

Senate Amendments to House Bill No. 816

TO THE CLERK OF THE HOUSE:

THIS IS TO INFORM YOU THAT THE SENATE HAS ADOPTED THE AMENDMENTS SET OUT BELOW:

AMENDMENT NO. 1

Amend by striking all after the enacting clause and inserting in lieu thereof the following:

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

32 43-1-55. (1) The Office of Family and Children's Services
33 shall devise formal social worker standards for employment and
34 service delivery designed to measure the quality of services
35 delivered to clients, as well as the timeliness of services.
36 Each social worker shall be assessed annually by a supervisor who
37 is knowledgeable in the standards promulgated. The * * *
38 standards shall be applicable to all social workers working under
39 the office.

40 (2) The Office of Family and Children's Services shall
41 devise formal standards for child protection specialists of the
42 Department of Human Services who are not licensed social workers.
43 Those standards shall require that:

44 (a) In order to be employed as a child protection
45 specialist, a person must have a bachelor's degree in either
46 psychology, sociology, nursing, criminal justice or a related
47 field, or a graduate degree in either law, psychology, sociology,
48 nursing, criminal justice or a related field. The determination
49 of what is a related field shall be made by certification of the
50 State Personnel Board; and

51 (b) Before a person may provide services as a child
52 protection specialist, the person shall complete four (4) weeks of
53 intensive training provided by the training unit of the Office of
54 Family and Children's Services, and shall take and receive a
55 passing score on the certification test administered by the

56 training unit upon completion of the four-week training. Upon
57 receiving a passing score on the certification test, the person
58 shall be certified as a child protection specialist by the
59 Department of Human Services. Any person who does not receive a
60 passing score on the certification test shall not be employed or
61 maintain employment as a child protection specialist for the
62 department. Further, a person, qualified as a child protection
63 specialist through the procedures set forth above, shall not
64 conduct forensic interviews of children until the specialist
65 receives additional specialized training in child forensic
66 interview protocols and techniques by a course or curriculum
67 approved by the Department of Human Services to be not less than
68 forty (40) hours.

69 (3) For the purpose of providing services in child abuse or
70 neglect cases, youth court proceedings, vulnerable adults cases,
71 and such other cases as designated by the Executive Director of
72 Human Services, the caseworker or service provider may be a child
73 protection specialist whose work is overseen by a licensed social
74 worker.

75 (4) The Department of Human Services and the Office of
76 Family and Children's Services shall seek to employ and use
77 licensed social workers to provide the services of the office, and
78 may employ and use child protection specialists to provide those
79 services only in counties in which there is not a sufficient
80 number of licensed social workers to adequately provide those
81 services in the county.

82 (5) This section and Sections 43-21-261, 43-21-353,
83 43-21-355, 43-21-603, 43-27-109, 43-47-7, 93-21-23 and 97-3-7
84 shall stand repealed on July 1, 2006.

85 **SECTION 2.** Section 43-21-261, Mississippi Code of 1972, is
86 amended as follows:

87 43-21-261. (1) Except as otherwise provided in this
88 section, records involving children shall not be disclosed, other
89 than to necessary staff of the youth court, except pursuant to an
90 order of the youth court specifying the person or persons to whom

91 the records may be disclosed, the extent of the records which may
92 be disclosed and the purpose of the disclosure. Such court orders
93 for disclosure shall be limited to those instances in which the
94 youth court concludes, in its discretion, that disclosure is
95 required for the best interests of the child, the public safety or
96 the functioning of the youth court and then only to the following
97 persons:

98 (a) The judge of another youth court or member of
99 another youth court staff;

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

102 (c) A judge of any other court or members of another
103 court staff;

104 (d) Representatives of a public or private agency
105 providing supervision or having custody of the child under order
106 of the youth court;

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

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

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

124 Law enforcement agencies may disclose information to the
125 public concerning the taking of a child into custody for the

126 commission of a delinquent act without the necessity of an order
127 from the youth court. The information released shall not identify
128 the child or his address unless the information involves a child
129 convicted as an adult.

