

By: Representative Whittington

To: Public Health and Human  
Services

## HOUSE BILL NO. 1129

1 AN ACT TO REENACT AND AMEND SECTION 43-21-355, MISSISSIPPI  
 2 CODE OF 1972, TO PROVIDE THAT A LICENSED PROFESSIONAL COUNSELOR  
 3 WHO, IN GOOD FAITH, REPORTS CERTAIN INFORMATION TO THE DEPARTMENT  
 4 OF HUMAN SERVICES REGARDING A NEGLECTED OR ABUSED CHILD SHALL BE  
 5 IMMUNE FROM LIABILITY FOR SUCH REPORTING; TO AMEND SECTION  
 6 41-21-97, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT RECORDS OF  
 7 PATIENTS BEING TREATED BY LICENSED PROFESSIONAL COUNSELORS SHALL  
 8 BE CONFIDENTIAL; TO AMEND SECTION 43-1-55, MISSISSIPPI CODE OF  
 9 1972, TO EXTEND THE DATE OF THE REPEALER ON SECTIONS 43-21-353 AND  
 10 43-21-355, WHICH REQUIRE THE REPORTING OF CERTAIN INFORMATION TO  
 11 THE DEPARTMENT OF HUMAN SERVICES REGARDING A NEGLECTED OR ABUSED  
 12 CHILD AND THAT PROVIDE IMMUNITY FOR SUCH REPORTING; TO REENACT  
 13 SECTION 43-21-353, MISSISSIPPI CODE OF 1972, WHICH REQUIRES THE  
 14 REPORTING OF CERTAIN INFORMATION TO THE DEPARTMENT OF HUMAN  
 15 SERVICES REGARDING A NEGLECTED OR ABUSED CHILD; AND FOR RELATED  
 16 PURPOSES.

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

18 **SECTION 1.** Section 43-21-355, Mississippi Code of 1972, is  
 19 reenact and amend as follows:

20 43-21-355. Any attorney, physician, dentist, intern,  
 21 resident, nurse, psychologist, social worker, child protection  
 22 specialist, child care giver, minister, law enforcement officer,  
 23 school attendance officer, public school district employee,  
 24 nonpublic school employee, licensed professional counselor, or any  
 25 other person participating in the making of a required report  
 26 pursuant to Section 43-21-353 or participating in the judicial  
 27 proceeding resulting therefrom shall be presumed to be acting in  
 28 good faith. Any person or institution reporting in good faith  
 29 shall be immune from any liability, civil or criminal, that might  
 30 otherwise be incurred or imposed.

31 **SECTION 2.** Section 41-21-97, Mississippi Code of 1972, is  
 32 amended as follows:

33 41-21-97. The hospital records of and information pertaining  
 34 to patients at treatment facilities or patients being treated by

35 physicians, psychologists (as defined in Section 73-31-3(e)),  
36 licensed professional counselors or licensed master social workers  
37 shall be confidential and shall be released only: (a) upon  
38 written authorization of the patient; (b) upon order of a court of  
39 competent jurisdiction; (c) when necessary for the continued  
40 treatment of a patient; (d) when, in the opinion of the director,  
41 release is necessary for the determination of eligibility for  
42 benefits, compliance with statutory reporting requirements, or  
43 other lawful purpose; or (e) when the patient has communicated to  
44 the treating physician, psychologist (as defined in Section  
45 73-31-3(e)) or master social worker an actual threat of physical  
46 violence against a clearly identified or reasonably identifiable  
47 potential victim or victims, and then the treating physician,  
48 psychologist (as defined in Section 73-31-3(e)) or master social  
49 worker may communicate the threat only to the potential victim or  
50 victims, a law enforcement agency, or the parent or guardian of a  
51 minor who is identified as a potential victim.

52 **SECTION 3.** Section 43-1-55, Mississippi Code of 1972, is  
53 amended as follows:

54 43-1-55. (1) The Office of Family and Children's Services  
55 shall devise formal social worker standards for employment and  
56 service delivery designed to measure the quality of services  
57 delivered to clients, as well as the timeliness of services. Each  
58 social worker shall be assessed annually by a supervisor who is  
59 knowledgeable in the standards promulgated. The standards shall  
60 be applicable to all social workers working under the office.

