SENATE BILL NO. 2472

AN ACT ENTITLED THE "MISSISSIPPI CHILD PROTECTION ACT OF 2009"; TO PROVIDE FOR THE MANDATORY REPORTING OF SEXUAL CRIMES AGAINST MINORS; TO PROVIDE FOR THE RETAINING OF THE DNA OF A FETUS FOR THE PURPOSE OF DOCUMENTING THE PERPETRATOR OF A SEX CRIME AGAINST A MINOR; TO CREATE A CIVIL ACTION FOR CAUSING, AIDING OR ASSISTING A MINOR TO OBTAIN AN ABORTION; AND FOR RELATED PURPOSES.

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

SECTION 1. (1) This act shall be known and may be cited as the "Mississippi Child Protection Act of 2009."

(2) Definitions. For the purposes of this section:

(a) "Abuse" means the involvement of the child in any sexual act with a parent or another person, or the aiding or intentional toleration of a parent or caretaker of the child's sexual involvement with any other person or the child's involvement in pornographic displays, or any other involvement of a child in sexual activity constituting a crime under the laws of this state.

(b) "Caretaker" means any person legally obligated to provide or secure adequate care for the child including parent, guardian, tutor, legal custodian, foster home parent, or anyone else providing the child with a residence.

(c) "Child pornography" means visual depiction of a child engaged in actual or simulated sexual intercourse, deviate sexual intercourse, bestiality, masturbation, sadomasochistic abuse, or lewd exhibition of the genitals.

(d) "Mandatory reporter" means any of the following individuals performing their occupational duties:
(i) "Health practitioner" means any individual who provides healthcare services, including a physician, surgeon, physical therapist, psychiatrist, psychologist, medical resident, medical intern, hospital staff member, licensed nurse, nurse's aide, any emergency medical technician, paramedic, and any employee, staff member or volunteer at a reproductive healthcare facility.

(ii) "Member of the clergy" means any priest, rabbi, or duly-ordained deacon or minister, except that the clergy member is not required to report a confidential communication that is protected as a function of the church, but shall then encourage that person to come forward and report the allegations to the proper authorities.

(iii) "Teaching or child care provider" means anyone who provides training and supervision of a child, including any public or private teacher, teacher's aide, school principal, school staff member, social worker, probation officer, foster home parent, group home or other child care institutional staff member, personnel of residential home facilities, a licensed or unlicensed day care provider, or any individual who provides such services to a child.

(iv) Police officers or law enforcement officials.

(v) "Commercial film and photographic print processor" means any person who develops exposed photographic film into negatives, slides, or prints, or who makes prints from negatives or slides for compensation.

(e) "Reproductive healthcare facility" means any office, clinic, or other facility that provides abortions, abortion counseling, abortion referrals, contraceptives, contraceptive counseling, sex education, or gynecological care and services.

(f) "Abortion" means the act of using or prescribing any instrument, medicine, drug, or any other substance, device or
means with the intent to terminate the clinically diagnosable
pregnancy of a woman with knowledge that the termination by those
means will with reasonable likelihood cause the death of the
unborn child. Such use, prescription or means is not an abortion
if done with the intent to:
   (i) Save the life or preserve the health of an
unborn child;
   (ii) Remove a dead unborn child caused by
spontaneous abortion; or
   (iii) Remove an ectopic pregnancy.
(g) "Sexual abuse" means any sexual battery conduct or
sexual penetration as defined in Sections 97-3-95(1)(b)(c) and
(d) or 97-3-97 and committed against a minor by an adult.

(3) Mandatory reporter requirements. A mandatory reporter
shall report every instance of alleged or suspected sexual abuse.
The mandatory reporter may not use the reporter's own discretion
in deciding what cases should or should not be reported to the
appropriate law enforcement or relevant state agency.

(4) Mandatory reporting procedure. If a mandatory reporter
has cause to believe that a child has been subjected to sexual
abuse, the mandatory reporter shall make a report no later than
the forty-eighth (48th) hour after such abuse has been brought to
the reporter's attention if the reporter suspects such abuse. A
mandatory reporter may not delegate the responsibility to report
such abuse to any other person but shall make the report
personally. The mandatory reporter shall make a report to the
local law enforcement agency, the Mississippi Department of Public
Safety or the Mississippi Department of Human Services.

