

By: Senator(s) Huggins

To: Public Health and Welfare

SENATE BILL NO. 2488

1 AN ACT TO AMEND SECTIONS 43-47-5, 43-47-7, 43-47-9 AND
2 43-47-31, MISSISSIPPI CODE OF 1972, RELATING TO THE MISSISSIPPI
3 VULNERABLE ADULTS ACT, TO DEFINE THE TERM "VULNERABLE ADULT," TO
4 DEFINE THE TERM "ABANDONMENT," TO CLARIFY THAT INVESTIGATIONS
5 SHALL BE INITIATED IMMEDIATELY AND TO CLARIFY THE AUTHORITY OF THE
6 DEPARTMENT TO OVERRIDE A COMPETENT ADULT'S CHOICE AND RIGHT TO
7 SELF DETERMINATION; AND FOR RELATED PURPOSES.

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

9 **SECTION 1.** Section 43-47-5, Mississippi Code of 1972, is
10 amended as follows:

11 43-47-5. For the purposes of this chapter, the following
12 words shall have the meanings ascribed herein unless the context
13 otherwise requires:

14 (a) "Abuse" shall mean the willful or nonaccidental
15 infliction of physical pain, injury or mental anguish on a
16 vulnerable adult, the unreasonable confinement of a vulnerable
17 adult, or the willful deprivation by a caretaker of services which
18 are necessary to maintain the mental and physical health of a
19 vulnerable adult. "Abuse" shall include sexual abuse. "Abuse"
20 shall not mean conduct which is a part of the treatment and care
21 of, and in furtherance of the health and safety of a patient or
22 resident of a care facility. "Abuse" includes, but is not limited
23 to, a single incident.

24 (b) "Care facility" shall mean:

25 (i) Any institution or place for the aged or
26 infirm as defined in, and required to be licensed under, the
27 provisions of Section 43-11-1 et seq.; and

28 (ii) Any long-term care facility as defined in
29 Section 43-7-55; and



30 (iii) Any hospital as defined in, and required to
31 be licensed under, the provisions of Section 41-9-1 et seq.; and

32 (iv) Any home health agency as defined in, and
33 required to be licensed under, the provisions of Section 41-71-1
34 et seq.; and

35 (v) Any hospice as defined in, and required to be
36 licensed under, the provisions of Chapter 85 of Title 41; and

37 (vi) Any adult day services facility, which shall
38 mean a community-based group program for adults designed to meet
39 the needs of adults with impairments through individual plans of
40 care, which are structured, comprehensive, planned, nonresidential
41 programs providing a variety of health, social and related support
42 services in a protective setting, enabling participants to live in
43 the community. Exempted from this definition shall be any program
44 licensed and certified by the Mississippi Department of Mental
45 Health and any adult day services program provided to ten (10) or
46 fewer individuals by a licensed institution for the aged or
47 infirm.

48 (c) "Caretaker" shall mean an individual, corporation,
49 partnership or other organization which has assumed the
50 responsibility for the care of a vulnerable adult, but shall not
51 include the Division of Medicaid, a licensed hospital, or a
52 licensed nursing home within the state.

53 (d) "Court" shall mean the chancery court of the county
54 in which the vulnerable adult resides or is located.

55 (e) "Department" shall mean the Department of Human
56 Services.

57 (f) "Emergency" shall mean a situation in which:

58 (i) A vulnerable adult is in substantial danger of
59 serious harm, death or irreparable harm if protective services are
60 not provided immediately;

61 (ii) The vulnerable adult is unable to consent to
62 services;



63 (iii) No responsible, able or willing caretaker,
64 if any, is available to consent to emergency services; and

65 (iv) There is insufficient time to utilize the
66 procedure provided in Section 43-47-13.

67 (g) "Emergency services" shall mean those services
68 necessary to maintain a vulnerable adult's vital functions and
69 without which there is reasonable belief that the vulnerable adult
70 would suffer irreparable harm or death, and may include taking
71 physical custody of the adult.

72 (h) "Essential services" shall mean those social work,
73 medical, psychiatric or legal services necessary to safeguard a
74 vulnerable adult's rights and resources and to maintain the
75 physical or mental well-being of the person. These services shall
76 include, but not be limited to, the provision of medical care for
77 physical and mental health needs, assistance in personal hygiene,
78 food, clothing, adequately heated and ventilated shelter,
79 protection from health and safety hazards, protection from
80 physical mistreatment and protection from exploitation. The words
81 "essential services" shall not include taking a vulnerable adult
82 into physical custody without his consent except as provided for
83 in Section 43-47-15 and as otherwise provided by the general laws
84 of the state.

