

By: Senator(s) Nunnelee

To: Public Health and Welfare

SENATE BILL NO. 2388

1 AN ACT TO AMEND SECTION 43-1-55, MISSISSIPPI CODE OF 1972, TO
2 DELETE THE AUTOMATIC REPEALER ON SECTIONS OF THE CODE RELATING TO
3 CHILD PROTECTION SPECIALISTS EMPLOYED BY THE DEPARTMENT OF HUMAN
4 SERVICES; TO REENACT SECTIONS 43-21-261, 43-21-353, 43-21-355,
5 43-21-603, 43-27-109, 43-47-7, 93-21-23 AND 97-3-7, MISSISSIPPI
6 CODE OF 1972, WHICH RELATE TO THE RESPONSIBILITIES OF CHILD
7 PROTECTION SPECIALISTS; AND FOR RELATED PURPOSES.

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

9 SECTION 1. Section 43-1-55, Mississippi Code of 1972, is
10 amended as follows:

11 43-1-55. (1) The Office of Family and Children's Services
12 shall devise formal social worker standards for employment and
13 service delivery designed to measure the quality of services
14 delivered to clients, as well as the timeliness of services. Each
15 social worker shall be assessed annually by a supervisor who is
16 knowledgeable in the standards promulgated. The standards shall
17 be applicable to all social workers working under the office.

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

22 (a) In order to be employed as a child protection
23 specialist, a person must have a bachelor's degree in either
24 psychology, sociology, nursing, criminal justice or a related
25 field, or a graduate degree in either law, psychology, sociology,
26 nursing, criminal justice or a related field. The determination
27 of what is a related field shall be made by certification of the
28 State Personnel Board; and

29 (b) Before a person may provide services as a child
30 protection specialist, the person shall complete four (4) weeks of
31 intensive training provided by the training unit of the Office of
32 Family and Children's Services, and shall take and receive a
33 passing score on the certification test administered by the
34 training unit upon completion of the four-week training. Upon
35 receiving a passing score on the certification test, the person
36 shall be certified as a child protection specialist by the
37 Department of Human Services. Any person who does not receive a
38 passing score on the certification test shall not be employed or
39 maintain employment as a child protection specialist for the
40 department. Further, a person, qualified as a child protection
41 specialist through the procedures set forth above, shall not
42 conduct forensic interviews of children until the specialist
43 receives additional specialized training in child forensic
44 interview protocols and techniques by a course or curriculum
45 approved by the Department of Human Services to be not less than
46 forty (40) hours.

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

53 (4) The Department of Human Services and the Office of
54 Family and Children's Services shall seek to employ and use
55 licensed social workers to provide the services of the office, and
56 may employ and use child protection specialists to provide those
57 services only in counties in which there is not a sufficient
58 number of licensed social workers to adequately provide those
59 services in the county.

60 * * *

61 **SECTION 2.** Section 43-21-261, Mississippi Code of 1972, is
62 reenacted as follows:

63 43-21-261. (1) Except as otherwise provided in this
64 section, records involving children shall not be disclosed, other
65 than to necessary staff of the youth court, except pursuant to an
66 order of the youth court specifying the person or persons to whom
67 the records may be disclosed, the extent of the records which may
68 be disclosed and the purpose of the disclosure. Such court orders
69 for disclosure shall be limited to those instances in which the
70 youth court concludes, in its discretion, that disclosure is
71 required for the best interests of the child, the public safety or
72 the functioning of the youth court and then only to the following
73 persons:

74 (a) The judge of another youth court or member of
75 another youth court staff;

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

78 (c) A judge of any other court or members of another
79 court staff;

80 (d) Representatives of a public or private agency
81 providing supervision or having custody of the child under order
82 of the youth court;

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

89 (f) The Mississippi Employment Security Commission, or
90 its duly authorized representatives, for the purpose of a child's
91 enrollment into the Job Corps Training Program as authorized by
92 Title IV of the Comprehensive Employment Training Act of 1973 (29
93 USCS Section 923 et seq.). However, no records, reports,

94 investigations or information derived therefrom pertaining to
95 child abuse or neglect shall be disclosed; and

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

100 Law enforcement agencies may disclose information to the
101 public concerning the taking of a child into custody for the
102 commission of a delinquent act without the necessity of an order
103 from the youth court. The information released shall not identify
104 the child or his address unless the information involves a child
105 convicted as an adult.

106 (2) Any records involving children which are disclosed under
107 an order of the youth court and the contents thereof shall be kept
108 confidential by the person or agency to whom the record is
109 disclosed except as provided in the order. Any further disclosure
110 of any records involving children shall be made only under an
111 order of the youth court as provided in this section.

