

By: Senator(s) Hewes

To: Public Health and Welfare

SENATE BILL NO. 3014

1 AN ACT TO AMEND SECTION 43-1-55, MISSISSIPPI CODE OF 1972, TO
 2 PROVIDE THAT THE OFFICE OF FAMILY AND CHILDREN'S SERVICES OF THE
 3 DEPARTMENT OF HUMAN SERVICES SHALL DEVISE FORMAL STANDARDS FOR
 4 CHILD PROTECTION SPECIALISTS WHO ARE NOT LICENSED SOCIAL WORKERS;
 5 TO SPECIFY THE MINIMUM EDUCATIONAL QUALIFICATIONS TO BE EMPLOYED
 6 AS A CHILD PROTECTION SPECIALIST BY THE DEPARTMENT; TO PROVIDE
 7 THAT FOR THE PURPOSES OF PROVIDING SERVICES IN CHILD ABUSE OR
 8 NEGLECT CASES, YOUTH COURT PROCEEDINGS, VULNERABLE ADULTS CASES,
 9 AND SUCH OTHER CASES AS DESIGNATED BY THE EXECUTIVE DIRECTOR OF
 10 HUMAN SERVICES, THE CASEWORKER OR SERVICE PROVIDER MAY BE A CHILD
 11 PROTECTION SPECIALIST INSTEAD OF A LICENSED SOCIAL WORKER; TO
 12 AMEND SECTION 73-53-5, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT
 13 THE SOCIAL WORKER LICENSURE LAW DOES NOT APPLY TO CHILD PROTECTION
 14 SPECIALISTS EMPLOYED BY THE DEPARTMENT WHILE THE CHILD PROTECTION
 15 SPECIALIST IS ENGAGING IN THE PERFORMANCE OF OFFICIAL DUTIES FOR
 16 THE DEPARTMENT, PROVIDED THAT THE CHILD PROTECTION SPECIALIST DOES
 17 NOT HOLD HIMSELF OR HERSELF OUT TO THE PUBLIC AS A SOCIAL WORKER;
 18 TO AMEND SECTIONS 43-21-261, 43-21-353, 43-21-355, 43-21-603,
 19 43-27-109, 43-47-7, 93-21-23 AND 97-3-7, MISSISSIPPI CODE OF 1972,
 20 TO CONFORM TO THE PRECEDING PROVISIONS; AND FOR RELATED PURPOSES.

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

22 **SECTION 1.** Section 43-1-55, Mississippi Code of 1972, is
 23 amended as follows:

24 43-1-55. (1) The Office of Family and Children's Services
 25 shall devise formal social worker standards for employment and
 26 service delivery designed to measure the quality of services
 27 delivered to clients, as well as the timeliness of services.
 28 Included in those standards shall be the requirement that all
 29 service workers receive specialized training from the Mississippi
 30 Law Enforcement Officers' Training Academy. Each social worker
 31 shall be assessed annually by a supervisor who is knowledgeable in
 32 the standards promulgated. The * * * standards shall be
 33 applicable to all social workers working under the office.

34 (2) The Office of Family and Children's Services shall
 35 devise formal standards for child protection specialists who are
 36 not licensed social workers. At a minimum, to be employed as a

37 child protection specialist by the Department of Human Services, a
38 person must have a bachelor's degree in either psychology,
39 sociology, nursing, criminal justice or a related field, or a
40 graduate degree in either law, psychology, sociology, nursing,
41 criminal justice or a related field. The determination of what is
42 a related field shall be made by certification of the senior judge
43 of the chancery court district in which the child protection
44 specialist is located.

45 (3) For the purpose of providing services in child abuse or
46 neglect cases, youth court proceedings, vulnerable adults cases,
47 and such other cases as designated by the Executive Director of
48 Human Services, the caseworker or service provider may be a child
49 protection specialist instead of a licensed social worker.

50 **SECTION 2.** Section 73-53-5, Mississippi Code of 1972, is
51 amended as follows:

52 73-53-5. (1) No provision in this chapter shall be
53 construed to prevent individuals licensed or certified by this
54 state, whose activities overlap with the practice of social work,
55 from carrying out the functions covered by their respective
56 licenses or certificates, or to prevent ministers or individuals
57 engaged in professional counseling who have recognized
58 professional degrees in counseling, guidance or a related
59 counseling field, whose activities overlap with the practice of
60 social work, from carrying out the functions for which they have
61 been trained, provided that such ministers or individuals shall
62 not hold themselves out to the public by any title set out in this
63 chapter.

64 (2) No provision in this chapter shall be construed to apply
65 to or in any way interfere with any office, officer, agency or
66 employee of the United States, while such office, officer, agency
67 or employee is engaging in the performance of official duties
68 within the course and scope of such employment or duties.

69 (3) No provision of this chapter shall be construed to apply
70 to or in any way interfere with an individual who performs
71 services described by this chapter solely for the benefit of a
72 member of that individual's family without compensation.

