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Chapter No. 463
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SENATE BILL NO. 2476

Originated in Senate *[Signature]* Secretary

SENATE BILL NO. 2476

AN ACT TO AMEND SECTION 97-3-7, MISSISSIPPI CODE OF 1972, TO CLARIFY THE SENTENCING STATUS OF A MULTIPLE DOMESTIC VIOLENCE OFFENDER; TO AMEND SECTION 93-21-15, MISSISSIPPI CODE OF 1972, TO REVISE THE TERM OF A DOMESTIC VIOLENCE PROTECTION ORDER; AND FOR RELATED PURPOSES.

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

SECTION 1. 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 * * * upon * * * any of the persons listed in subsection (14) of this

section under the circumstances enumerated in subsection (14) 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 * * * upon * * * any of the persons listed in subsection (14) of this section under the circumstances enumerated in subsection (14) 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) When the offense is committed 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, a person is guilty of simple domestic violence who:

(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 * * *.

Upon conviction, the defendant 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) * * * **Simple domestic violence: third.** A person is guilty of the felony of simple domestic violence third who commits simple domestic violence as defined in this subsection (3) and who, at the time of the commission of the offense in question, has two (2) prior convictions, whether against the same or another victim, within seven (7) years, for any combination of simple domestic violence under this subsection (3) or aggravated domestic violence as defined in subsection (4) of this section or * * * substantially similar offenses under the law of another state, of

the United States, or of a federally recognized Native American tribe * * *. Upon conviction, the defendant shall be * * * sentenced to a term of imprisonment not less than five (5) nor more than ten (10) years. * * *

* * *

(4) (a) When the offense is committed 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 * * *, a person is guilty of aggravated domestic violence who:

(i) Attempts to cause serious bodily injury to another, or causes such an 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) Strangles, or attempts to strangle another.

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

(b) * * * Aggravated domestic violence; third. A

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

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

(* * *6) In sentencing under subsections (3), (4) and (5) of this section, 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.

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

(* * *8) A person convicted * * * under subsection (4) or (5) of this section 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.

(* * *9) For the purposes of this section:

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

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

(* * *10) Every conviction * * * under subsection (3), (4) or (5) of this section 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.

(11) (a) Upon conviction under subsection (3), (4) or (5) of this section, the court shall be empowered to issue a criminal protection order prohibiting the defendant from any contact with the victim. The court may include in a criminal protection order any other condition available under Section 93-21-15. The duration of a criminal protection order shall be based upon the seriousness of the facts before the court, the probability of future violations, and the continued safety of the victim or another person. However, municipal and justice courts may issue criminal protection orders for a maximum period of time not to exceed one (1) year. Circuit and county courts may issue a criminal protection order for any period of time deemed necessary.

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

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

(d) It shall be a misdemeanor to knowingly violate any condition of a criminal protection order. Upon conviction for a violation, the defendant 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.

(* * *12) When investigating allegations of a violation of subsection (3) * * *, (4) (5) or 11 of this section, whether or not an arrest results, 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 * * * this section. The uniform offense report shall not be required if, upon investigation, the offense does not involve persons in the relationships specified in subsections (3) and (4) of this section.

(* * *13) In any conviction * * * under subsection (3), (4), (5) or (11) of this section * * *, 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.

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

(a) A statewide elected official * * *; law enforcement officer * * *; fireman * * *; emergency medical personnel * * *; public health personnel * * *; social worker * * *, 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 * * * or school bus driver * * *; 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 * * * or legal assistant to a district attorney * * *; county prosecutor * * * or municipal prosecutor * * *; court reporter employed by a court, court administrator, clerk or deputy clerk of the court * * *; or public defender * * * when that person is acting within the scope of his duty, office or employment;

(b) 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

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

SECTION 2. 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. However, if the party to be protected and the respondent do not have minor children in common, the duration of the temporary domestic abuse protection order may exceed thirty (30) days but shall not exceed one (1) year.

(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 3. This act shall take effect and be in force from and after July 1, 2014.

PASSED BY THE SENATE
February 13, 2014



PRESIDENT OF THE SENATE

PASSED BY THE HOUSE OF REPRESENTATIVES
March 12, 2014



SPEAKER OF THE HOUSE OF REPRESENTATIVES

APPROVED BY THE GOVERNOR



GOVERNOR

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