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

65 (a) In order to be employed as a child protection  
66 specialist, a person must have a bachelor's degree in either  
67 psychology, sociology, nursing, criminal justice or a related

68 field, or a graduate degree in either law, psychology, sociology,  
69 nursing, criminal justice or a related field. The determination  
70 of what is a related field shall be made by certification of the  
71 State Personnel Board; and

72 (b) Before a person may provide services as a child  
73 protection specialist, the person shall complete four (4) weeks of  
74 intensive training provided by the training unit of the Office of  
75 Family and Children's Services, and shall take and receive a  
76 passing score on the certification test administered by the  
77 training unit upon completion of the four-week training. Upon  
78 receiving a passing score on the certification test, the person  
79 shall be certified as a child protection specialist by the  
80 Department of Human Services. Any person who does not receive a  
81 passing score on the certification test shall not be employed or  
82 maintain employment as a child protection specialist for the  
83 department. Further, a person, qualified as a child protection  
84 specialist through the procedures set forth above, shall not  
85 conduct forensic interviews of children until the specialist  
86 receives additional specialized training in child forensic  
87 interview protocols and techniques by a course or curriculum  
88 approved by the Department of Human Services to be not less than  
89 forty (40) hours.

90 (3) For the purpose of providing services in child abuse or  
91 neglect cases, youth court proceedings, vulnerable adults cases,  
92 and such other cases as designated by the Executive Director of  
93 Human Services, the caseworker or service provider may be a child  
94 protection specialist whose work is overseen by a licensed social  
95 worker.

96 (4) The Department of Human Services and the Office of  
97 Family and Children's Services shall seek to employ and use  
98 licensed social workers to provide the services of the office, and  
99 may employ and use child protection specialists to provide those  
100 services only in counties in which there is not a sufficient

101 number of licensed social workers to adequately provide those  
102 services in the county.

103 (5) \* \* \* Sections \* \* \* 43-21-353 and 43-21-355 \* \* \* shall  
104 stand repealed on July 1, 2008. This section and Sections  
105 43-21-603, 43-27-109, 43-47-7, 93-21-23 and 97-3-7 shall stand  
106 repealed on July 1, 2006.

107 **SECTION 4.** Section 43-21-353, Mississippi Code of 1972, is  
108 reenacted as follows:

109 43-21-353. (1) Any attorney, physician, dentist, intern,  
110 resident, nurse, psychologist, social worker, child protection  
111 specialist, child care giver, minister, law enforcement officer,  
112 public or private school employee or any other person having  
113 reasonable cause to suspect that a child is a neglected child or  
114 an abused child, shall cause an oral report to be made immediately  
115 by telephone or otherwise and followed as soon thereafter as  
116 possible by a report in writing to the Department of Human  
117 Services, and immediately a referral shall be made by the  
118 Department of Human Services to the youth court intake unit, which  
119 unit shall promptly comply with Section 43-21-357. Where  
120 appropriate, the Department of Human Services shall additionally  
121 make a referral to the youth court prosecutor. Upon receiving a  
122 report that a child has been sexually abused, or burned, tortured,  
123 mutilated or otherwise physically abused in such a manner as to  
124 cause serious bodily harm, or upon receiving any report of abuse  
125 that would be a felony under state or federal law, the Department  
126 of Human Services shall immediately notify the law enforcement  
127 agency in whose jurisdiction the abuse occurred and shall notify  
128 the appropriate prosecutor within forty-eight (48) hours, and the  
129 Department of Human Services shall have the duty to provide the  
130 law enforcement agency all the names and facts known at the time  
131 of the report; this duty shall be of a continuing nature. The law  
132 enforcement agency and the Department of Human Services shall  
133 investigate the reported abuse immediately and shall file a

134 preliminary report with the appropriate prosecutor's office within  
135 twenty-four (24) hours and shall make additional reports as new or  
136 additional information or evidence becomes available. The  
137 Department of Human Services shall advise the clerk of the youth  
138 court and the youth court prosecutor of all cases of abuse  
139 reported to the department within seventy-two (72) hours and shall  
140 update such report as information becomes available.

141 (2) Any report to the Department of Human Services shall  
142 contain the names and addresses of the child and his parents or  
143 other persons responsible for his care, if known, the child's age,  
144 the nature and extent of the child's injuries, including any  
145 evidence of previous injuries and any other information that might  
146 be helpful in establishing the cause of the injury and the  
147 identity of the perpetrator.

