

By: Senator(s) Burton, Little, Browning, Butler, Carmichael, Chamberlin, Chaney, Clarke, Dawkins, Dearing, Flowers, Frazier, Harden, Harvey, Hewes, Hyde-Smith, Jackson (15th), Jackson (11th), Jackson (32nd), Jordan, King, Kirby, Lee (35th), Lee (47th), Mettetal, Morgan, Nunnelee, Pickering, Posey, Thames, Thomas, Tollison, Walley, White, Wilemon, Williamson

To: Judiciary, Division B

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 2404

1 AN ACT TO AMEND SECTION 43-47-5, MISSISSIPPI CODE OF 1972, TO
2 REVISE DEFINITIONS UNDER THE VULNERABLE ADULT ACT; TO CREATE NEW
3 SECTION 43-47-18, MISSISSIPPI CODE OF 1972, TO CREATE THE OFFENSE
4 OF SEXUAL BATTERY OF A VULNERABLE ADULT TO INCLUDE CONSENSUAL SEX
5 WITH A VULNERABLE ADULT BY HEALTH CARE EMPLOYEES WHO ARE NOT
6 MARRIED TO THE VULNERABLE ADULT AND TO CREATE THE OFFENSE OF
7 FONDLING OF A VULNERABLE ADULT TO INCLUDE CONSENSUAL SEXUAL
8 ACTIVITY WITH A VULNERABLE ADULT BY HEALTH CARE EMPLOYEES WHO ARE
9 NOT MARRIED TO THE VULNERABLE ADULT; AND FOR RELATED PURPOSES.

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

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

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

16 (a) "Abuse" means the willful or nonaccidental
17 infliction of physical pain, injury or mental anguish on a
18 vulnerable adult, the unreasonable confinement of a vulnerable
19 adult, or the willful deprivation by a caretaker of services which
20 are necessary to maintain the mental and physical health of a
21 vulnerable adult. "Abuse" includes the sexual abuse delineated in
22 Section 43-47-18. "Abuse" shall not mean conduct which is a part
23 of the treatment and care of, and in furtherance of the health and
24 safety of, a patient or resident of a care facility, nor a normal
25 caregiving action or appropriate display of affection. "Abuse"
26 includes, but is not limited to, a single incident.

27 (b) "Care facility" means:

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

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

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

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

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

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

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

56 (d) "Court" means the chancery court of the county in
57 which the vulnerable adult resides or is located.

58 (e) "Department" means the Department of Human
59 Services.

60 (f) "Emergency" means a situation in which:

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

64 (ii) The vulnerable adult is unable to consent to
65 services;

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

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

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

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

88 (i) "Exploitation" means the illegal or improper use of
89 a vulnerable adult or his resources for another's profit or
90 advantage, with or without the consent of the vulnerable adult,
91 and includes acts committed pursuant to a power of attorney.
92 "Exploitation" includes, but is not limited to, a single incident.

93 (j) "Lacks the capacity to consent" means that a
94 vulnerable adult, because of physical or mental incapacity, lacks
95 sufficient understanding or capacity to make or communicate
96 responsible decisions concerning his person, including, but not

97 limited to, provisions for health care, food, clothing or shelter.
98 This may be reasonably determined by the department in emergency
99 situations; in all other instances, the court shall make the
100 determination following the procedures in Sections 43-47-13 and
101 43-47-15 or as otherwise provided by the general laws of the
102 state.

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

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

119 (m) "Sexual penetration" shall have the meaning
120 ascribed in Section 97-3-97.