73 (4) No provision of this chapter shall be construed to apply
74 to or in any way interfere with the activities and services of a
75 student while pursuing a course of professional education
76 qualifying as education under this chapter if these activities or
77 services constitute a part of such student's supervised course of
78 study and such activities are supervised by a licensee under this
79 chapter.

80 (5) No provision of this chapter shall apply to or in any
81 way interfere with any child protection specialist employed by the
82 Department of Human Services while the child protection specialist
83 is engaging in the performance of official duties for the
84 Department of Human Services within the course and scope of
85 employment or duties, provided that the child protection
86 specialist does not hold himself or herself out to the public by
87 any title set out in this chapter.

88 **SECTION 3.** Section 43-21-261, Mississippi Code of 1972, is
89 amended as follows:

90 43-21-261. (1) Except as otherwise provided in this
91 section, records involving children shall not be disclosed, other
92 than to necessary staff of the youth court, except pursuant to an
93 order of the youth court specifying the person or persons to whom
94 the records may be disclosed, the extent of the records which may
95 be disclosed and the purpose of the disclosure. Such court orders
96 for disclosure shall be limited to those instances in which the
97 youth court concludes, in its discretion, that disclosure is
98 required for the best interests of the child, the public safety or
99 the functioning of the youth court and then only to the following
100 persons:

101 (a) The judge of another youth court or member of
102 another youth court staff;

103 (b) The court of the parties in a child custody or
104 adoption cause in another court;

105 (c) A judge of any other court or members of another
106 court staff;

107 (d) Representatives of a public or private agency
108 providing supervision or having custody of the child under order
109 of the youth court;

110 (e) Any person engaged in a bona fide research purpose,
111 provided that no information identifying the subject of the
112 records shall be made available to the researcher unless it is
113 absolutely essential to the research purpose and the judge gives
114 prior written approval, and the child, through his or her
115 representative, gives permission to release the information;

116 (f) The Mississippi Employment Security Commission, or
117 its duly authorized representatives, for the purpose of a child's
118 enrollment into the Job Corps Training Program as authorized by
119 Title IV of the Comprehensive Employment Training Act of 1973 (29
120 USCS Section 923 et seq.). However, no records, reports,
121 investigations or information derived therefrom pertaining to
122 child abuse or neglect shall be disclosed; and

123 (g) To any person pursuant to a finding by a judge of
124 the youth court of compelling circumstances affecting the health
125 or safety of a child and that such disclosure is in the best
126 interests of the child.

127 Law enforcement agencies may disclose information to the
128 public concerning the taking of a child into custody for the
129 commission of a delinquent act without the necessity of an order
130 from the youth court. The information released shall not identify
131 the child or his address unless the information involves a child
132 convicted as an adult.

133 (2) Any records involving children which are disclosed under
134 an order of the youth court and the contents thereof shall be kept
135 confidential by the person or agency to whom the record is
136 disclosed except as provided in the order. Any further disclosure
137 of any records involving children shall be made only under an
138 order of the youth court as provided in this section.

139 (3) Upon request, the parent, guardian or custodian of the
140 child who is the subject of a youth court cause or any attorney
141 for such parent, guardian or custodian, shall have the right to
142 inspect any record, report or investigation which is to be
143 considered by the youth court at a hearing, except that the
144 identity of the reporter shall not be released, nor the name of
145 any other person where the person or agency making the information
146 available finds that disclosure of the information would be likely
147 to endanger the life or safety of such person.

148 (4) Upon request, the child who is the subject of a youth
149 court cause shall have the right to have his counsel inspect and
150 copy any record, report or investigation which is filed with the
151 youth court.

152 (5) (a) The youth court prosecutor or prosecutors, the
153 county attorney, the district attorney, the youth court defender
154 or defenders, or any attorney representing a child shall have the
155 right to inspect any law enforcement record involving children.

156 (b) The Department of Human Services shall disclose to
157 a county prosecuting attorney or district attorney any and all
158 records resulting from an investigation into suspected child abuse
159 or neglect when the case has been referred by the Department of
160 Human Services to the county prosecuting attorney or district
161 attorney for criminal prosecution.

162 (c) Agency records made confidential under the
163 provisions of this section may be disclosed to a court of
164 competent jurisdiction.

165 (6) Information concerning an investigation into a report of
166 child abuse or child neglect may be disclosed by the Department of
167 Human Services without order of the youth court to any attorney,
168 physician, dentist, intern, resident, nurse, psychologist, social
169 worker, child protection specialist, child care giver, minister,
170 law enforcement officer, public or private school employee making
171 that report pursuant to Section 43-21-353(1) if the reporter has a
172 continuing professional relationship with the child and a need for
173 such information in order to protect or treat the child.

174 (7) Information concerning an investigation into a report of
175 child abuse or child neglect may be disclosed without further
176 order of the youth court to any interagency child abuse task force
177 established in any county or municipality by order of the youth
178 court of that county or municipality.

179 (8) Names and addresses of juveniles twice adjudicated as
180 delinquent for an act which would be a felony if committed by an
181 adult or for the unlawful possession of a firearm shall not be
182 held confidential and shall be made available to the public.

