

By: Senator(s) Nunnelee, Burton, Watson, Lee To: Judiciary, Division A
(47th), King, Frazier, Yancey, Clarke,
Carmichael, Fillingane, Montgomery

SENATE BILL NO. 2472

1 AN ACT ENTITLED THE "MISSISSIPPI CHILD PROTECTION ACT OF
2 2009"; TO PROVIDE FOR THE MANDATORY REPORTING OF SEXUAL CRIMES
3 AGAINST MINORS; TO PROVIDE FOR THE RETAINING OF THE DNA OF A FETUS
4 FOR THE PURPOSE OF DOCUMENTING THE PERPETRATOR OF A SEX CRIME
5 AGAINST A MINOR; TO CREATE A CIVIL ACTION FOR CAUSING, AIDING OR
6 ASSISTING A MINOR TO OBTAIN AN ABORTION; AND FOR RELATED PURPOSES.

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

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

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

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

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

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

26 (d) "Mandatory reporter" means any of the following
27 individuals performing their occupational duties:



28 (i) "Health practitioner" means any individual who
29 provides healthcare services, including a physician, surgeon,
30 physical therapist, psychiatrist, psychologist, medical resident,
31 medical intern, hospital staff member, licensed nurse, nurse's
32 aide, any emergency medical technician, paramedic, and any
33 employee, staff member or volunteer at a reproductive healthcare
34 facility.

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

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

49 (iv) Police officers or law enforcement officials.

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

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

59 (f) "Abortion" means the act of using or prescribing
60 any instrument, medicine, drug, or any other substance, device or



61 means with the intent to terminate the clinically diagnosable
62 pregnancy of a woman with knowledge that the termination by those
63 means will with reasonable likelihood cause the death of the
64 unborn child. Such use, prescription or means is not an abortion
65 if done with the intent to:

66 (i) Save the life or preserve the health of an
67 unborn child;

68 (ii) Remove a dead unborn child caused by
69 spontaneous abortion; or

70 (iii) Remove an ectopic pregnancy.

71 (g) "Sexual abuse" means any sexual battery conduct or
72 sexual penetration as defined in Sections 97-3-95(1)(b)(c) and
73 (d) or 97-3-97 and committed against a minor by an adult.

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

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

89 (5) **Contents of the report.** The person making the report
90 shall identify the name and address of the child as well as the
91 name and address of the person who is responsible for the care or
92 custody of the child. The person making the report shall file any



93 pertinent information he or she may have relating to the alleged
94 or suspected sexual abuse.

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

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

105 (a) "Abortion" has the meaning provided in Section
106 41-41-31, Mississippi Code of 1972.

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

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

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

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

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

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

124 (d) Procedures for proper disposal of fetal tissue
125 preserved pursuant to this section;



126 (e) A uniform reporting instrument mandated to be
127 utilized by physicians when submitting fetal tissue under this
128 section which shall include the name of the physician submitting
129 the fetal tissue and the name, complete address of residence and
130 name of the parent or legal guardian of the minor upon whom the
131 abortion was performed; and

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

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

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

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

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

146 (2) A person who violates subsection (1) of this section
147 shall be civilly liable to the minor and to the person or persons
148 required to give the consent or consents under Section 41-41-53.
149 A court may award damages to the person or persons adversely
150 affected by a violation of subsection (1) of this section,
151 including compensation for emotional injury without the need for
152 personal presence at the act or event, and the court may further
153 award attorneys' fees, litigation costs, and punitive damages.
154 Any adult who engages in or consents to another person engaging in
155 a sex act with a minor in violation of the provisions of Section
156 97-3-65, and which results in the minor's pregnancy shall not be
157 awarded damages under this section.



158 (3) It shall not be a defense to a claim brought under this
159 section that the abortion was performed or induced pursuant to
160 consent to the abortion given in a manner that is otherwise lawful
161 in the state or place where the abortion was performed or induced.

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

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

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

170 or

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

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

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

