

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

SENATE BILL NO. 2404
(As Passed the Senate)

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; TO AMEND SECTION 45-33-23,
10 MISSISSIPPI CODE OF 1972, TO INCLUDE SEXUAL ABUSE OF A VULNERABLE
11 ADULT AS A REGISTRABLE OFFENSE UNDER THE SEX OFFENDER REGISTRATION
12 LAW; AND FOR RELATED PURPOSES.

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

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

16 43-47-5. For the purposes of this chapter, the following
17 words shall have the meanings ascribed herein unless the context
18 otherwise requires:

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

30 (b) "Care facility" means:

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

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

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

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

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

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

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

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

61 (e) "Department" means the Department of Human
62 Services.

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

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

67 (ii) The vulnerable adult is unable to consent to
68 services;

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

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

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

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

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

96 (j) "Lacks the capacity to consent" means that a
97 vulnerable adult, because of physical or mental incapacity, lacks
98 sufficient understanding or capacity to make or communicate
99 responsible decisions concerning his person, including, but not
100 limited to, provisions for health care, food, clothing or shelter.
101 This may be reasonably determined by the department in emergency
102 situations; in all other instances, the court shall make the
103 determination following the procedures in Sections 43-47-13 and
104 43-47-15 or as otherwise provided by the general laws of the
105 state.

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

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

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

124 (n) "Vulnerable adult" means a person eighteen (18)
125 years of age or older or any minor whose ability to perform the
126 normal activities of daily living or to provide for his or her own
127 care or protection from abuse, neglect, exploitation or improper
128 sexual contact is impaired due to a mental, emotional, physical or

129 developmental disability or dysfunction, or brain damage or the
130 infirmities of aging. The term "vulnerable adult" also includes
131 all residents or patients, regardless of age, in a care facility
132 for the purposes of Sections 43-47-19 and 43-47-37 only. The
133 department shall not be prohibited from investigating, and shall
134 have the authority and responsibility to fully investigate, in
135 accordance with the provisions of this chapter, any allegation of
136 abuse, neglect, or exploitation regarding a patient in a care
137 facility, if the alleged abuse, neglect or exploitation occurred
138 at a private residence.

139 **SECTION 2.** The following shall be codified as Section
140 43-47-18, Mississippi Code of 1972:

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

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

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

161 (2) (a) Any person who, for the purpose of gratifying the
162 person's lust, or indulging the person's depraved licentious
163 sexual desires, shall handle, touch or rub with hands or any part
164 of the person's body or any member thereof, any vulnerable adult,
165 with or without the vulnerable adult's consent, when the person is
166 a volunteer at, or an employee of, or contracted to work for, a
167 health care facility in which the vulnerable adult is a patient or
168 resident, shall be guilty of a felony and, upon conviction
169 thereof, shall be fined in a sum not less than One Thousand
170 Dollars (\$1,000.00) nor more than Five Thousand Dollars
171 (\$5,000.00), or be committed to the custody of the Department of
172 Corrections not less than two (2) nor more than fifteen (15)
173 years, or be punished by both fine and imprisonment, at the
174 discretion of the court.

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

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

199 SECTION 3. Section 45-33-23, Mississippi Code of 1972, is
200 amended as follows:

201 45-33-23. For the purposes of this chapter, the following
202 words shall have the meanings ascribed herein unless the context
203 clearly requires otherwise:

204 (a) "Conviction" shall mean that, regarding the
205 person's offense, there has been a determination or judgment of
206 guilt as a result of a trial or the entry of a plea of guilty or
207 nolo contendere regardless of whether adjudication is withheld.
208 "Conviction of similar offenses" includes, but is not limited to,
209 a conviction by a federal or military tribunal, including a court
210 martial conducted by the Armed Forces of the United States, a
211 conviction for an offense committed on an Indian Reservation or
212 other federal property, and a conviction in any state of the
213 United States.

214 (b) "Jurisdiction" shall mean any state court, federal
215 court, military court or Indian tribunal.

216 (c) "Permanent residence" is defined as a place where
217 the person abides, lodges, or resides for a period of fourteen
218 (14) or more consecutive days.

219 (d) "Registration" means providing information to the
220 appropriate agency within the time frame specified as required by
221 this chapter.

