) of this section.

(c) In all criminal cases charging a misdemeanor of domestic violence as defined in Section 99-3-7(5) or aggravated domestic violence as defined in Section 97-3-7(4), a circuit, county, justice or municipal court shall be empowered, upon the entry of a plea of guilty by the criminal defendant, to withhold acceptance of the plea and sentence thereon pending successful completion of such conditions as may be imposed by the court pursuant to subsection (2) of this section.

(d) No person having previously qualified under the provisions of this section or having ever been convicted of a felony shall be eligible to qualify for release in accordance with this section. A person shall not be eligible to qualify for release in accordance with this section if such person has been charged (i) with an offense pertaining to the sale, barter, transfer, manufacture, distribution or dispensing of a controlled substance, or the possession with intent to sell, barter, transfer, manufacture, distribute or dispense a controlled substance, as provided in Section 41-29-139(a)(1), except for a charge under said provision when the controlled substance involved is one (1) ounce or less of marijuana; (ii) with an offense

pertaining to the possession of one (1) kilogram or more of marijuana as provided in Section 41-29-139(c)(2)(F) and (G); or (iii) with an offense under the Mississippi Implied Consent Law.

(2) (a) Conditions which the circuit, county, justice or municipal court may impose under subsection (1) of this section shall consist of:

(i) Reasonable restitution to the victim of the crime.

(ii) Performance of not more than nine hundred sixty (960) hours of public service work approved by the court.

(iii) Payment of a fine not to exceed the statutory limit.

(iv) Successful completion of drug, alcohol, psychological or psychiatric treatment, successful completion of a program designed to bring about the cessation of domestic abuse, or any combination thereof, if the court deems * * * treatment necessary.

(v) The circuit or county court, in its discretion, may require the defendant to remain in the program subject to good behavior for a period of time not to exceed five (5) years. The justice or municipal court, in its discretion, may require the defendant to remain in the program subject to good behavior for a period of time not to exceed two (2) years.

(b) Conditions which the circuit or county court may impose under subsection (1) of this section also include successful completion of a regimented inmate discipline program.

(3) When the court has imposed upon the defendant the conditions set out in this section, the court shall release the bail bond, if any.

(4) Upon successful completion of the court-imposed conditions permitted by subsection (2) of this section, the court shall direct that the cause be dismissed and the case be closed.

(5) Upon petition therefor, the court shall expunge the record of any case in which an arrest was made, the person arrested was released and the case was dismissed or the charges were dropped or there was no disposition of such case.

(6) This section shall take effect and be in force from and after March 31, 1983.

SECTION 13. This act shall take effect and be in force from and after July 1, 2012.

PASSED BY THE HOUSE OF REPRESENTATIVES
March 9, 2012


SPEAKER OF THE HOUSE OF REPRESENTATIVES

PASSED BY THE SENATE
April 5, 2012


PRESIDENT OF THE SENATE

APPROVED BY THE GOVERNOR


GOVERNOR
4:10 pm 5/1/12