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

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

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

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

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

159 (c) Agency records made confidential under the
160 provisions of this section may be disclosed to a court of
161 competent jurisdiction.

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

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

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

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

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

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

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

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

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

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

224 (16) In every case where an abuse or neglect allegation has
225 been made, the confidentiality provisions of this section shall
226 not apply to prohibit access to a child's records by any state
227 regulatory agency, any state or local prosecutorial agency or law
228 enforcement agency; * * * however, * * * no identifying

229 information concerning the child in question may be released to
230 the public by such agency except as otherwise provided herein.

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

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

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

257 **SECTION 3.** Section 43-21-353, Mississippi Code of 1972, is
258 amended as follows:

259 43-21-353. (1) Any attorney, physician, dentist, intern,
260 resident, nurse, psychologist, social worker, child protection
261 specialist, child care giver, minister, law enforcement officer,
262 public or private school employee or any other person having
263 reasonable cause to suspect that a child is a neglected child or

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

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

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

307 (4) Reports of abuse and neglect made under this chapter and
308 the identity of the reporter are confidential except when the
309 court in which the investigation report is filed, in its
310 discretion, determines the testimony of the person reporting to be
311 material to a judicial proceeding or when the identity of the
312 reporter is released to law enforcement agencies and the
313 appropriate prosecutor pursuant to subsection (1). Reports made
314 under this section to any law enforcement agency or prosecutorial
315 officer are for the purpose of criminal investigation and
316 prosecution only and no information from these reports may be
317 released to the public except as provided by Section 43-21-261.
318 Disclosure of any information by the prosecutor shall be according
319 to the Mississippi Uniform Rules of Circuit and County Court
320 Procedure. The identity of the reporting party shall not be
321 disclosed to anyone other than law enforcement officers or
322 prosecutors without an order from the appropriate youth court.
323 Any person disclosing any reports made under this section in a
324 manner not expressly provided for in this section or Section
325 43-21-261, shall be guilty of a misdemeanor and subject to the
326 penalties prescribed by Section 43-21-267.

327 (5) All final dispositions of law enforcement investigations
328 described in subsection (1) of this section shall be determined
329 only by the appropriate prosecutor or court. All final
330 dispositions of investigations by the Department of Human Services
331 as described in subsection (1) of this section shall be determined
332 only by the youth court. Reports made under subsection (1) of

333 this section by the Department of Human Services to the law
334 enforcement agency and to the district attorney's office shall
335 include the following, if known to the department:

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

349 (6) In any investigation of a report made under this chapter
350 of the abuse or neglect of a child as defined in Section
351 43-21-105(m), the Department of Human Services may request the
352 appropriate law enforcement officer with jurisdiction to accompany
353 the department in its investigation, and in such cases the law
354 enforcement officer shall comply with such request.

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

359 (8) If a report is made directly to the Department of Human
360 Services that a child has been abused or neglected in an
361 out-of-home setting, a referral shall be made immediately to the
362 law enforcement agency in whose jurisdiction the abuse occurred
363 and the department shall notify the district attorney's office
364 within forty-eight (48) hours of such report. The Department of
365 Human Services shall investigate the out-of-home setting report of
366 abuse or neglect to determine whether the child who is the subject
367 of the report, or other children in the same environment, comes

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

384 **SECTION 4.** Section 43-21-355, Mississippi Code of 1972, is
385 amended as follows:

386 43-21-355. Any attorney, physician, dentist, intern,
387 resident, nurse, psychologist, social worker, child protection
388 specialist, child care giver, minister, law enforcement officer,
389 school attendance officer, public school district employee,
390 nonpublic school employee, or any other person participating in
391 the making of a required report pursuant to Section 43-21-353 or
392 participating in the judicial proceeding resulting therefrom shall
393 be presumed to be acting in good faith. Any person or institution
394 reporting in good faith shall be immune from any liability, civil
395 or criminal, that might otherwise be incurred or imposed.

396 **SECTION 5.** Section 43-21-603, Mississippi Code of 1972, is
397 amended as follows:

398 43-21-603. (1) At the beginning of each disposition
399 hearing, the judge shall inform the parties of the purpose of the
400 hearing.