183 (9) Names and addresses of juveniles adjudicated as
184 delinquent for murder, manslaughter, burglary, arson, armed
185 robbery, aggravated assault, any sex offense as defined in Section
186 45-33-23, for any violation of Section 41-29-139(a)(1) or for any
187 violation of Section 63-11-30, shall not be held confidential and
188 shall be made available to the public.

189 (10) The judges of the circuit and county courts, and
190 presentence investigators for the circuit courts, as provided in
191 Section 47-7-9, shall have the right to inspect any youth court
192 records of a person convicted of a crime for sentencing purposes
193 only.

194 (11) The victim of an offense committed by a child who is
195 the subject of a youth court cause shall have the right to be
196 informed of the child's disposition by the youth court.

197 (12) A classification hearing officer of the State
198 Department of Corrections, as provided in Section 47-5-103, shall
199 have the right to inspect any youth court records, excluding abuse
200 and neglect records, of any offender in the custody of the
201 department who as a child or minor was a juvenile offender or was
202 the subject of a youth court cause of action, and the State Parole
203 Board, as provided in Section 47-7-17, shall have the right to
204 inspect such records when the offender becomes eligible for
205 parole.

206 (13) The youth court shall notify the Department of Public
207 Safety of the name, and any other identifying information such
208 department may require, of any child who is adjudicated delinquent
209 as a result of a violation of the Uniform Controlled Substances
210 Law.

211 (14) The Administrative Office of Courts shall have the
212 right to inspect any youth court records in order that the number
213 of youthful offenders, abused, neglected, truant and dependent
214 children, as well as children in need of special care and children
215 in need of supervision, may be tracked with specificity through
216 the youth court and adult justice system, and to utilize tracking
217 forms for such purpose.

218 (15) Upon a request by a youth court, the Administrative
219 Office of Courts shall disclose all information at its disposal
220 concerning any previous youth court intakes alleging that a child
221 was a delinquent child, child in need of supervision, child in
222 need of special care, truant child, abused child or neglected
223 child, as well as any previous youth court adjudications for the
224 same and all dispositional information concerning a child who at
225 the time of such request comes under the jurisdiction of the youth
226 court making such request.

227 (16) In every case where an abuse or neglect allegation has
228 been made, the confidentiality provisions of this section shall
229 not apply to prohibit access to a child's records by any state

230 regulatory agency, any state or local prosecutorial agency or law
231 enforcement agency; * * * however, * * * no identifying
232 information concerning the child in question may be released to
233 the public by such agency except as otherwise provided herein.

234 (17) In every case where there is any indication or
235 suggestion of either abuse or neglect and a child's physical
236 condition is medically labeled as medically "serious" or
237 "critical" or a child dies, the confidentiality provisions of this
238 section shall not apply. In cases of child deaths, the following
239 information may be released by the Mississippi Department of Human
240 Services: (a) Child's name; (b) address or location; (c)
241 verification from the Department of Human Services of case status
242 (no case or involvement, case exists, open or active case, case
243 closed); (d) if a case exists, the type of report or case
244 (physical abuse, neglect, etc.), date of intake(s) and
245 investigation(s), and case disposition (substantiated or
246 unsubstantiated). Notwithstanding the aforesaid, the
247 confidentiality provisions of this section shall continue if there
248 is a pending or planned investigation by any local, state or
249 federal governmental agency or institution.

250 (18) Any member of a foster care review board designated by
251 the Department of Human Services shall have the right to inspect
252 youth court records relating to the abuse, neglect or child in
253 need of supervision cases assigned to such member for review.

254 (19) Information concerning an investigation into a report
255 of child abuse or child neglect may be disclosed without further
256 order of the youth court in any administrative or due process
257 hearing held, pursuant to Section 43-21-257, by the Department of
258 Human Services for individuals whose names will be placed on the
259 central registry as substantiated perpetrators.

260 **SECTION 4.** Section 43-21-353, Mississippi Code of 1972, is
261 amended as follows:

262 43-21-353. (1) Any attorney, physician, dentist, intern,
263 resident, nurse, psychologist, social worker, child protection
264 specialist, child care giver, minister, law enforcement officer,
265 public or private school employee or any other person having
266 reasonable cause to suspect that a child is a neglected child or
267 an abused child, shall cause an oral report to be made immediately
268 by telephone or otherwise and followed as soon thereafter as
269 possible by a report in writing to the Department of Human
270 Services, and immediately a referral shall be made by the
271 Department of Human Services to the youth court intake unit, which
272 unit shall promptly comply with Section 43-21-357. Where
273 appropriate, the Department of Human Services shall additionally
274 make a referral to the youth court prosecutor. Upon receiving a
275 report that a child has been sexually abused, or burned, tortured,
276 mutilated or otherwise physically abused in such a manner as to
277 cause serious bodily harm, or upon receiving any report of abuse
278 that would be a felony under state or federal law, the Department
279 of Human Services shall immediately notify the law enforcement
280 agency in whose jurisdiction the abuse occurred and shall notify
281 the appropriate prosecutor within forty-eight (48) hours, and the
282 Department of Human Services shall have the duty to provide the
283 law enforcement agency all the names and facts known at the time
284 of the report; this duty shall be of a continuing nature. The law
285 enforcement agency and the Department of Human Services shall
286 investigate the reported abuse immediately and shall file a
287 preliminary report with the appropriate prosecutor's office within
288 twenty-four (24) hours and shall make additional reports as new or
289 additional information or evidence becomes available. The
290 Department of Human Services shall advise the clerk of the youth
291 court and the youth court prosecutor of all cases of abuse
292 reported to the department within seventy-two (72) hours and shall
293 update such report as information becomes available.