148 (3) The Department of Human Services shall maintain a  
149 statewide incoming wide-area telephone service or similar service  
150 for the purpose of receiving reports of suspected cases of child  
151 abuse; provided that any attorney, physician, dentist, intern,  
152 resident, nurse, psychologist, social worker, child protection  
153 specialist, child care giver, minister, law enforcement officer or  
154 public or private school employee who is required to report under  
155 subsection (1) of this section shall report in the manner required  
156 in subsection (1).

157 (4) Reports of abuse and neglect made under this chapter and  
158 the identity of the reporter are confidential except when the  
159 court in which the investigation report is filed, in its  
160 discretion, determines the testimony of the person reporting to be  
161 material to a judicial proceeding or when the identity of the  
162 reporter is released to law enforcement agencies and the  
163 appropriate prosecutor pursuant to subsection (1). Reports made  
164 under this section to any law enforcement agency or prosecutorial  
165 officer are for the purpose of criminal investigation and  
166 prosecution only and no information from these reports may be

167 released to the public except as provided by Section 43-21-261.  
168 Disclosure of any information by the prosecutor shall be according  
169 to the Mississippi Uniform Rules of Circuit and County Court  
170 Procedure. The identity of the reporting party shall not be  
171 disclosed to anyone other than law enforcement officers or  
172 prosecutors without an order from the appropriate youth court.  
173 Any person disclosing any reports made under this section in a  
174 manner not expressly provided for in this section or Section  
175 43-21-261, shall be guilty of a misdemeanor and subject to the  
176 penalties prescribed by Section 43-21-267.

177 (5) All final dispositions of law enforcement investigations  
178 described in subsection (1) of this section shall be determined  
179 only by the appropriate prosecutor or court. All final  
180 dispositions of investigations by the Department of Human Services  
181 as described in subsection (1) of this section shall be determined  
182 only by the youth court. Reports made under subsection (1) of  
183 this section by the Department of Human Services to the law  
184 enforcement agency and to the district attorney's office shall  
185 include the following, if known to the department:

186 (a) The name and address of the child;  
187 (b) The names and addresses of the parents;  
188 (c) The name and address of the suspected perpetrator;  
189 (d) The names and addresses of all witnesses, including  
190 the reporting party if a material witness to the abuse;

191 (e) A brief statement of the facts indicating that the  
192 child has been abused and any other information from the agency  
193 files or known to the social worker or child protection specialist  
194 making the investigation, including medical records or other  
195 records, which may assist law enforcement or the district attorney  
196 in investigating and/or prosecuting the case; and

197 (f) What, if any, action is being taken by the  
198 Department of Human Services.

199           (6) In any investigation of a report made under this chapter  
200 of the abuse or neglect of a child as defined in Section  
201 43-21-105(m), the Department of Human Services may request the  
202 appropriate law enforcement officer with jurisdiction to accompany  
203 the department in its investigation, and in such cases the law  
204 enforcement officer shall comply with such request.

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

209           (8) If a report is made directly to the Department of Human  
210 Services that a child has been abused or neglected in an  
211 out-of-home setting, a referral shall be made immediately to the  
212 law enforcement agency in whose jurisdiction the abuse occurred  
213 and the department shall notify the district attorney's office  
214 within forty-eight (48) hours of such report. The Department of  
215 Human Services shall investigate the out-of-home setting report of  
216 abuse or neglect to determine whether the child who is the subject  
217 of the report, or other children in the same environment, comes  
218 within the jurisdiction of the youth court and shall report to the  
219 youth court the department's findings and recommendation as to  
220 whether the child who is the subject of the report or other  
221 children in the same environment require the protection of the  
222 youth court. The law enforcement agency shall investigate the  
223 reported abuse immediately and shall file a preliminary report  
224 with the district attorney's office within forty-eight (48) hours  
225 and shall make additional reports as new information or evidence  
226 becomes available. If the out-of-home setting is a licensed  
227 facility, an additional referral shall be made by the Department  
228 of Human Services to the licensing agency. The licensing agency  
229 shall investigate the report and shall provide the Department of  
230 Human Services, the law enforcement agency and the district  
231 attorney's office with their written findings from such

232 investigation as well as that licensing agency's recommendations  
233 and actions taken.

234         **SECTION 5.** This act shall take effect and be in force from  
235 and after July 1, 2006.