112 (3) Upon request, the parent, guardian or custodian of the
113 child who is the subject of a youth court cause or any attorney
114 for such parent, guardian or custodian, shall have the right to
115 inspect any record, report or investigation which is to be
116 considered by the youth court at a hearing, except that the
117 identity of the reporter shall not be released, nor the name of
118 any other person where the person or agency making the information
119 available finds that disclosure of the information would be likely
120 to endanger the life or safety of such person.

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

125 (5) (a) The youth court prosecutor or prosecutors, the
126 county attorney, the district attorney, the youth court defender

127 or defenders, or any attorney representing a child shall have the
128 right to inspect any law enforcement record involving children.

129 (b) The Department of Human Services shall disclose to
130 a county prosecuting attorney or district attorney any and all
131 records resulting from an investigation into suspected child abuse
132 or neglect when the case has been referred by the Department of
133 Human Services to the county prosecuting attorney or district
134 attorney for criminal prosecution.

135 (c) Agency records made confidential under the
136 provisions of this section may be disclosed to a court of
137 competent jurisdiction.

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

147 (7) Information concerning an investigation into a report of
148 child abuse or child neglect may be disclosed without further
149 order of the youth court to any interagency child abuse task force
150 established in any county or municipality by order of the youth
151 court of that county or municipality.

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

156 (9) Names and addresses of juveniles adjudicated as
157 delinquent for murder, manslaughter, burglary, arson, armed
158 robbery, aggravated assault, any sex offense as defined in Section
159 45-33-23, for any violation of Section 41-29-139(a)(1) or for any

160 violation of Section 63-11-30, shall not be held confidential and
161 shall be made available to the public.

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

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

170 (12) A classification hearing officer of the State
171 Department of Corrections, as provided in Section 47-5-103, shall
172 have the right to inspect any youth court records, excluding abuse
173 and neglect records, of any offender in the custody of the
174 department who as a child or minor was a juvenile offender or was
175 the subject of a youth court cause of action, and the State Parole
176 Board, as provided in Section 47-7-17, shall have the right to
177 inspect such records when the offender becomes eligible for
178 parole.

179 (13) The youth court shall notify the Department of Public
180 Safety of the name, and any other identifying information such
181 department may require, of any child who is adjudicated delinquent
182 as a result of a violation of the Uniform Controlled Substances
183 Law.

184 (14) The Administrative Office of Courts shall have the
185 right to inspect any youth court records in order that the number
186 of youthful offenders, abused, neglected, truant and dependent
187 children, as well as children in need of special care and children
188 in need of supervision, may be tracked with specificity through
189 the youth court and adult justice system, and to utilize tracking
190 forms for such purpose.

191 (15) Upon a request by a youth court, the Administrative
192 Office of Courts shall disclose all information at its disposal

193 concerning any previous youth court intakes alleging that a child
194 was a delinquent child, child in need of supervision, child in
195 need of special care, truant child, abused child or neglected
196 child, as well as any previous youth court adjudications for the
197 same and all dispositional information concerning a child who at
198 the time of such request comes under the jurisdiction of the youth
199 court making such request.

200 (16) In every case where an abuse or neglect allegation has
201 been made, the confidentiality provisions of this section shall
202 not apply to prohibit access to a child's records by any state
203 regulatory agency, any state or local prosecutorial agency or law
204 enforcement agency; however, no identifying information concerning
205 the child in question may be released to the public by such agency
206 except as otherwise provided herein.

207 (17) In every case where there is any indication or
208 suggestion of either abuse or neglect and a child's physical
209 condition is medically labeled as medically "serious" or
210 "critical" or a child dies, the confidentiality provisions of this
211 section shall not apply. In cases of child deaths, the following
212 information may be released by the Mississippi Department of Human
213 Services: (a) Child's name; (b) address or location; (c)
214 verification from the Department of Human Services of case status
215 (no case or involvement, case exists, open or active case, case
216 closed); (d) if a case exists, the type of report or case
217 (physical abuse, neglect, etc.), date of intake(s) and
218 investigation(s), and case disposition (substantiated or
219 unsubstantiated). Notwithstanding the aforesaid, the
220 confidentiality provisions of this section shall continue if there
221 is a pending or planned investigation by any local, state or
222 federal governmental agency or institution.

223 (18) Any member of a foster care review board designated by
224 the Department of Human Services shall have the right to inspect

225 youth court records relating to the abuse, neglect or child in
226 need of supervision cases assigned to such member for review.