294 (2) Any report to the Department of Human Services shall
295 contain the names and addresses of the child and his parents or
296 other persons responsible for his care, if known, the child's age,
297 the nature and extent of the child's injuries, including any
298 evidence of previous injuries and any other information that might
299 be helpful in establishing the cause of the injury and the
300 identity of the perpetrator.

301 (3) The Department of Human Services shall maintain a
302 statewide incoming wide-area telephone service or similar service
303 for the purpose of receiving reports of suspected cases of child
304 abuse; provided that any attorney, physician, dentist, intern,
305 resident, nurse, psychologist, social worker, child protection
306 specialist, child care giver, minister, law enforcement officer or
307 public or private school employee who is required to report under
308 subsection (1) of this section shall report in the manner required
309 in subsection (1).

310 (4) Reports of abuse and neglect made under this chapter and
311 the identity of the reporter are confidential except when the
312 court in which the investigation report is filed, in its
313 discretion, determines the testimony of the person reporting to be
314 material to a judicial proceeding or when the identity of the
315 reporter is released to law enforcement agencies and the
316 appropriate prosecutor pursuant to subsection (1). Reports made
317 under this section to any law enforcement agency or prosecutorial
318 officer are for the purpose of criminal investigation and
319 prosecution only and no information from these reports may be
320 released to the public except as provided by Section 43-21-261.
321 Disclosure of any information by the prosecutor shall be according
322 to the Mississippi Uniform Rules of Circuit and County Court
323 Procedure. The identity of the reporting party shall not be
324 disclosed to anyone other than law enforcement officers or
325 prosecutors without an order from the appropriate youth court.
326 Any person disclosing any reports made under this section in a

327 manner not expressly provided for in this section or Section
328 43-21-261, shall be guilty of a misdemeanor and subject to the
329 penalties prescribed by Section 43-21-267.

330 (5) All final dispositions of law enforcement investigations
331 described in subsection (1) of this section shall be determined
332 only by the appropriate prosecutor or court. All final
333 dispositions of investigations by the Department of Human Services
334 as described in subsection (1) of this section shall be determined
335 only by the youth court. Reports made under subsection (1) of
336 this section by the Department of Human Services to the law
337 enforcement agency and to the district attorney's office shall
338 include the following, if known to the department:

- 339 (a) The name and address of the child;
340 (b) The names and addresses of the parents;
341 (c) The name and address of the suspected perpetrator;
342 (d) The names and addresses of all witnesses, including
343 the reporting party if a material witness to the abuse;
344 (e) A brief statement of the facts indicating that the
345 child has been abused and any other information from the agency
346 files or known to the social worker or child protection specialist
347 making the investigation, including medical records or other
348 records, which may assist law enforcement or the district attorney
349 in investigating and/or prosecuting the case; and
350 (f) What, if any, action is being taken by the
351 Department of Human Services.

352 (6) In any investigation of a report made under this chapter
353 of the abuse or neglect of a child as defined in Section
354 43-21-105(m), the Department of Human Services may request the
355 appropriate law enforcement officer with jurisdiction to accompany
356 the department in its investigation, and in such cases the law
357 enforcement officer shall comply with such request.

358 (7) Anyone who willfully violates any provision of this
359 section shall be, upon being found guilty, punished by a fine not

360 to exceed Five Thousand Dollars (\$5,000.00), or by imprisonment in
361 jail not to exceed one (1) year, or both.

362 (8) If a report is made directly to the Department of Human
363 Services that a child has been abused or neglected in an
364 out-of-home setting, a referral shall be made immediately to the
365 law enforcement agency in whose jurisdiction the abuse occurred
366 and the department shall notify the district attorney's office
367 within forty-eight (48) hours of such report. The Department of
368 Human Services shall investigate the out-of-home setting report of
369 abuse or neglect to determine whether the child who is the subject
370 of the report, or other children in the same environment, comes
371 within the jurisdiction of the youth court and shall report to the
372 youth court the department's findings and recommendation as to
373 whether the child who is the subject of the report or other
374 children in the same environment require the protection of the
375 youth court. The law enforcement agency shall investigate the
376 reported abuse immediately and shall file a preliminary report
377 with the district attorney's office within forty-eight (48) hours
378 and shall make additional reports as new information or evidence
379 becomes available. If the out-of-home setting is a licensed
380 facility, an additional referral shall be made by the Department
381 of Human Services to the licensing agency. The licensing agency
382 shall investigate the report and shall provide the Department of
383 Human Services, the law enforcement agency and the district
384 attorney's office with their written findings from such
385 investigation as well as that licensing agency's recommendations
386 and actions taken.