85 (i) "Exploitation" shall mean the illegal or improper
86 use of a vulnerable adult or his resources for another's profit or
87 advantage with or without the consent of the vulnerable adult.
88 "Exploitation" includes, but is not limited to, a single incident.

89 (j) "Lacks the capacity to consent" shall mean that a
90 vulnerable adult, because of physical or mental incapacity, lacks
91 sufficient understanding or capacity to make or communicate
92 responsible decisions concerning his person, including, but not
93 limited to, provisions for health care, food, clothing or shelter.
94 This may be reasonably determined by the department in emergency
95 situations; in all other instances, the court shall make the



96 determination following the procedures in Sections 43-47-13 and
97 43-47-15 or as otherwise provided by the general laws of the
98 state.

99 (k) "Neglect" shall mean either the inability of a
100 vulnerable adult who is living alone to provide for himself the
101 food, clothing, shelter, health care or other services which are
102 necessary to maintain his mental and physical health, or failure
103 of a caretaker to supply the vulnerable adult with the food,
104 clothing, shelter, health care, supervision or other services
105 which a reasonably prudent person would do to maintain the
106 vulnerable adult's mental and physical health. "Neglect"
107 includes, but is not limited to, a single incident.

108 (l) "Protective services" shall mean services provided
109 by the state or other government or private organizations,
110 agencies or individuals which are necessary to protect a
111 vulnerable adult from abuse, neglect or exploitation. They shall
112 include, but not be limited to, investigation, evaluation of the
113 need for services and provision of essential services on behalf of
114 a vulnerable adult.

115 (m) "Vulnerable adult" shall mean a person eighteen
116 (18) years of age or older or any minor not covered by the Youth
117 Court Act. The term "vulnerable adult" shall also include all
118 residents or patients, regardless of age, in a care facility for
119 the purposes of Sections 43-47-19 and 43-47-37 only. The
120 department shall not be prohibited from investigating, and shall
121 have the authority and responsibility to fully investigate, in
122 accordance with the provisions of this chapter, any allegation of
123 abuse, neglect, and/or exploitation regarding a patient in a care
124 facility, if the alleged abuse, neglect and/or exploitation
125 occurred at a private residence.

126 **SECTION 2.** Section 43-47-7, Mississippi Code of 1972, is
127 amended as follows:



128 43-47-7. (1) (a) Except as otherwise provided by Section
129 43-47-37 for vulnerable adults in care facilities, any person
130 including, but not limited to, the following, who knows or
131 suspects that a vulnerable adult has been or is being abused,
132 neglected or exploited shall immediately report such knowledge or
133 suspicion to the Department of Human Services or to the county
134 department of human services where the vulnerable adult is
135 located:

136 (i) Attorney, physician, osteopathic physician,
137 medical examiner, chiropractor or nurse engaged in the admission,
138 examination, care or treatment of vulnerable adults;

139 (ii) Health professional or mental health
140 professional other than one listed in subparagraph (i);

141 (iii) Practitioner who relies solely on spiritual
142 means for healing;

143 (iv) Social worker or other professional adult
144 care, residential or institutional staff;

145 (v) State, county or municipal criminal justice
146 employee or law enforcement officer;

147 (vi) Human rights advocacy committee or long-term
148 care ombudsman council member; or

149 (vii) Accountant, stockbroker, financial advisor
150 or consultant, insurance agent or consultant, investment advisor
151 or consultant, financial planner, or any officer or employee of a
152 bank, savings and loan, credit union or any other financial
153 service provider.

154 (b) To the extent possible, a report made pursuant to
155 paragraph (a) must contain, but need not be limited to, the
156 following information:

157 (i) Name, age, race, sex, physical description and
158 location of each vulnerable adult alleged to have been abused,
159 neglected or exploited.



160 (ii) Names, addresses and telephone numbers of the
161 vulnerable adult's family members.

162 (iii) Name, address and telephone number of each
163 alleged perpetrator.

164 (iv) Name, address and telephone number of the
165 caregiver of the vulnerable adult, if different from the alleged
166 perpetrator.

167 (v) Description of the neglect, exploitation,
168 physical or psychological injuries sustained.

169 (vi) Actions taken by the reporter, if any, such
170 as notification of the criminal justice agency.

171 (vii) Any other information available to the
172 reporting person which may establish the cause of abuse, neglect
173 or exploitation that occurred or is occurring.

174 In addition to the above, any person or entity holding or
175 required to hold a license as specified in Title 73, Professions
176 and Vocations, Mississippi Code of 1972, shall be required to give
177 his, her or its name, address and telephone number in the report
178 of the alleged abuse, neglect or exploitation.