401 (2) All testimony shall be under oath unless waived by all
402 parties and may be in narrative form. The court may consider any

403 evidence which is material and relevant to the disposition of the
404 cause, including hearsay and opinion evidence. At the conclusion
405 of the evidence, the youth court shall give the parties an
406 opportunity to present oral argument.

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

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

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

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

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

- 426 (a) The child's physical and mental conditions;
- 427 (b) The child's need of assistance;
- 428 (c) The manner in which the parent, guardian or
429 custodian participated in, tolerated or condoned the abuse,
430 neglect or abandonment of the child;
- 431 (d) The ability of a child's parent, guardian or
432 custodian to provide proper supervision and care of a child; and
- 433 (e) Relevant testimony and recommendations, where
434 available, from the foster parent of the child, the grandparents
435 of the child, the guardian ad litem of the child, representatives
436 of any private care agency which has cared for the child, the

437 social worker or child protection specialist assigned to the case,
438 and any other relevant testimony pertaining to the case.

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

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

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

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

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

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

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

468 (ii) The parent has been convicted of murder of
469 another child of such parent, voluntary manslaughter of another
470 child of such parent, aided or abetted, attempted, conspired or
471 solicited to commit such murder or voluntary manslaughter, or a

472 felony assault that results in the serious bodily injury to the
473 surviving child or another child of such parent; or

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

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

480 Once the reasonable efforts requirement is bypassed, the
481 court shall have a permanency hearing pursuant to Section
482 43-21-613 within thirty (30) days of such finding.

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

486 **SECTION 6.** Section 43-27-109, Mississippi Code of 1972, is
487 amended as follows:

488 43-27-109. The Department of Human Services may employ a
489 sufficient number of new social workers, child protection
490 specialists, youth counselors and clerical staff to reduce the
491 case load sizes for social workers and youth counselors of the
492 department and to reduce the work load on clerical staff, if funds
493 are appropriated to the department for that purpose.

494 **SECTION 7.** Section 43-47-7, Mississippi Code of 1972, is
495 amended as follows:

496 43-47-7. (1) (a) Except as otherwise provided by Section
497 43-47-37 for vulnerable adults in care facilities, any person
498 including, but not limited to, the following, who knows or
499 suspects that a vulnerable adult has been or is being abused,
500 neglected or exploited shall immediately report such knowledge or
501 suspicion to the Department of Human Services or to the county
502 department of human services where the vulnerable adult is
503 located:

504 (i) Attorney, physician, osteopathic physician,
505 medical examiner, chiropractor or nurse engaged in the admission,
506 examination, care or treatment of vulnerable adults;

507 (ii) Health professional or mental health
508 professional other than one listed in subparagraph (i);
509 (iii) Practitioner who relies solely on spiritual
510 means for healing;
511 (iv) Social worker, child protection specialist or
512 other professional adult care, residential or institutional staff;
513 (v) State, county or municipal criminal justice
514 employee or law enforcement officer;
515 (vi) Human rights advocacy committee or long-term
516 care ombudsman council member; or
517 (vii) Accountant, stockbroker, financial advisor
518 or consultant, insurance agent or consultant, investment advisor
519 or consultant, financial planner, or any officer or employee of a
520 bank, savings and loan, credit union or any other financial
521 service provider.

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

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

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

530 (iii) Name, address and telephone number of each
531 alleged perpetrator.

532 (iv) Name, address and telephone number of the
533 caregiver of the vulnerable adult, if different from the alleged
534 perpetrator.

535 (v) Description of the neglect, exploitation,
536 physical or psychological injuries sustained.

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

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

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

547 (c) The department, or its designees, shall report to
548 an appropriate criminal investigative or prosecutive authority any
549 person required by this section to report or who fails to comply
550 with this section. A person who fails to make a report as
551 required under this subsection or who, because of the
552 circumstances, should have known or suspected beyond a reasonable
553 doubt that a vulnerable adult suffers from exploitation, abuse,
554 neglect or self-neglect but who knowingly fails to comply with
555 this section shall, upon conviction, be guilty of a misdemeanor
556 and shall be punished by a fine not exceeding Five Thousand
557 Dollars (\$5,000.00), or by imprisonment in the county jail for not
558 more than six (6) months, or both such fine and imprisonment.
559 However, for purposes of this subsection (1), any recognized legal
560 financial transaction shall not be considered cause to report the
561 knowledge or suspicion of the financial exploitation of a
562 vulnerable adult. If a person convicted under this section is a
563 member of a profession or occupation that is licensed, certified
564 or regulated by the state, the court shall notify the appropriate
565 licensing, certifying or regulating entity of the conviction.