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

233 **SECTION 3.** Section 43-21-353, Mississippi Code of 1972, is
234 reenacted as follows:

235 43-21-353. (1) Any attorney, physician, dentist, intern,
236 resident, nurse, psychologist, social worker, child protection
237 specialist, child care giver, minister, law enforcement officer,
238 public or private school employee or any other person having
239 reasonable cause to suspect that a child is a neglected child or
240 an abused child, shall cause an oral report to be made immediately
241 by telephone or otherwise and followed as soon thereafter as
242 possible by a report in writing to the Department of Human
243 Services, and immediately a referral shall be made by the
244 Department of Human Services to the youth court intake unit, which
245 unit shall promptly comply with Section 43-21-357. Where
246 appropriate, the Department of Human Services shall additionally
247 make a referral to the youth court prosecutor. Upon receiving a
248 report that a child has been sexually abused, or burned, tortured,
249 mutilated or otherwise physically abused in such a manner as to
250 cause serious bodily harm, or upon receiving any report of abuse
251 that would be a felony under state or federal law, the Department
252 of Human Services shall immediately notify the law enforcement
253 agency in whose jurisdiction the abuse occurred and shall notify
254 the appropriate prosecutor within forty-eight (48) hours, and the
255 Department of Human Services shall have the duty to provide the
256 law enforcement agency all the names and facts known at the time
257 of the report; this duty shall be of a continuing nature. The law

258 enforcement agency and the Department of Human Services shall
259 investigate the reported abuse immediately and shall file a
260 preliminary report with the appropriate prosecutor's office within
261 twenty-four (24) hours and shall make additional reports as new or
262 additional information or evidence becomes available. The
263 Department of Human Services shall advise the clerk of the youth
264 court and the youth court prosecutor of all cases of abuse
265 reported to the department within seventy-two (72) hours and shall
266 update such report as information becomes available.

267 (2) Any report to the Department of Human Services shall
268 contain the names and addresses of the child and his parents or
269 other persons responsible for his care, if known, the child's age,
270 the nature and extent of the child's injuries, including any
271 evidence of previous injuries and any other information that might
272 be helpful in establishing the cause of the injury and the
273 identity of the perpetrator.

274 (3) The Department of Human Services shall maintain a
275 statewide incoming wide-area telephone service or similar service
276 for the purpose of receiving reports of suspected cases of child
277 abuse; provided that any attorney, physician, dentist, intern,
278 resident, nurse, psychologist, social worker, child protection
279 specialist, child care giver, minister, law enforcement officer or
280 public or private school employee who is required to report under
281 subsection (1) of this section shall report in the manner required
282 in subsection (1).

283 (4) Reports of abuse and neglect made under this chapter and
284 the identity of the reporter are confidential except when the
285 court in which the investigation report is filed, in its
286 discretion, determines the testimony of the person reporting to be
287 material to a judicial proceeding or when the identity of the
288 reporter is released to law enforcement agencies and the
289 appropriate prosecutor pursuant to subsection (1). Reports made
290 under this section to any law enforcement agency or prosecutorial

291 officer are for the purpose of criminal investigation and
292 prosecution only and no information from these reports may be
293 released to the public except as provided by Section 43-21-261.
294 Disclosure of any information by the prosecutor shall be according
295 to the Mississippi Uniform Rules of Circuit and County Court
296 Procedure. The identity of the reporting party shall not be
297 disclosed to anyone other than law enforcement officers or
298 prosecutors without an order from the appropriate youth court.
299 Any person disclosing any reports made under this section in a
300 manner not expressly provided for in this section or Section
301 43-21-261, shall be guilty of a misdemeanor and subject to the
302 penalties prescribed by Section 43-21-267.

303 (5) All final dispositions of law enforcement investigations
304 described in subsection (1) of this section shall be determined
305 only by the appropriate prosecutor or court. All final
306 dispositions of investigations by the Department of Human Services
307 as described in subsection (1) of this section shall be determined
308 only by the youth court. Reports made under subsection (1) of
309 this section by the Department of Human Services to the law
310 enforcement agency and to the district attorney's office shall
311 include the following, if known to the department:

- 312 (a) The name and address of the child;
- 313 (b) The names and addresses of the parents;
- 314 (c) The name and address of the suspected perpetrator;
- 315 (d) The names and addresses of all witnesses, including
316 the reporting party if a material witness to the abuse;
- 317 (e) A brief statement of the facts indicating that the
318 child has been abused and any other information from the agency
319 files or known to the social worker or child protection specialist
320 making the investigation, including medical records or other
321 records, which may assist law enforcement or the district attorney
322 in investigating and/or prosecuting the case; and

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

325 (6) In any investigation of a report made under this chapter
326 of the abuse or neglect of a child as defined in Section
327 43-21-105(m), the Department of Human Services may request the
328 appropriate law enforcement officer with jurisdiction to accompany
329 the department in its investigation, and in such cases the law
330 enforcement officer shall comply with such request.