179 (c) The department, or its designees, shall report to
180 an appropriate criminal investigative or prosecutive authority any
181 person required by this section to report or who fails to comply
182 with this section. A person who fails to make a report as
183 required under this subsection or who, because of the
184 circumstances, should have known or suspected beyond a reasonable
185 doubt that a vulnerable adult suffers from exploitation, abuse,
186 neglect or self-neglect but who knowingly fails to comply with
187 this section shall, upon conviction, be guilty of a misdemeanor
188 and shall be punished by a fine not exceeding Five Thousand
189 Dollars (\$5,000.00), or by imprisonment in the county jail for not
190 more than six (6) months, or both such fine and imprisonment.
191 However, for purposes of this subsection (1), any recognized legal
192 financial transaction shall not be considered cause to report the



193 knowledge or suspicion of the financial exploitation of a
194 vulnerable adult. If a person convicted under this section is a
195 member of a profession or occupation that is licensed, certified
196 or regulated by the state, the court shall notify the appropriate
197 licensing, certifying or regulating entity of the conviction.

198 (2) Reports received by law enforcement authorities or other
199 agencies shall be forwarded immediately to the Department of Human
200 Services or the county department of human services. The
201 Department of Human Services shall investigate the reported abuse,
202 neglect or exploitation immediately and shall file a preliminary
203 report of its findings with the Office of the Attorney General
204 within forty-eight (48) hours, and shall make additional reports
205 as new information or evidence becomes available. The Department
206 of Human Services, upon request, shall forward a statement to the
207 person making the initial report required by this section as to
208 what action is being taken, if any.

209 (3) The report may be made orally or in writing, but where
210 made orally, it shall be followed up by a written report. A
211 person who fails to report or to otherwise comply with this
212 section, as provided herein, shall have no civil or criminal
213 liability, other than that expressly provided for in this section,
214 to any person or entity in connection with any failure to report
215 or to otherwise comply with the requirements of this section.

216 (4) Anyone who makes a report required by this section or
217 who testifies or participates in any judicial proceedings arising
218 from the report or who participates in a required investigation or
219 evaluation shall be presumed to be acting in good faith and in so
220 doing shall be immune from liability, civil or criminal, that
221 might otherwise be incurred or imposed. However, the immunity
222 provided under this subsection shall not apply to any suspect or
223 perpetrator of any abuse, neglect or exploitation.

224 (5) A person who intentionally makes a false report under
225 the provisions of this section may be found liable in a civil suit



226 for any actual damages suffered by the person or persons so
227 reported and for any punitive damages set by the court or jury.

228 (6) The Executive Director of Human Services shall establish
229 a statewide central register of reports made pursuant to this
230 section. The central register shall be capable of receiving
231 reports of vulnerable adults in need of protective services seven
232 (7) days a week, twenty-four (24) hours a day. To effectuate this
233 purpose the executive director shall establish a single toll-free
234 statewide phone number that all persons may use to report
235 vulnerable adults in need of protective services, and that all
236 persons authorized by subsection (7) of this section may use for
237 determining the existence of prior reports in order to evaluate
238 the condition or circumstances of the vulnerable adult before
239 them. Such oral reports and evidence of previous reports shall be
240 transmitted to the appropriate county department of human
241 services. The central register shall include, but not be limited
242 to, the following information: the name and identifying
243 information of the individual reported, the county department of
244 human services responsible for the investigation of each such
245 report, the names, affiliations and purposes of any person
246 requesting or receiving information which the executive director
247 believes might be helpful in the furtherance of the purposes of
248 this chapter, the name, address, birth date, social security
249 number of the perpetrator of abuse, neglect and/or exploitation,
250 and the type of abuse, neglect and/or exploitation of which there
251 was substantial evidence upon investigation of the report. The
252 central register shall inform the person making reports required
253 under this section of his or her right to request statements from
254 the department as to what action is being taken, if any.

255 Each person, business, organization or other entity, whether
256 public or private, operated for profit, operated for nonprofit or
257 a voluntary unit of government not responsible for law enforcement
258 providing care, supervision or treatment of vulnerable adults



259 shall conduct criminal history records checks on each new employee
260 of the entity who provides, and/or would provide direct patient
261 care or services to adults or vulnerable persons, as provided in
262 Section 43-11-13.

263 The department shall not release data that would be harmful
264 or detrimental to the vulnerable adult or that would identify or
265 locate a person who, in good faith, made a report or cooperated in
266 a subsequent investigation unless ordered to do so by a court of
267 competent jurisdiction.