222 (e) "Registration duties" means obtaining the
223 registration information required on the form specified by the
224 department as well as the photograph, fingerprints, and biological
225 sample of the registrant. Biological samples are to be forwarded
226 to the State Crime Laboratory pursuant to Section 45-33-37; the

227 photograph, fingerprints and other registration information are to
228 be forwarded to the Department of Public Safety within three (3)
229 days of registration.

230 (f) "Responsible agency" is defined as the person or
231 government entity whose duty it is to obtain information from a
232 criminal sex offender upon conviction and to transmit that
233 information to the Mississippi Department of Public Safety.

234 (i) For a criminal sex offender being released
235 from the custody of the Department of Corrections, the responsible
236 agency is the Department of Corrections.

237 (ii) For a criminal sex offender being released
238 from a county jail, the responsible agency is the sheriff of that
239 county.

240 (iii) For a criminal sex offender being released
241 from a municipal jail, the responsible agency is the police
242 department of that municipality.

243 (iv) For a sex offender in the custody of youth
244 court, the responsible agency is the youth court.

245 (v) For a criminal sex offender who is being
246 placed on probation, including conditional discharge or
247 unconditional discharge, without any sentence of incarceration,
248 the responsible agency is the sentencing court.

249 (vi) For an offender who has been committed to a
250 mental institution following an acquittal by reason of insanity,
251 the responsible agency is the facility from which the offender is
252 released. Specifically, the director of said facility shall
253 notify the Department of Public Safety prior to the offender's
254 release.

255 (vii) For a criminal sex offender who is being
256 released from a jurisdiction outside this state or who has a prior
257 conviction in another state and who is to reside in this state,
258 the responsible agency is the Department of Public Safety.

259 (g) "Sex offense" means any of the following offenses:

260 (i) Section 97-3-53 relating to kidnapping, if the
261 victim was below the age of eighteen (18);

262 (ii) Section 97-3-65 relating to rape; however,
263 conviction or adjudication under Section 97-3-65(1)(a) on or after
264 July 1, 1998, when the offender was eighteen (18) years of age or
265 younger at the time of the alleged offense, shall not be a
266 registrable sex offense;

267 (iii) Section 97-3-71 relating to rape and assault
268 with intent to ravish;

269 (iv) Section 97-3-95 relating to sexual battery;
270 however, conviction or adjudication under Section 97-3-95(1)(c) on
271 or after July 1, 1998, when the offender was eighteen (18) years
272 of age or younger at the time of the alleged offense, shall not be
273 a registrable sex offense;

274 (v) Section 97-5-5 relating to enticing child for
275 concealment, prostitution or marriage;

276 (vi) Section 97-5-23 relating to the touching of a
277 child for lustful purposes;

278 (vii) Section 97-5-27 relating to the
279 dissemination of sexually oriented material to children;

280 (viii) Section 97-5-33 relating to the
281 exploitation of children;

282 (ix) Section 97-5-41 relating to the carnal
283 knowledge of a stepchild, adopted child or child of a cohabiting
284 partner;

285 (x) Section 97-29-59 relating to unnatural
286 intercourse;

287 (xi) Section 97-1-7 relating to attempt to commit
288 any of the above-referenced offenses;

289 (xii) Section 97-29-3 relating to adultery or
290 fornication between teacher and pupil;

291 (xiii) Section 43-47-18 relating to sexual abuse
292 of a vulnerable adult;

293 (xiv) Any other offense resulting in a conviction
294 in another jurisdiction, whether state, federal or military,
295 which, if committed in this state, would be deemed to be such a
296 crime without regard to its designation elsewhere;

297 (xv) Any offense resulting in a conviction in
298 another jurisdiction, whether state, federal or military, for
299 which registration is required in the jurisdiction where the
300 conviction was had.

301 (h) "Temporary residence" is defined as a place where
302 the person abides, lodges, or resides for a period of fourteen
303 (14) or more days in the aggregate during any calendar year and
304 which is not the person's permanent address; for a person whose
305 permanent residence is not in this state, the place where the
306 person is employed, practices a vocation, or is enrolled as a
307 student for any period of time in the state; or a place where a
308 person routinely abides, lodges or resides for a period of four
309 (4) or more consecutive or nonconsecutive days in any month and
310 which is not the person's permanent residence.

311 (i) "Department" unless otherwise specified is defined
312 as the Mississippi Department of Public Safety.

313 **SECTION 4.** This act shall take effect and be in force from
314 and after July 1, 2004.