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

335 (8) If a report is made directly to the Department of Human
336 Services that a child has been abused or neglected in an
337 out-of-home setting, a referral shall be made immediately to the
338 law enforcement agency in whose jurisdiction the abuse occurred
339 and the department shall notify the district attorney's office
340 within forty-eight (48) hours of such report. The Department of
341 Human Services shall investigate the out-of-home setting report of
342 abuse or neglect to determine whether the child who is the subject
343 of the report, or other children in the same environment, comes
344 within the jurisdiction of the youth court and shall report to the
345 youth court the department's findings and recommendation as to
346 whether the child who is the subject of the report or other
347 children in the same environment require the protection of the
348 youth court. The law enforcement agency shall investigate the
349 reported abuse immediately and shall file a preliminary report
350 with the district attorney's office within forty-eight (48) hours
351 and shall make additional reports as new information or evidence
352 becomes available. If the out-of-home setting is a licensed
353 facility, an additional referral shall be made by the Department
354 of Human Services to the licensing agency. The licensing agency
355 shall investigate the report and shall provide the Department of

356 Human Services, the law enforcement agency and the district
357 attorney's office with their written findings from such
358 investigation as well as that licensing agency's recommendations
359 and actions taken.

360 **SECTION 4.** Section 43-21-355, Mississippi Code of 1972, is
361 reenacted as follows:

362 43-21-355. Any attorney, physician, dentist, intern,
363 resident, nurse, psychologist, social worker, child protection
364 specialist, child care giver, minister, law enforcement officer,
365 school attendance officer, public school district employee,
366 nonpublic school employee, or any other person participating in
367 the making of a required report pursuant to Section 43-21-353 or
368 participating in the judicial proceeding resulting therefrom shall
369 be presumed to be acting in good faith. Any person or institution
370 reporting in good faith shall be immune from any liability, civil
371 or criminal, that might otherwise be incurred or imposed.

372 **SECTION 5.** Section 43-21-603, Mississippi Code of 1972, is
373 reenacted as follows:

374 43-21-603. (1) At the beginning of each disposition
375 hearing, the judge shall inform the parties of the purpose of the
376 hearing.

377 (2) All testimony shall be under oath unless waived by all
378 parties and may be in narrative form. The court may consider any
379 evidence that is material and relevant to the disposition of the
380 cause, including hearsay and opinion evidence. At the conclusion
381 of the evidence, the youth court shall give the parties an
382 opportunity to present oral argument.

383 (3) If the child has been adjudicated a delinquent child,
384 before entering a disposition order, the youth court should
385 consider, among others, the following relevant factors:

- 386 (a) The nature of the offense;
- 387 (b) The manner in which the offense was committed;

- 388 (c) The nature and number of a child's prior
389 adjudicated offenses;
- 390 (d) The child's need for care and assistance;
- 391 (e) The child's current medical history, including
392 medication and diagnosis;
- 393 (f) The child's mental health history, which may
394 include, but not be limited to, the Massachusetts Youth Screening
395 Instrument version 2 (MAYSI-2);
- 396 (g) Copies of the child's cumulative record from the
397 last school of record, including special education records, if
398 applicable;
- 399 (h) Recommendation from the school of record based on
400 areas of remediation needed;
- 401 (i) Disciplinary records from the school of record; and
- 402 (j) Records of disciplinary actions outside of the
403 school setting.

404 (4) If the child has been adjudicated a child in need of
405 supervision, before entering a disposition order, the youth court
406 should consider, among others, the following relevant factors:

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

410 (5) If the child has been adjudicated a neglected child or
411 an abused child, before entering a disposition order, the youth
412 court shall consider, among others, the following relevant
413 factors:

- 414 (a) The child's physical and mental conditions;
- 415 (b) The child's need of assistance;
- 416 (c) The manner in which the parent, guardian or
417 custodian participated in, tolerated or condoned the abuse,
418 neglect or abandonment of the child;
- 419 (d) The ability of a child's parent, guardian or
420 custodian to provide proper supervision and care of a child; and

421 (e) Relevant testimony and recommendations, where
422 available, from the foster parent of the child, the grandparents
423 of the child, the guardian ad litem of the child, representatives
424 of any private care agency that has cared for the child, the
425 social worker or child protection specialist assigned to the case,
426 and any other relevant testimony pertaining to the case.