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

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

584 (4) Anyone who makes a report required by this section or
585 who testifies or participates in any judicial proceedings arising
586 from the report or who participates in a required investigation or
587 evaluation shall be presumed to be acting in good faith and in so
588 doing shall be immune from liability, civil or criminal, that
589 might otherwise be incurred or imposed. However, the immunity
590 provided under this subsection shall not apply to any suspect or
591 perpetrator of any abuse, neglect or exploitation.

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

596 (6) The Executive Director of Human Services shall establish
597 a statewide central register of reports made pursuant to this
598 section. The central register shall be capable of receiving
599 reports of vulnerable adults in need of protective services seven
600 (7) days a week, twenty-four (24) hours a day. To effectuate this
601 purpose the executive director shall establish a single toll-free
602 statewide phone number that all persons may use to report
603 vulnerable adults in need of protective services, and that all
604 persons authorized by subsection (7) of this section may use for
605 determining the existence of prior reports in order to evaluate
606 the condition or circumstances of the vulnerable adult before
607 them. Such oral reports and evidence of previous reports shall be
608 transmitted to the appropriate county department of human
609 services. The central register shall include, but not be limited
610 to, the following information: the name and identifying
611 information of the individual reported, the county department of

612 human services responsible for the investigation of each such
613 report, the names, affiliations and purposes of any person
614 requesting or receiving information which the executive director
615 believes might be helpful in the furtherance of the purposes of
616 this chapter, the name, address, birth date, social security
617 number of the perpetrator of abuse, neglect and/or exploitation,
618 and the type of abuse, neglect and/or exploitation of which there
619 was substantial evidence upon investigation of the report. The
620 central register shall inform the person making reports required
621 under this section of his or her right to request statements from
622 the department as to what action is being taken, if any.

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

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

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

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

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

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

649 (d) A district attorney or other law enforcement
650 official.

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

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

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

673 **SECTION 8.** Section 93-21-23, Mississippi Code of 1972, is
674 amended as follows:

675 93-21-23. Any licensed doctor of medicine, licensed doctor
676 of dentistry, intern, resident or registered nurse, psychologist,
677 social worker, child protection specialist, preacher, teacher,
678 attorney, law enforcement officer, or any other person or
679 institution participating in the making of a report pursuant to
680 this chapter or participating in judicial proceedings resulting

681 therefrom shall be presumed to be acting in good faith, and if
682 found to have acted in good faith shall be immune from any
683 liability, civil or criminal, that might otherwise be incurred or
684 imposed. The reporting of an abused person shall not constitute a
685 breach of confidentiality.

686 **SECTION 9.** Section 97-3-7, Mississippi Code of 1972, is
687 amended as follows:

688 97-3-7. (1) A person is guilty of simple assault if he (a)
689 attempts to cause or purposely, knowingly or recklessly causes
690 bodily injury to another; or (b) negligently causes bodily injury
691 to another with a deadly weapon or other means likely to produce
692 death or serious bodily harm; or (c) attempts by physical menace
693 to put another in fear of imminent serious bodily harm; and, upon
694 conviction, he shall be punished by a fine of not more than Five
695 Hundred Dollars (\$500.00) or by imprisonment in the county jail
696 for not more than six (6) months, or both. * * * However, a
697 person convicted of simple assault (a) upon a statewide elected
698 official, law enforcement officer, fireman, emergency medical
699 personnel, public health personnel, social worker or child
700 protection specialist employed by the Department of Human Services
701 or another agency, superintendent, principal, teacher or other
702 instructional personnel, school attendance officer, school bus
703 driver, or a judge of a circuit, chancery, county, justice or
704 youth court or a judge of the Court of Appeals or a justice of the
705 Supreme Court, district attorney, legal assistant to a district
706 attorney, county prosecutor, municipal prosecutor, court reporter
707 employed by a court, court administrator, clerk or deputy clerk of
708 the court, or public defender, while such statewide elected
709 official, judge or justice, law enforcement officer, fireman,
710 emergency medical personnel, public health personnel, social
711 worker, child protection specialist, superintendent, principal,
712 teacher or other instructional personnel, school attendance
713 officer, school bus driver, district attorney, legal assistant to
714 a district attorney, county prosecutor, municipal prosecutor,
715 court reporter employed by a court, court administrator, clerk or

