

By: Senator(s) Burton

To: Judiciary, Division B

SENATE BILL NO. 2667

1 AN ACT TO AMEND SECTION 43-47-5, MISSISSIPPI CODE OF 1972, TO
 2 REVISE DEFINITIONS UNDER THE VULNERABLE ADULT ACT; TO CREATE NEW
 3 SECTION 43-47-18, MISSISSIPPI CODE OF 1972, TO CREATE THE OFFENSE
 4 OF SEXUAL BATTERY OF A VULNERABLE ADULT TO INCLUDE CONSENSUAL SEX
 5 WITH A VULNERABLE ADULT BY HEALTH CARE EMPLOYEES WHO ARE NOT
 6 MARRIED TO THE VULNERABLE ADULT AND TO CREATE THE OFFENSE OF
 7 FONDLING OF A VULNERABLE ADULT TO INCLUDE CONSENSUAL SEXUAL
 8 ACTIVITY WITH A VULNERABLE ADULT BY HEALTH CARE EMPLOYEES WHO ARE
 9 NOT MARRIED TO THE VULNERABLE ADULT; TO AMEND SECTION 45-33-23,
 10 MISSISSIPPI CODE OF 1972, TO INCLUDE SEXUAL ABUSE OF A VULNERABLE
 11 ADULT AS A REGISTRABLE OFFENSE UNDER THE SEX OFFENDER REGISTRATION
 12 LAW; AND FOR RELATED PURPOSES.

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

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

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

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

31 (b) "Care facility" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

140 **SECTION 2.** The following shall be codified as Section
141 43-47-18, Mississippi Code of 1972:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

314 **SECTION 4.** This act shall take effect and be in force from
315 and after July 1, 2006.