121 (n) "Vulnerable adult" means a person eighteen (18)
122 years of age or older or any minor whose ability to perform the
123 normal activities of daily living or to provide for his or her own
124 care or protection from abuse, neglect, exploitation or improper
125 sexual contact is impaired due to a mental, emotional, physical or
126 developmental disability or dysfunction, or brain damage or the
127 infirmities of aging. The term "vulnerable adult" also includes
128 all residents or patients, regardless of age, in a care facility
129 for the purposes of Sections 43-47-19 and 43-47-37 only. The

130 department shall not be prohibited from investigating, and shall
131 have the authority and responsibility to fully investigate, in
132 accordance with the provisions of this chapter, any allegation of
133 abuse, neglect, or exploitation regarding a patient in a care
134 facility, if the alleged abuse, neglect or exploitation occurred
135 at a private residence.

136 **SECTION 2.** The following shall be codified as Section
137 43-47-18, Mississippi Code of 1972:

138 43-47-18. (1) (a) A person who engages in sexual
139 penetration with a vulnerable adult is guilty of sexual battery if
140 the person is a volunteer at, or an employee of, or contracted to
141 work for, a health care facility in which the vulnerable adult is
142 a patient or resident.

143 (b) A person who engages in sexual penetration with a
144 vulnerable adult is guilty of sexual battery if the person is in a
145 position of trust or authority over the vulnerable adult,
146 including, without limitation, the vulnerable adult's teacher,
147 counselor, physician, psychiatrist, psychologist, nurse, certified
148 nursing assistant, direct care worker, technical assistant,
149 minister, priest, physical therapist, chiropractor, legal
150 guardian, parent, stepparent, other relative, caretaker, or
151 conservator.

152 (c) Every person who is convicted of sexual battery
153 under this subsection (1) shall be imprisoned in the custody of
154 the State Department of Corrections for a period of not more than
155 thirty (30) years, and for a second or subsequent such offense
156 shall be imprisoned in the custody of the State Department of
157 Corrections for a period of not more than forty (40) years

158 (2) (a) Any person who, for the purpose of gratifying the
159 person's lust, or indulging the person's depraved licentious
160 sexual desires, shall handle, touch or rub with hands or any part
161 of the person's body or any member thereof, any vulnerable adult,
162 with or without the vulnerable adult's consent, when the person is

163 a volunteer at, or an employee of, or contracted to work for, a
164 health care facility in which the vulnerable adult is a patient or
165 resident, shall be guilty of a felony and, upon conviction
166 thereof, shall be fined in a sum not less than One Thousand
167 Dollars (\$1,000.00) nor more than Five Thousand Dollars
168 (\$5,000.00), or be committed to the custody of the Department of
169 Corrections not less than two (2) nor more than fifteen (15)
170 years, or be punished by both fine and imprisonment, at the
171 discretion of the court.

172 (b) Any person who, for the purpose of gratifying the
173 person's lust, or indulging the person's depraved licentious
174 sexual desires, shall handle, touch or rub with hands or any part
175 of the person's body or any member thereof, any vulnerable adult,
176 with or without the vulnerable adult's consent, when the person
177 occupies a position of trust or authority over the vulnerable
178 adult, shall be guilty of a felony and, upon conviction thereof,
179 shall be fined in a sum not less than One Thousand Dollars
180 (\$1,000.00) nor more than Five Thousand Dollars (\$5,000.00), or be
181 committed to the custody of the Department of Corrections not less
182 than two (2) nor more than fifteen (15) years, or be punished by
183 both fine and imprisonment, at the discretion of the court. A
184 person in a position of trust or authority over a vulnerable adult
185 includes, without limitation, the vulnerable adult's teacher,
186 counselor, physician, psychiatrist, psychologist, nurse, certified
187 nursing assistant, direct care worker, technical assistant,
188 minister, priest, physical therapist, chiropractor, legal
189 guardian, parent, stepparent, other relative, caretaker, or
190 conservator.

191 (3) A person is not guilty of any offense under this section
192 if the alleged victim is that person's legal spouse; however, the
193 legal spouse of the alleged victim may be found guilty of sexual
194 battery if the legal spouse engaged in forcible sexual penetration
195 without the consent of the alleged victim.

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