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

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

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

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

777 (4) A person is guilty of aggravated domestic violence who
778 commits aggravated assault as described in subsection (2) of this
779 section against a family or household member who resides with the
780 defendant or who formerly resided with the defendant, or a current
781 or former spouse, a person who has a current dating relationship
782 with the defendant, or a person with whom the defendant has had a
783 biological or legally adopted child and upon conviction, the
784 defendant shall be punished as provided under subsection (2) of
785 this section; however, upon a third or subsequent offense of

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

797 (5) "Dating relationship" means a social relationship of a
798 romantic or intimate nature.

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

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

809 **SECTION 10.** This act shall take effect and be in force from
810 and after July 1, 2004.

**Further, amend by striking the title in its entirety and
inserting in lieu thereof the following:**

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; TO PROVIDE THAT BEFORE A PERSON
7 MAY PROVIDE SERVICES AS A CHILD PROTECTION SPECIALIST, THE PERSON
8 MUST COMPLETE FOUR WEEKS OF INTENSIVE TRAINING AND MUST TAKE AND
9 RECEIVE A PASSING SCORE ON A CERTIFICATION TEST; TO PROVIDE THAT
10 UPON RECEIVING A PASSING SCORE ON THE CERTIFICATION TEST, THE
11 PERSON SHALL BE CERTIFIED AS A CHILD PROTECTION SPECIALIST BY THE
12 DEPARTMENT; TO PROVIDE THAT A PERSON QUALIFIED AS A CHILD
13 PROTECTION SPECIALIST SHALL NOT CONDUCT FORENSIC INTERVIEWS OF
14 CHILDREN UNTIL AFTER RECEIVING ADDITIONAL SPECIALIZED TRAINING; TO

15 PROVIDE THAT FOR THE PURPOSES OF PROVIDING SERVICES IN CHILD ABUSE
16 OR NEGLECT CASES, YOUTH COURT PROCEEDINGS, VULNERABLE ADULTS
17 CASES, AND SUCH OTHER CASES AS DESIGNATED BY THE EXECUTIVE
18 DIRECTOR OF HUMAN SERVICES, THE CASEWORKER OR SERVICE PROVIDER MAY
19 BE A CHILD PROTECTION SPECIALIST WHOSE WORK IS OVERSEEN BY A
20 LICENSED SOCIAL WORKER; TO PROVIDE THAT THE DEPARTMENT AND THE
21 OFFICE SHALL SEEK TO EMPLOY AND USE LICENSED SOCIAL WORKERS TO
22 PROVIDE THE SERVICES OF THE OFFICE, AND MAY EMPLOY AND USE CHILD
23 PROTECTION SPECIALISTS TO PROVIDE THOSE SERVICES ONLY IN COUNTIES
24 IN WHICH THERE IS NOT A SUFFICIENT NUMBER OF LICENSED SOCIAL
25 WORKERS TO ADEQUATELY PROVIDE THOSE SERVICES IN THE COUNTY; TO
26 AMEND SECTIONS 43-27-109, 43-21-261, 43-21-353, 43-21-355,
27 43-21-603, 43-47-7, 93-21-23 AND 97-3-7, MISSISSIPPI CODE OF 1972,
28 TO CONFORM TO THE PRECEDING PROVISIONS; AND FOR RELATED PURPOSES.

SS02\HB816A.J

John O. Gilbert
Secretary of the Senate