(5) Contents of the report. The person making the report
shall identify the name and address of the child as well as the
name and address of the person who is responsible for the care or
custody of the child. The person making the report shall file any
pertinent information he or she may have relating to the alleged
or suspected sexual abuse.

(6) **Failure to report.** Any mandatory reporter who has
reason to believe that a child's physical or mental health or
welfare has been adversely affected due to sexual abuse and
willfully does not report such sexual abuse as provided by this
section, upon conviction thereof, shall be guilty of a misdemeanor
punishable as provided in Section 43-21-353(7).

**SECTION 2. Child Rape Protection Act; submission of fetal
tissue from certain abortions; physicians' duties; rules and
regulations; noncompliance, penalties.** (1) As used in this
section:

(a) "Abortion" has the meaning provided in Section

(b) "Physician" means any person licensed to practice
medicine and surgery.

(2) Any physician who performs an abortion on a minor who is
less than fourteen (14) years of age at the time of the abortion
procedure shall preserve, in accordance with rules and regulations
adopted by the Attorney General pursuant to this section, fetal
tissue extracted during such abortion. The physician shall submit
such tissue to the Mississippi Department of Public Safety, Bureau
of Investigation, or to the Mississippi State Crime Laboratory.

(3) The State Board of Health shall adopt rules and
regulations prescribing:

(a) The amount and type of fetal tissue to be preserved
and submitted by a physician pursuant to this section;

(b) Procedures for the proper preservation of such
tissue for the purpose of DNA testing and examination;

(c) Procedures for documenting the chain of custody of
such tissue for use as evidence;

(d) Procedures for proper disposal of fetal tissue
preserved pursuant to this section;
(e) A uniform reporting instrument mandated to be utilized by physicians when submitting fetal tissue under this section which shall include the name of the physician submitting the fetal tissue and the name, complete address of residence and name of the parent or legal guardian of the minor upon whom the abortion was performed; and

(f) Procedures for communication with law enforcement agencies regarding evidence and information obtained pursuant to this section.

(4) Failure of a physician to comply with any provision of this section or any rule or regulation adopted thereunder:

   (a) Shall constitute unprofessional conduct for the purposes of Section 73-25-29; and

   (b) Is a misdemeanor upon a first conviction punishable as provided in Section 43-21-353(7), and a felony upon a second or subsequent conviction, punishable by a fine of Ten Thousand Dollars ($10,000.00) and imprisonment for up to five (5) years.

SECTION 3. (1) No person shall intentionally cause, aid, or assist a minor to obtain an abortion without the consent or consents required by Section 41-41-53.

(2) A person who violates subsection (1) of this section shall be civilly liable to the minor and to the person or persons required to give the consent or consents under Section 41-41-53. A court may award damages to the person or persons adversely affected by a violation of subsection (1) of this section, including compensation for emotional injury without the need for personal presence at the act or event, and the court may further award attorneys' fees, litigation costs, and punitive damages. Any adult who engages in or consents to another person engaging in a sex act with a minor in violation of the provisions of Section 97-3-65, and which results in the minor's pregnancy shall not be awarded damages under this section.
(3) It shall not be a defense to a claim brought under this section that the abortion was performed or induced pursuant to consent to the abortion given in a manner that is otherwise lawful in the state or place where the abortion was performed or induced.

(4) An unemancipated minor does not have capacity to consent to any action in violation of this section.

(5) A court may enjoin conduct that would be in violation of this section upon petition by the Attorney General, a prosecuting or district attorney, or any person adversely affected or who reasonably may be adversely affected by such conduct, upon a showing that such conduct:

(a) Is reasonably anticipated to occur in the future; or

(b) Has occurred in the past, whether with the same minor or others, and that it is not unreasonable to expect that such conduct will be repeated.

SECTION 4. Severability. Any provision of this act held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, shall be construed so as to give it the maximum effect permitted by law, unless such holding shall be one of utter invalidity or unenforceability, in which event such provision shall be deemed severable herefrom and shall not affect the remainder hereof or the application of such provision to other persons not similarly situated or to other dissimilar circumstances.

SECTION 5. This act shall take effect and be in force from and after July 1, 2009.