427 (6) After consideration of all the evidence and the relevant
428 factors, the youth court shall enter a disposition order that
429 shall not recite any of the facts or circumstances upon which the
430 disposition is based, nor shall it recite that a child has been
431 found guilty; but it shall recite that a child is found to be a
432 delinquent child, a child in need of supervision, a neglected
433 child or an abused child.

434 (7) If the youth court orders that the custody or
435 supervision of a child who has been adjudicated abused or
436 neglected be placed with the Department of Human Services or any
437 other person or public or private agency, other than the child's
438 parent, guardian or custodian, the youth court shall find and the
439 disposition order shall recite that:

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

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

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

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

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

456 (ii) The parent has been convicted of murder of
457 another child of that parent, voluntary manslaughter of another
458 child of that parent, aided or abetted, attempted, conspired or
459 solicited to commit that murder or voluntary manslaughter, or a
460 felony assault that results in the serious bodily injury to the
461 surviving child or another child of that parent; or

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

464 (iv) That the effect of the continuation of the
465 child's residence within his own home would be contrary to the
466 welfare of the child and that placement of the child in foster
467 care is in the best interests of the child.

468 Once the reasonable efforts requirement is bypassed, the
469 court shall have a permanency hearing under Section 43-21-613
470 within thirty (30) days of the finding.

471 (8) Upon a written motion by a party, the youth court shall
472 make written findings of fact and conclusions of law upon which it
473 relies for the disposition order. If the disposition ordered by
474 the youth court includes placing the child in the custody of a
475 training school, an admission packet shall be prepared for the
476 child that contains the following information:

477 (a) The child's current medical history, including
478 medications and diagnosis;

479 (b) The child's mental health history;

480 (c) Copies of the child's cumulative record from the
481 last school of record, including special education records, if
482 reasonably available;

483 (d) Recommendation from the school of record based on
484 areas of remediation needed;

485 (e) Disciplinary records from the school of record; and

486 (f) Records of disciplinary actions outside of the
487 school setting, if reasonably available.

488 Only individuals who are permitted under the Health Insurance
489 Portability and Accountability Act of 1996 (HIPAA) shall have
490 access to a child's medical records which are contained in an
491 admission packet. The youth court shall provide the admission
492 packet to the training school at or before the child's arrival at
493 the training school. The admittance of any child to a training
494 school shall take place between the hours of 8:00 a.m. and 3:00
495 p.m. on designated admission days.

496 (9) When a child in the jurisdiction of the Youth Court is
497 committed to the custody of the Mississippi Department of Human
498 Services and is believed to be in need of treatment for a mental
499 or emotional disability or infirmity, the Department of Human
500 Services shall file an affidavit alleging that the child is in
501 need of mental health services with the Youth Court. The Youth
502 Court shall refer the child to the appropriate community mental
503 health center for evaluation pursuant to Section 41-21-67. If
504 said prescreening evaluation recommends residential care, the
505 Youth Court shall proceed with civil commitment pursuant to
506 Sections 41-21-61 et seq., 43-21-315 and 43-21-611, and the
507 Department of Mental Health, once commitment is ordered, shall
508 provide appropriate care, treatment and services for at least as
509 many adolescents as were provided services in fiscal year 2004 in
510 its facilities.

511 **SECTION 6.** Section 43-27-109, Mississippi Code of 1972, is
512 reenacted as follows:

513 43-27-109. The Department of Human Services may employ a
514 sufficient number of new social workers, child protection
515 specialists, youth counselors and clerical staff to reduce the
516 case load sizes for social workers and youth counselors of the
517 department and to reduce the work load on clerical staff, if funds
518 are appropriated to the department for that purpose.

519 **SECTION 7.** Section 43-47-7, Mississippi Code of 1972, is
520 reenacted as follows:

521 43-47-7. (1) (a) Except as otherwise provided by Section
522 43-47-37 for vulnerable adults in care facilities, any person
523 including, but not limited to, the following, who knows or
524 suspects that a vulnerable adult has been or is being abused,
525 neglected or exploited shall immediately report such knowledge or
526 suspicion to the Department of Human Services or to the county
527 department of human services where the vulnerable adult is
528 located:

529 (i) Attorney, physician, osteopathic physician,
530 medical examiner, chiropractor or nurse engaged in the admission,
531 examination, care or treatment of vulnerable adults;

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

534 (iii) Practitioner who relies solely on spiritual
535 means for healing;

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

538 (v) State, county or municipal criminal justice
539 employee or law enforcement officer;

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

542 (vii) Accountant, stockbroker, financial advisor
543 or consultant, insurance agent or consultant, investment advisor
544 or consultant, financial planner, or any officer or employee of a
545 bank, savings and loan, credit union or any other financial
546 service provider.

