

By: Representatives Holland, Carlton

To: Public Health and Human
Services

HOUSE BILL NO. 1347

1 AN ACT TO AMEND SECTION 43-21-353, MISSISSIPPI CODE OF 1972,
2 TO PROVIDE THAT IN CASES OF REPORTS OF FELONY CHILD ABUSE, THE
3 DEPARTMENT OF HUMAN SERVICES SHALL NOTIFY THE DISTRICT ATTORNEY'S
4 OFFICE IN WHOSE JURISDICTION THE ABUSE OCCURRED, AND THE DISTRICT
5 ATTORNEY'S OFFICE SHALL CONDUCT THE CRIMINAL FORENSIC
6 INVESTIGATION INTO THE REPORTED ABUSE; TO PROVIDE THAT THE
7 ATTORNEY GENERAL'S OFFICE SHALL DETERMINE THE QUALIFICATIONS AND
8 TRAINING REQUIRED FOR THE FELONY CHILD ABUSE INVESTIGATORS
9 ASSIGNED TO DISTRICT ATTORNEY'S OFFICES; TO AMEND SECTION
10 43-21-357, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT IN CASES OF
11 INVESTIGATIONS OF ABUSE BY THE YOUTH COURT INTAKE UNIT, IF IT
12 APPEARS THAT OTHER CHILDREN IN THE SAME ENVIRONMENT ARE VICTIMS OF
13 FELONY CHILD ABUSE, THE UNIT SHALL NOTIFY THE DISTRICT ATTORNEY'S
14 OFFICE IN WHOSE JURISDICTION THE ABUSE OCCURRED TO INITIATE A
15 CRIMINAL PRELIMINARY INQUIRY INTO THE MATTER; AND FOR RELATED
16 PURPOSES.

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

18 **SECTION 1.** Section 43-21-353, Mississippi Code of 1972, is
19 amended as follows:

20 43-21-353. (1) Any attorney, physician, dentist, intern,
21 resident, nurse, psychologist, social worker, child care giver,
22 minister, law enforcement officer, public or private school
23 employee or any other person having reasonable cause to suspect
24 that a child is a neglected child or an abused child, shall cause
25 an oral report to be made immediately by telephone or otherwise
26 and followed as soon thereafter as possible by a report in writing
27 to the Department of Human Services, and immediately a referral
28 shall be made by the Department of Human Services to the youth
29 court intake unit, which unit shall promptly comply with Section
30 43-21-357. Where appropriate, the Department of Human Services
31 shall additionally make a referral to the youth court prosecutor.
32 Upon receiving a report that a child has been sexually abused, or
33 burned, tortured, mutilated or otherwise physically abused in such
34 a manner as to cause serious bodily harm, or upon receiving any

35 report of abuse that would be a felony under state or federal law,
36 the Department of Human Services shall immediately notify the
37 district attorney's office and the law enforcement agency in whose
38 jurisdiction the abuse occurred. The Department of Human Services
39 shall have the duty to provide the district attorney's office and
40 the law enforcement agency all the names and facts known at the
41 time of the report, and this duty shall be of a continuing nature.
42 The qualified felony child abuse investigators of the district
43 attorney's office shall conduct the criminal forensic
44 investigation into the reported felony child abuse, whether the
45 abuse is in-home, out-of-home, caregiver, guardian, or
46 institutional abuse, immediately upon receipt of the report. The
47 law enforcement agency in whose jurisdiction the abuse occurred,
48 the Department of Human Services, and the servicing Children's
49 Advocacy Center shall assist as needed with the criminal forensic
50 investigation, grand jury hearings, and criminal trial of the
51 case, if any. The Department of Human Services shall investigate
52 cases of reported misdemeanor child abuse or neglect for the
53 purposes of child welfare, children in need of supervision,
54 children in need of special care, shelter needs and shelter
55 hearings, custody, care, and maintenance hearings, delinquency
56 matters, and the state central registry established under Section
57 43-21-257. The Department of Human Services shall advise the
58 clerk of the youth court and the youth court prosecutor of all
59 cases of abuse reported to the department within seventy-two (72)
60 hours and shall update the report as information becomes
61 available.

62 (2) Any report to the Department of Human Services shall
63 contain the names and addresses of the child and his parents or
64 other persons responsible for his care, if known, the child's age,
65 the nature and extent of the child's injuries, including any
66 evidence of previous injuries and any other information that might

67 be helpful in establishing the cause of the injury and the
68 identity of the perpetrator.

69 (3) The Department of Human Services shall maintain a
70 statewide incoming wide-area telephone service or similar service
71 for the purpose of receiving reports of suspected cases of child
72 abuse; provided that any attorney, physician, dentist, intern,
73 resident, nurse, psychologist, social worker, child care giver,
74 minister, law enforcement officer or public or private school
75 employee who is required to report under subsection (1) of this
76 section shall report in the manner required in subsection (1).

77 (4) Reports of abuse and neglect made under this chapter and
78 the identity of the reporter are confidential except when the
79 court in which the investigation report is filed, in its
80 discretion, determines the testimony of the person reporting to be
81 material to a judicial proceeding or when the identity of the
82 reporter is released to the district attorney's office, law
83 enforcement agencies and the appropriate prosecutor under
84 subsection (1). Reports made under this section to any district
85 attorney's office, law enforcement agency or prosecutorial officer
86 are for the purpose of criminal investigation and prosecution
87 only, and no information from these reports may be released to the
88 public except as provided by Section 43-21-261. Disclosure of any
89 information by the prosecutor shall be according to the
90 Mississippi Uniform Rules of Circuit and County Court Procedure.
91 The identity of the reporting party shall not be disclosed to
92 anyone other than the district attorney's office, law enforcement
93 officers or prosecutors without an order from the appropriate
94 youth court. Any person disclosing any reports made under this
95 section in a manner not expressly provided for in this section or
96 Section 43-21-261, shall be guilty of a misdemeanor and subject to
97 the penalties prescribed by Section 43-21-267.