268 (7) Reports made pursuant to this section, reports written
269 or photographs taken concerning such reports in the possession of
270 the Department of Human Services or the county department of human
271 services shall be confidential and shall only be made available
272 to:

273 (a) A physician who has before him a vulnerable adult
274 whom he reasonably suspects may be abused, neglected or exploited,
275 as defined in Section 43-47-5;

276 (b) A duly authorized agency having the responsibility
277 for the care or supervision of a subject of the report;

278 (c) A grand jury or a court of competent jurisdiction,
279 upon finding that the information in the record is necessary for
280 the determination of charges before the grand jury;

281 (d) A district attorney or other law enforcement
282 official.

283 Notwithstanding the provisions of paragraph (b) of this
284 subsection, the department may not disclose a report of the
285 abandonment, exploitation, abuse, neglect or self-neglect of a
286 vulnerable adult to the vulnerable adult's guardian,
287 attorney-in-fact, surrogate decision maker, or caregiver who is a
288 perpetrator or alleged perpetrator of the abandonment,
289 exploitation, abuse or neglect of the vulnerable adult.

290 "Abandonment" shall mean an action or inaction by a legal
291 guardian, caretaker or custodian of a vulnerable adult which



292 leaves the vulnerable adult without the means or ability to obtain
293 necessary food, clothing, shelter or health care.

294 Any person given access to the names or other information
295 identifying the subject of the report, except the subject of the
296 report, shall not divulge or make public such identifying
297 information unless he is a district attorney or other law
298 enforcement official and the purpose is to initiate court action.
299 Any person who willfully permits the release of any data or
300 information obtained pursuant to this section to persons or
301 agencies not permitted to such access by this section shall be
302 guilty of a misdemeanor.

303 (8) Upon reasonable cause to believe that a caretaker or
304 other person has abused, neglected or exploited a vulnerable
305 adult, the department shall promptly notify the district attorney
306 of the county in which the vulnerable adult is located and the
307 Office of the Attorney General, except as provided in Section
308 43-47-37(2).

309 **SECTION 3.** Section 43-47-9, Mississippi Code of 1972, is
310 amended as follows:

311 43-47-9. (1) Upon receipt of a report pursuant to Section
312 43-47-7 that a vulnerable adult is in need of protective services,
313 the department shall initiate an investigation and/or evaluation
314 immediately to determine whether the vulnerable adult is in need
315 of protective services and what services are needed. The
316 evaluation shall include any necessary visits and interviews with
317 the adult, and if appropriate, with the alleged perpetrator of the
318 vulnerable adult abuse and with any person believed to have
319 knowledge of the circumstances of the case. When a caretaker of a
320 vulnerable adult refuses to allow the department reasonable access
321 to conduct an investigation to determine if the vulnerable adult
322 is in need of protective services, the department may petition the
323 court for an order for injunctive relief enjoining the caretaker
324 from interfering with the investigation.



325 (2) The staff and physicians of local health departments,
326 mental health clinics and other public or private agencies,
327 including law enforcement agencies, shall cooperate fully with the
328 department in the performance of its duties. These duties include
329 immediate, in-residence evaluations and medical examinations and
330 treatment where the department deems it necessary. However, upon
331 receipt of a report of abuse, neglect or exploitation of a
332 vulnerable adult confined in a licensed hospital or licensed
333 nursing home facility in the state, the department shall
334 immediately refer this report to the proper authority at the State
335 Department of Health for investigation under Section 43-47-37.

336 Upon a showing of probable cause that a vulnerable adult has
337 been abused, a court may authorize a qualified third party to make
338 an evaluation to enter the residence of, and to examine the
339 vulnerable adult. Upon a showing of probable cause that a
340 vulnerable adult has been financially exploited, a court may
341 authorize a qualified third party, also authorized by the
342 department, to make an evaluation, and to gain access to the
343 financial records of the vulnerable adult.

344 (3) The department may contract with an agency or private
345 physician for the purpose of providing immediate, accessible
346 evaluations in the location that the department deems most
347 appropriate.

348 **SECTION 4.** Section 43-47-31, Mississippi Code of 1972, is
349 amended as follows:

350 43-47-31. (1) Nothing in this chapter shall be construed to
351 authorize, permit or require any emergency or protective services
352 in contravention of the stated or implied objection of such person
353 based upon his right of privacy, which is grounded in the federal
354 courts and the courts of this state * * *.

355 (2) Nothing in this chapter shall be construed to mean a
356 person is neglected or in need of emergency or protective services
357 for the sole reason he is being furnished or relies upon treatment



358 by spiritual means through prayer alone in accordance with the
359 tenets and practices of a recognized church or religious
360 denominations.

361 (3) Nothing in this chapter shall be construed to authorize,
362 permit or require any medical care or treatment in contravention
363 of the stated or implied objection of such person.

364 **SECTION 5.** This act shall take effect and be in force from
365 and after July 1, 2002.