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

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

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

555 (iii) Name, address and telephone number of each
556 alleged perpetrator.

557 (iv) Name, address and telephone number of the
558 caregiver of the vulnerable adult, if different from the alleged
559 perpetrator.

560 (v) Description of the neglect, exploitation,
561 physical or psychological injuries sustained.

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

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

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

572 (c) The department, or its designees, shall report to
573 an appropriate criminal investigative or prosecutive authority any
574 person required by this section to report or who fails to comply
575 with this section. A person who fails to make a report as
576 required under this subsection or who, because of the
577 circumstances, should have known or suspected beyond a reasonable
578 doubt that a vulnerable adult suffers from exploitation, abuse,
579 neglect or self-neglect but who knowingly fails to comply with
580 this section shall, upon conviction, be guilty of a misdemeanor
581 and shall be punished by a fine not exceeding Five Thousand
582 Dollars (\$5,000.00), or by imprisonment in the county jail for not

583 more than six (6) months, or both such fine and imprisonment.
584 However, for purposes of this subsection (1), any recognized legal
585 financial transaction shall not be considered cause to report the
586 knowledge or suspicion of the financial exploitation of a
587 vulnerable adult. If a person convicted under this section is a
588 member of a profession or occupation that is licensed, certified
589 or regulated by the state, the court shall notify the appropriate
590 licensing, certifying or regulating entity of the conviction.

591 (2) Reports received by law enforcement authorities or other
592 agencies shall be forwarded immediately to the Department of Human
593 Services or the county department of human services. The
594 Department of Human Services shall investigate the reported abuse,
595 neglect or exploitation immediately and shall file a preliminary
596 report of its findings with the Office of the Attorney General
597 within forty-eight (48) hours, and shall make additional reports
598 as new information or evidence becomes available. The Department
599 of Human Services, upon request, shall forward a statement to the
600 person making the initial report required by this section as to
601 what action is being taken, if any.

602 (3) The report may be made orally or in writing, but where
603 made orally, it shall be followed up by a written report. A
604 person who fails to report or to otherwise comply with this
605 section, as provided herein, shall have no civil or criminal
606 liability, other than that expressly provided for in this section,
607 to any person or entity in connection with any failure to report
608 or to otherwise comply with the requirements of this section.

609 (4) Anyone who makes a report required by this section or
610 who testifies or participates in any judicial proceedings arising
611 from the report or who participates in a required investigation or
612 evaluation shall be presumed to be acting in good faith and in so
613 doing shall be immune from liability, civil or criminal, that
614 might otherwise be incurred or imposed. However, the immunity

615 provided under this subsection shall not apply to any suspect or
616 perpetrator of any abuse, neglect or exploitation.

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

621 (6) The Executive Director of Human Services shall establish
622 a statewide central register of reports made pursuant to this
623 section. The central register shall be capable of receiving
624 reports of vulnerable adults in need of protective services seven
625 (7) days a week, twenty-four (24) hours a day. To effectuate this
626 purpose, the executive director shall establish a single toll-free
627 statewide phone number that all persons may use to report
628 vulnerable adults in need of protective services, and that all
629 persons authorized by subsection (7) of this section may use for
630 determining the existence of prior reports in order to evaluate
631 the condition or circumstances of the vulnerable adult before
632 them. Such oral reports and evidence of previous reports shall be
633 transmitted to the appropriate county department of human
634 services. The central register shall include, but not be limited
635 to, the following information: the name and identifying
636 information of the individual reported, the county department of
637 human services responsible for the investigation of each such
638 report, the names, affiliations and purposes of any person
639 requesting or receiving information which the executive director
640 believes might be helpful in the furtherance of the purposes of
641 this chapter, the name, address, birth date, social security
642 number of the perpetrator of abuse, neglect and/or exploitation,
643 and the type of abuse, neglect and/or exploitation of which there
644 was substantial evidence upon investigation of the report. The
645 central register shall inform the person making reports required
646 under this section of his or her right to request statements from
647 the department as to what action is being taken, if any.