387 **SECTION 5.** Section 43-21-355, Mississippi Code of 1972, is
388 amended as follows:

389 43-21-355. Any attorney, physician, dentist, intern,
390 resident, nurse, psychologist, social worker, child protection
391 specialist, child care giver, minister, law enforcement officer,
392 school attendance officer, public school district employee,

393 nonpublic school employee, or any other person participating in
394 the making of a required report pursuant to Section 43-21-353 or
395 participating in the judicial proceeding resulting therefrom shall
396 be presumed to be acting in good faith. Any person or institution
397 reporting in good faith shall be immune from any liability, civil
398 or criminal, that might otherwise be incurred or imposed.

399 **SECTION 6.** Section 43-21-603, Mississippi Code of 1972, is
400 amended as follows:

401 43-21-603. (1) At the beginning of each disposition
402 hearing, the judge shall inform the parties of the purpose of the
403 hearing.

404 (2) All testimony shall be under oath unless waived by all
405 parties and may be in narrative form. The court may consider any
406 evidence which is material and relevant to the disposition of the
407 cause, including hearsay and opinion evidence. At the conclusion
408 of the evidence, the youth court shall give the parties an
409 opportunity to present oral argument.

410 (3) If the child has been adjudicated a delinquent child,
411 prior to entering a disposition order, the youth court should
412 consider, among others, the following relevant factors:

- 413 (a) The nature of the offense;
- 414 (b) The manner in which the offense was committed;
- 415 (c) The nature and number of a child's prior
416 adjudicated offenses; and
- 417 (d) The child's need for care and assistance.

418 (4) If the child has been adjudicated a child in need of
419 supervision, prior to entering a disposition order, the youth
420 court should consider, among others, the following relevant
421 factors:

- 422 (a) The nature and history of the child's conduct;
- 423 (b) The family and home situation; and
- 424 (c) The child's need of care and assistance.

425 (5) If the child has been adjudicated a neglected child or
426 an abused child, prior to entering a disposition order, the youth
427 court shall consider, among others, the following relevant
428 factors:

429 (a) The child's physical and mental conditions;

430 (b) The child's need of assistance;

431 (c) The manner in which the parent, guardian or
432 custodian participated in, tolerated or condoned the abuse,
433 neglect or abandonment of the child;

434 (d) The ability of a child's parent, guardian or
435 custodian to provide proper supervision and care of a child; and

436 (e) Relevant testimony and recommendations, where
437 available, from the foster parent of the child, the grandparents
438 of the child, the guardian ad litem of the child, representatives
439 of any private care agency which has cared for the child, the
440 social worker or child protection specialist assigned to the case,
441 and any other relevant testimony pertaining to the case.

442 (6) After consideration of all the evidence and the relevant
443 factors, the youth court shall enter a disposition order which
444 shall not recite any of the facts or circumstances upon which such
445 disposition is based, nor shall it recite that a child has been
446 found guilty; but it shall recite that a child is found to be a
447 delinquent child, a child in need of supervision, a neglected
448 child or an abused child.

449 (7) In the event that the youth court orders that the
450 custody or supervision of a child who has been adjudicated abused
451 or neglected be placed with the Department of Human Services or
452 any other person or public or private agency, other than the
453 child's parent, guardian or custodian, the youth court shall find
454 and the disposition order shall recite that:

455 (a) (i) Reasonable efforts have been made to maintain
456 the child within his own home, but that the circumstances warrant
457 his removal and there is no reasonable alternative to custody; or

458 (ii) The circumstances are of such an emergency
459 nature that no reasonable efforts have been made to maintain the
460 child within his own home, and that there is no reasonable
461 alternative to custody; and

462 (b) That the effect of the continuation of the child's
463 residence within his own home would be contrary to the welfare of
464 the child and that the placement of the child in foster care is in
465 the best interests of the child; or

466 (c) Reasonable efforts to maintain the child within his
467 home shall not be required if the court determines that:

468 (i) The parent has subjected the child to
469 aggravated circumstances including, but not limited to,
470 abandonment, torture, chronic abuse and sexual abuse; or

471 (ii) The parent has been convicted of murder of
472 another child of such parent, voluntary manslaughter of another
473 child of such parent, aided or abetted, attempted, conspired or
474 solicited to commit such murder or voluntary manslaughter, or a
475 felony assault that results in the serious bodily injury to the
476 surviving child or another child of such parent; or

477 (iii) The parental rights of the parent to a
478 sibling have been terminated involuntarily; and

479 (iv) That the effect of the continuation of the
480 child's residence within his own home would be contrary to the
481 welfare of the child and that placement of the child in foster
482 care is in the best interests of the child.

483 Once the reasonable efforts requirement is bypassed, the
484 court shall have a permanency hearing pursuant to Section
485 43-21-613 within thirty (30) days of such finding.