98 (5) All final dispositions of criminal investigations by the
99 district attorney's office and law enforcement investigations

100 described in subsection (1) of this section shall be determined
101 only by the appropriate prosecutor or court. All final
102 dispositions of investigations by the Department of Human Services
103 as described in subsection (1) of this section shall be determined
104 only by the youth court. Reports made under subsection (1) of
105 this section by the Department of Human Services to the law
106 enforcement agency and to the district attorney's office shall
107 include the following, if known to the department:

- 108 (a) The name and address of the child;
- 109 (b) The names and addresses of the parents;
- 110 (c) The name and address of the suspected perpetrator;
- 111 (d) The names and addresses of all witnesses, including
112 the reporting party if a material witness to the abuse;
- 113 (e) A brief statement of the facts indicating that the
114 child has been abused and any other information from the agency
115 files or known to the social worker making the investigation,
116 including medical records or other records, which may assist law
117 enforcement or the district attorney in investigating and/or
118 prosecuting the case; and
- 119 (f) What, if any, action is being taken by the
120 Department of Human Services.

121 (6) In any investigation of a report made under this chapter
122 of the abuse or neglect of a child as defined in Section
123 43-21-105(m), the Department of Human Services may request the
124 appropriate law enforcement officer with jurisdiction to accompany
125 the department in its investigation, and in those cases, the law
126 enforcement officer shall comply with the request.

127 (7) Anyone who willfully violates any provision of this
128 section shall be, upon being found guilty, punished by a fine not
129 to exceed Five Thousand Dollars (\$5,000.00), or by imprisonment in
130 jail not to exceed one (1) year, or both.

131 (8) If a report is made directly to the Department of Human
132 Services that a child has been abused or neglected in an

133 out-of-home setting, a referral shall be made immediately to the
134 district attorney's office and the law enforcement agency in whose
135 jurisdiction the abuse occurred * * * The district attorney's
136 office in whose jurisdiction the abuse occurred shall have primary
137 responsibility to conduct the criminal forensic investigation into
138 reported felony child abuse in all settings: in-home abuse,
139 out-of-home abuse, alleged guardian felony abuse, reported
140 institutional felony abuse, and reported felony level caregiver
141 abuse. Law enforcement agencies and the Department of Human
142 Services shall cooperate and assist as needed in the criminal
143 investigation. The Attorney General's Office shall determine the
144 qualifications and training required for the felony child abuse
145 investigators assigned to the district attorney's offices in the
146 state. The Department of Human Services shall investigate the
147 out-of-home setting report of abuse or neglect to determine
148 whether the child who is the subject of the report, or other
149 children in the same environment, comes within the jurisdiction of
150 the youth court and shall report to the youth court the
151 department's findings and recommendation as to whether the child
152 who is the subject of the report or other children in the same
153 environment require the protection of the youth court. * * * If
154 the out-of-home setting is a licensed facility, an additional
155 referral shall be made by the Department of Human Services to the
156 licensing agency. The licensing agency shall investigate the
157 report and shall provide the Department of Human Services, the law
158 enforcement agency and the district attorney's office with their
159 written findings from that investigation as well as that licensing
160 agency's recommendations and actions taken.

161 **SECTION 2.** Section 43-21-357, Mississippi Code of 1972, is
162 amended as follows:

163 43-21-357. (1) After receiving a report, the youth court
164 intake unit shall promptly make a preliminary inquiry to determine
165 whether the interest of the child, other children in the same

166 environment or the public requires the youth court to take further
167 action. As part of the preliminary inquiry, the youth court
168 intake unit may request or the youth court may order the
169 Department of Human Services, * * * any successor agency or any
170 other qualified public employee to make an investigation or report
171 concerning the child and any other children in the same
172 environment, and present the findings thereof to the youth court
173 intake unit. If the youth court intake unit receives a neglect or
174 abuse report, the youth court intake unit shall immediately
175 forward the complaint to the Department of Human Services to
176 promptly make an investigation or report concerning the child and
177 any other children in the same environment and promptly present
178 the findings thereof to the youth court intake unit. If it is
179 determined that reasonable cause exists to believe that the "other
180 children" referred to in this subsection are victims of felony
181 child abuse, the youth court intake unit shall immediately notify
182 the district attorney's office in whose jurisdiction the abuse
183 occurred to initiate a criminal preliminary inquiry into the
184 matter. If it appears from the preliminary inquiry that the child
185 or other children in the same environment are within the
186 jurisdiction of the court, the youth court intake unit shall
187 recommend to the youth court:

- 188 (a) That the youth court take no action;
- 189 (b) That an informal adjustment be made;
- 190 (c) The Department of Human Services, Office of Family
191 and Children Services, monitor the child, family and other
192 children in the same environment;
- 193 (d) That the child is warned or counseled informally;
- 194 or
- 195 (e) That a petition be filed.
- 196 (2) The youth court shall then, without a hearing:
- 197 (a) Order that no action be taken;
- 198 (b) Order that an informal adjustment be made;

199 (c) Order that the Department of Human Services,
200 Office of Family and Children Services, monitor the child, family
201 and other children in the same environment;

202 (d) Order that the child is warned or counseled
203 informally; or

204 (e) Order that a petition be filed.

205 (3) If the preliminary inquiry discloses that a child needs
206 emergency medical treatment, the judge may order the necessary
207 treatment.

208 **SECTION 3.** This act shall take effect and be in force from
209 and after July 1, 2004.