648 Each person, business, organization or other entity, whether
649 public or private, operated for profit, operated for nonprofit or
650 a voluntary unit of government not responsible for law enforcement
651 providing care, supervision or treatment of vulnerable adults
652 shall conduct criminal history records checks on each new employee
653 of the entity who provides, and/or would provide direct patient
654 care or services to adults or vulnerable persons, as provided in
655 Section 43-11-13.

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

661 (7) Reports made pursuant to this section, reports written
662 or photographs taken concerning such reports in the possession of
663 the Department of Human Services or the county department of human
664 services shall be confidential and shall only be made available
665 to:

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

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

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

674 (d) A district attorney or other law enforcement
675 official.

676 Notwithstanding the provisions of paragraph (b) of this
677 subsection, the department may not disclose a report of the
678 abandonment, exploitation, abuse, neglect or self-neglect of a
679 vulnerable adult to the vulnerable adult's guardian,
680 attorney-in-fact, surrogate decision maker, or caregiver who is a

681 perpetrator or alleged perpetrator of the abandonment,
682 exploitation, abuse or neglect of the vulnerable adult.

683 Any person given access to the names or other information
684 identifying the subject of the report, except the subject of the
685 report, shall not divulge or make public such identifying
686 information unless he is a district attorney or other law
687 enforcement official and the purpose is to initiate court action.
688 Any person who willfully permits the release of any data or
689 information obtained pursuant to this section to persons or
690 agencies not permitted to such access by this section shall be
691 guilty of a misdemeanor.

692 (8) Upon reasonable cause to believe that a caretaker or
693 other person has abused, neglected or exploited a vulnerable
694 adult, the department shall promptly notify the district attorney
695 of the county in which the vulnerable adult is located and the
696 Office of the Attorney General, except as provided in Section
697 43-47-37(2).

698 **SECTION 8.** Section 93-21-23, Mississippi Code of 1972, is
699 reenacted as follows:

700 93-21-23. Any licensed doctor of medicine, licensed doctor
701 of dentistry, intern, resident or registered nurse, psychologist,
702 social worker, child protection specialist, preacher, teacher,
703 attorney, law enforcement officer, or any other person or
704 institution participating in the making of a report pursuant to
705 this chapter or participating in judicial proceedings resulting
706 therefrom shall be presumed to be acting in good faith, and if
707 found to have acted in good faith shall be immune from any
708 liability, civil or criminal, that might otherwise be incurred or
709 imposed. The reporting of an abused person shall not constitute a
710 breach of confidentiality.

711 **SECTION 9.** Section 97-3-7, Mississippi Code of 1972, is
712 reenacted as follows:

713 97-3-7. (1) A person is guilty of simple assault if he (a)
714 attempts to cause or purposely, knowingly or recklessly causes
715 bodily injury to another; or (b) negligently causes bodily injury
716 to another with a deadly weapon or other means likely to produce
717 death or serious bodily harm; or (c) attempts by physical menace
718 to put another in fear of imminent serious bodily harm; and, upon
719 conviction, he shall be punished by a fine of not more than Five
720 Hundred Dollars (\$500.00) or by imprisonment in the county jail
721 for not more than six (6) months, or both. However, a person
722 convicted of simple assault (a) upon a statewide elected official,
723 law enforcement officer, fireman, emergency medical personnel,
724 public health personnel, social worker or child protection
725 specialist employed by the Department of Human Services or another
726 agency, superintendent, principal, teacher or other instructional
727 personnel, school attendance officer, school bus driver, or a
728 judge of a circuit, chancery, county, justice or youth court or a
729 judge of the Court of Appeals or a justice of the Supreme Court,
730 district attorney, legal assistant to a district attorney, county
731 prosecutor, municipal prosecutor, court reporter employed by a
732 court, court administrator, clerk or deputy clerk of the court, or
733 public defender, while such statewide elected official, judge or
734 justice, law enforcement officer, fireman, emergency medical
735 personnel, public health personnel, social worker, child
736 protection specialist, superintendent, principal, teacher or other
737 instructional personnel, school attendance officer, school bus
738 driver, district attorney, legal assistant to a district attorney,
739 county prosecutor, municipal prosecutor, court reporter employed
740 by a court, court administrator, clerk or deputy clerk of the
741 court, or public defender is acting within the scope of his duty,
742 office or employment, or (b) upon a legislator while the
743 Legislature is in regular or extraordinary session or while
744 otherwise acting within the scope of his duty, office or
745 employment, shall be punished by a fine of not more than One