486 (8) Upon a written motion by a party, the youth court shall
487 make written findings of fact and conclusions of law upon which it
488 relies for the disposition order.

489 **SECTION 7.** Section 43-27-109, Mississippi Code of 1972, is
490 amended as follows:

491 43-27-109. The Department of Human Services may employ a
492 sufficient number of new social workers, child protection
493 specialists, youth counselors and clerical staff to reduce the
494 case load sizes for social workers and youth counselors of the
495 department and to reduce the work load on clerical staff, if funds
496 are appropriated to the department for that purpose.

497 **SECTION 8.** Section 43-47-7, Mississippi Code of 1972, is
498 amended as follows:

499 43-47-7. (1) (a) Except as otherwise provided by Section
500 43-47-37 for vulnerable adults in care facilities, any person
501 including, but not limited to, the following, who knows or
502 suspects that a vulnerable adult has been or is being abused,
503 neglected or exploited shall immediately report such knowledge or
504 suspicion to the Department of Human Services or to the county
505 department of human services where the vulnerable adult is
506 located:

507 (i) Attorney, physician, osteopathic physician,
508 medical examiner, chiropractor or nurse engaged in the admission,
509 examination, care or treatment of vulnerable adults;

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

512 (iii) Practitioner who relies solely on spiritual
513 means for healing;

514 (iv) Social worker, child protection specialist or
515 other professional adult care, residential or institutional staff;

516 (v) State, county or municipal criminal justice
517 employee or law enforcement officer;

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

520 (vii) Accountant, stockbroker, financial advisor
521 or consultant, insurance agent or consultant, investment advisor
522 or consultant, financial planner, or any officer or employee of a

523 bank, savings and loan, credit union or any other financial
524 service provider.

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

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

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

533 (iii) Name, address and telephone number of each
534 alleged perpetrator.

535 (iv) Name, address and telephone number of the
536 caregiver of the vulnerable adult, if different from the alleged
537 perpetrator.

538 (v) Description of the neglect, exploitation,
539 physical or psychological injuries sustained.

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

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

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

550 (c) The department, or its designees, shall report to
551 an appropriate criminal investigative or prosecutive authority any
552 person required by this section to report or who fails to comply
553 with this section. A person who fails to make a report as
554 required under this subsection or who, because of the
555 circumstances, should have known or suspected beyond a reasonable

556 doubt that a vulnerable adult suffers from exploitation, abuse,
557 neglect or self-neglect but who knowingly fails to comply with
558 this section shall, upon conviction, be guilty of a misdemeanor
559 and shall be punished by a fine not exceeding Five Thousand
560 Dollars (\$5,000.00), or by imprisonment in the county jail for not
561 more than six (6) months, or both such fine and imprisonment.
562 However, for purposes of this subsection (1), any recognized legal
563 financial transaction shall not be considered cause to report the
564 knowledge or suspicion of the financial exploitation of a
565 vulnerable adult. If a person convicted under this section is a
566 member of a profession or occupation that is licensed, certified
567 or regulated by the state, the court shall notify the appropriate
568 licensing, certifying or regulating entity of the conviction.

569 (2) Reports received by law enforcement authorities or other
570 agencies shall be forwarded immediately to the Department of Human
571 Services or the county department of human services. The
572 Department of Human Services shall investigate the reported abuse,
573 neglect or exploitation immediately and shall file a preliminary
574 report of its findings with the Office of the Attorney General
575 within forty-eight (48) hours, and shall make additional reports
576 as new information or evidence becomes available. The Department
577 of Human Services, upon request, shall forward a statement to the
578 person making the initial report required by this section as to
579 what action is being taken, if any.

580 (3) The report may be made orally or in writing, but where
581 made orally, it shall be followed up by a written report. A
582 person who fails to report or to otherwise comply with this
583 section, as provided herein, shall have no civil or criminal
584 liability, other than that expressly provided for in this section,
585 to any person or entity in connection with any failure to report
586 or to otherwise comply with the requirements of this section.

587 (4) Anyone who makes a report required by this section or
588 who testifies or participates in any judicial proceedings arising

589 from the report or who participates in a required investigation or
590 evaluation shall be presumed to be acting in good faith and in so
591 doing shall be immune from liability, civil or criminal, that
592 might otherwise be incurred or imposed. However, the immunity
593 provided under this subsection shall not apply to any suspect or
594 perpetrator of any abuse, neglect or exploitation.

595 (5) A person who intentionally makes a false report under
596 the provisions of this section may be found liable in a civil suit
597 for any actual damages suffered by the person or persons so
598 reported and for any punitive damages set by the court or jury.

599 (6) The Executive Director of Human Services shall establish
600 a statewide central register of reports made pursuant to this
601 section. The central register shall be capable of receiving
602 reports of vulnerable adults in need of protective services seven
603 (7) days a week, twenty-four (24) hours a day. To effectuate this
604 purpose the executive director shall establish a single toll-free
605 statewide phone number that all persons may use to report
606 vulnerable adults in need of protective services, and that all
607 persons authorized by subsection (7) of this section may use for
608 determining the existence of prior reports in order to evaluate
609 the condition or circumstances of the vulnerable adult before
610 them. Such oral reports and evidence of previous reports shall be
611 transmitted to the appropriate county department of human
612 services. The central register shall include, but not be limited
613 to, the following information: the name and identifying
614 information of the individual reported, the county department of
615 human services responsible for the investigation of each such
616 report, the names, affiliations and purposes of any person
617 requesting or receiving information which the executive director
618 believes might be helpful in the furtherance of the purposes of
619 this chapter, the name, address, birth date, social security
620 number of the perpetrator of abuse, neglect and/or exploitation,
621 and the type of abuse, neglect and/or exploitation of which there

622 was substantial evidence upon investigation of the report. The
623 central register shall inform the person making reports required
624 under this section of his or her right to request statements from
625 the department as to what action is being taken, if any.

626 Each person, business, organization or other entity, whether
627 public or private, operated for profit, operated for nonprofit or
628 a voluntary unit of government not responsible for law enforcement
629 providing care, supervision or treatment of vulnerable adults
630 shall conduct criminal history records checks on each new employee
631 of the entity who provides, and/or would provide direct patient
632 care or services to adults or vulnerable persons, as provided in
633 Section 43-11-13.

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

639 (7) Reports made pursuant to this section, reports written
640 or photographs taken concerning such reports in the possession of
641 the Department of Human Services or the county department of human
642 services shall be confidential and shall only be made available
643 to:

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

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

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

652 (d) A district attorney or other law enforcement
653 official.

654 Notwithstanding the provisions of paragraph (b) of this
655 subsection, the department may not disclose a report of the
656 abandonment, exploitation, abuse, neglect or self-neglect of a
657 vulnerable adult to the vulnerable adult's guardian,
658 attorney-in-fact, surrogate decision maker, or caregiver who is a
659 perpetrator or alleged perpetrator of the abandonment,
660 exploitation, abuse or neglect of the vulnerable adult.

661 Any person given access to the names or other information
662 identifying the subject of the report, except the subject of the
663 report, shall not divulge or make public such identifying
664 information unless he is a district attorney or other law
665 enforcement official and the purpose is to initiate court action.
666 Any person who willfully permits the release of any data or
667 information obtained pursuant to this section to persons or
668 agencies not permitted to such access by this section shall be
669 guilty of a misdemeanor.

670 (8) Upon reasonable cause to believe that a caretaker or
671 other person has abused, neglected or exploited a vulnerable
672 adult, the department shall promptly notify the district attorney
673 of the county in which the vulnerable adult is located and the
674 Office of the Attorney General, except as provided in Section
675 43-47-37(2).

676 **SECTION 9.** Section 93-21-23, Mississippi Code of 1972, is
677 amended as follows:

678 93-21-23. Any licensed doctor of medicine, licensed doctor
679 of dentistry, intern, resident or registered nurse, psychologist,
680 social worker, child protection specialist, preacher, teacher,
681 attorney, law enforcement officer, or any other person or
682 institution participating in the making of a report pursuant to
683 this chapter or participating in judicial proceedings resulting
684 therefrom shall be presumed to be acting in good faith, and if
685 found to have acted in good faith shall be immune from any
686 liability, civil or criminal, that might otherwise be incurred or

687 imposed. The reporting of an abused person shall not constitute a
688 breach of confidentiality.

689 **SECTION 10.** Section 97-3-7, Mississippi Code of 1972, is
690 amended as follows:

691 97-3-7. (1) A person is guilty of simple assault if he (a)
692 attempts to cause or purposely, knowingly or recklessly causes
693 bodily injury to another; or (b) negligently causes bodily injury
694 to another with a deadly weapon or other means likely to produce
695 death or serious bodily harm; or (c) attempts by physical menace
696 to put another in fear of imminent serious bodily harm; and, upon
697 conviction, he shall be punished by a fine of not more than Five
698 Hundred Dollars (\$500.00) or by imprisonment in the county jail
699 for not more than six (6) months, or both. * * * However, a
700 person convicted of simple assault (a) upon a statewide elected
701 official, law enforcement officer, fireman, emergency medical
702 personnel, public health personnel, social worker or child
703 protection specialist employed by the Department of Human Services
704 or another agency, superintendent, principal, teacher or other
705 instructional personnel, school attendance officer, school bus
706 driver, or a judge of a circuit, chancery, county, justice or
707 youth court or a judge of the Court of Appeals or a justice of the
708 Supreme Court, district attorney, legal assistant to a district
709 attorney, county prosecutor, municipal prosecutor, court reporter
710 employed by a court, court administrator, clerk or deputy clerk of
711 the court, or public defender, while such statewide elected
712 official, judge or justice, law enforcement officer, fireman,
713 emergency medical personnel, public health personnel, social
714 worker, child protection specialist, superintendent, principal,
715 teacher or other instructional personnel, school attendance
716 officer, school bus driver, district attorney, legal assistant to
717 a district attorney, county prosecutor, municipal prosecutor,
718 court reporter employed by a court, court administrator, clerk or
719 deputy clerk of the court, or public defender is acting within the

720 scope of his duty, office or employment, or (b) upon a legislator
721 while the Legislature is in regular or extraordinary session or
722 while otherwise acting within the scope of his duty, office or
723 employment, shall be punished by a fine of not more than One
724 Thousand Dollars (\$1,000.00) or by imprisonment for not more than
725 five (5) years, or both.