746 Thousand Dollars (\$1,000.00) or by imprisonment for not more than
747 five (5) years, or both.

748 (2) A person is guilty of aggravated assault if he (a)
749 attempts to cause serious bodily injury to another, or causes such
750 injury purposely, knowingly or recklessly under circumstances
751 manifesting extreme indifference to the value of human life; or
752 (b) attempts to cause or purposely or knowingly causes bodily
753 injury to another with a deadly weapon or other means likely to
754 produce death or serious bodily harm; and, upon conviction, he
755 shall be punished by imprisonment in the county jail for not more
756 than one (1) year or in the Penitentiary for not more than twenty
757 (20) years. However, a person convicted of aggravated assault (a)
758 upon a statewide elected official, law enforcement officer,
759 fireman, emergency medical personnel, public health personnel,
760 social worker or child protection specialist employed by the
761 Department of Human Services or another agency, superintendent,
762 principal, teacher or other instructional personnel, school
763 attendance officer, school bus driver, or a judge of a circuit,
764 chancery, county, justice or youth court or a judge of the Court
765 of Appeals or a justice of the Supreme Court, district attorney,
766 legal assistant to a district attorney, county prosecutor,
767 municipal prosecutor, court reporter employed by a court, court
768 administrator, clerk or deputy clerk of the court, or public
769 defender, while such statewide elected official, judge or justice,
770 law enforcement officer, fireman, emergency medical personnel,
771 public health personnel, social worker, child protection
772 specialist, superintendent, principal, teacher or other
773 instructional personnel, school attendance officer, school bus
774 driver, district attorney, legal assistant to a district attorney,
775 county prosecutor, municipal prosecutor, court reporter employed
776 by a court, court administrator, clerk or deputy clerk of the
777 court, or public defender is acting within the scope of his duty,
778 office or employment, or (b) upon a legislator while the

779 Legislature is in regular or extraordinary session or while
780 otherwise acting within the scope of his duty, office or
781 employment, shall be punished by a fine of not more than Five
782 Thousand Dollars (\$5,000.00) or by imprisonment for not more than
783 thirty (30) years, or both.

784 (3) A person is guilty of simple domestic violence who
785 commits simple assault as described in subsection (1) of this
786 section against a family or household member who resides with the
787 defendant or who formerly resided with the defendant, a current or
788 former spouse, a person who has a current dating relationship with
789 the defendant, or a person with whom the defendant has had a
790 biological or legally adopted child and upon conviction, the
791 defendant shall be punished as provided under subsection (1) of
792 this section; however, upon a third or subsequent conviction of
793 simple domestic violence, whether against the same or another
794 victim and within five (5) years, the defendant shall be guilty of
795 a felony and sentenced to a term of imprisonment not less than
796 five (5) nor more than ten (10) years. In sentencing, the court
797 shall consider as an aggravating factor whether the crime was
798 committed in the physical presence or hearing of a child under
799 sixteen (16) years of age who was, at the time of the offense,
800 living within either the residence of the victim, the residence of
801 the perpetrator, or the residence where the offense occurred.

802 (4) A person is guilty of aggravated domestic violence who
803 commits aggravated assault as described in subsection (2) of this
804 section against a family or household member who resides with the
805 defendant or who formerly resided with the defendant, or a current
806 or former spouse, a person who has a current dating relationship
807 with the defendant, or a person with whom the defendant has had a
808 biological or legally adopted child and upon conviction, the
809 defendant shall be punished as provided under subsection (2) of
810 this section; however, upon a third or subsequent offense of
811 aggravated domestic violence, whether against the same or another

812 victim and within five (5) years, the defendant shall be guilty of
813 a felony and sentenced to a term of imprisonment of not less than
814 five (5) nor more than twenty (20) years. In sentencing, the
815 court shall consider as an aggravating factor whether the crime
816 was committed in the physical presence or hearing of a child under
817 sixteen (16) years of age who was, at the time of the offense,
818 living within either the residence of the victim, the residence of
819 the perpetrator, or the residence where the offense occurred.
820 Reasonable discipline of a child, such as spanking, is not an
821 offense under this subsection (4).

822 (5) "Dating relationship" means a social relationship of a
823 romantic or intimate nature.

824 (6) Every conviction of domestic violence may require as a
825 condition of any suspended sentence that the defendant participate
826 in counseling or treatment to bring about the cessation of
827 domestic abuse. The defendant may be required to pay all or part
828 of the cost of the counseling or treatment, in the discretion of
829 the court.

830 (7) In any conviction of assault as described in any
831 subsection of this section which arises from an incident of
832 domestic violence, the sentencing order shall include the
833 designation "domestic violence."

834 **SECTION 10.** This act shall take effect and be in force from
835 and after June 30, 2006.