726 (2) A person is guilty of aggravated assault if he (a)
727 attempts to cause serious bodily injury to another, or causes such
728 injury purposely, knowingly or recklessly under circumstances
729 manifesting extreme indifference to the value of human life; or
730 (b) attempts to cause or purposely or knowingly causes bodily
731 injury to another with a deadly weapon or other means likely to
732 produce death or serious bodily harm; and, upon conviction, he
733 shall be punished by imprisonment in the county jail for not more
734 than one (1) year or in the Penitentiary for not more than twenty
735 (20) years. * * * However, a person convicted of aggravated
736 assault (a) upon a statewide elected official, law enforcement
737 officer, fireman, emergency medical personnel, public health
738 personnel, social worker or child protection specialist employed
739 by the Department of Human Services or another agency,
740 superintendent, principal, teacher or other instructional
741 personnel, school attendance officer, school bus driver, or a
742 judge of a circuit, chancery, county, justice or youth court or a
743 judge of the Court of Appeals or a justice of the Supreme Court,
744 district attorney, legal assistant to a district attorney, county
745 prosecutor, municipal prosecutor, court reporter employed by a
746 court, court administrator, clerk or deputy clerk of the court, or
747 public defender, while such statewide elected official, judge or
748 justice, law enforcement officer, fireman, emergency medical
749 personnel, public health personnel, social worker, child
750 protection specialist, superintendent, principal, teacher or other
751 instructional personnel, school attendance officer, school bus
752 driver, district attorney, legal assistant to a district attorney,

753 county prosecutor, municipal prosecutor, court reporter employed
754 by a court, court administrator, clerk or deputy clerk of the
755 court, or public defender is acting within the scope of his duty,
756 office or employment, or (b) upon a legislator while the
757 Legislature is in regular or extraordinary session or while
758 otherwise acting within the scope of his duty, office or
759 employment, shall be punished by a fine of not more than Five
760 Thousand Dollars (\$5,000.00) or by imprisonment for not more than
761 thirty (30) years, or both.

762 (3) A person is guilty of simple domestic violence who
763 commits simple assault as described in subsection (1) of this
764 section against a family or household member who resides with the
765 defendant or who formerly resided with the defendant, a current or
766 former spouse, a person who has a current dating relationship with
767 the defendant, or a person with whom the defendant has had a
768 biological or legally adopted child and upon conviction, the
769 defendant shall be punished as provided under subsection (1) of
770 this section; however, upon a third or subsequent conviction of
771 simple domestic violence, whether against the same or another
772 victim and within five (5) years, the defendant shall be guilty of
773 a felony and sentenced to a term of imprisonment not less than
774 five (5) nor more than ten (10) years. In sentencing, the court
775 shall consider as an aggravating factor whether the crime was
776 committed in the physical presence or hearing of a child under
777 sixteen (16) years of age who was, at the time of the offense,
778 living within either the residence of the victim, the residence of
779 the perpetrator, or the residence where the offense occurred.

780 (4) A person is guilty of aggravated domestic violence who
781 commits aggravated assault as described in subsection (2) of this
782 section against a family or household member who resides with the
783 defendant or who formerly resided with the defendant, or a current
784 or former spouse, a person who has a current dating relationship
785 with the defendant, or a person with whom the defendant has had a

786 biological or legally adopted child and upon conviction, the
787 defendant shall be punished as provided under subsection (2) of
788 this section; however, upon a third or subsequent offense of
789 aggravated domestic violence, whether against the same or another
790 victim and within five (5) years, the defendant shall be guilty of
791 a felony and sentenced to a term of imprisonment of not less than
792 five (5) nor more than twenty (20) years. In sentencing, the
793 court shall consider as an aggravating factor whether the crime
794 was committed in the physical presence or hearing of a child under
795 sixteen (16) years of age who was, at the time of the offense,
796 living within either the residence of the victim, the residence of
797 the perpetrator, or the residence where the offense occurred.
798 Reasonable discipline of a child, such as spanking, is not an
799 offense under this subsection (4).

800 (5) "Dating relationship" means a social relationship of a
801 romantic or intimate nature.

802 (6) Every conviction of domestic violence may require as a
803 condition of any suspended sentence that the defendant participate
804 in counseling or treatment to bring about the cessation of
805 domestic abuse. The defendant may be required to pay all or part
806 of the cost of the counseling or treatment, in the discretion of
807 the court.

808 (7) In any conviction of assault as described in any
809 subsection of this section which arises from an incident of
810 domestic violence, the sentencing order shall include the
811 designation "domestic violence."

812 **SECTION 11.** This act shall take effect and be in force from
813 and after July 1, 2004.