

By: Representative Gunn

To: Judiciary A

HOUSE BILL NO. 874

1 AN ACT TO AMEND SECTION 43-21-353, MISSISSIPPI CODE OF 1972,
2 TO CREATE A CRIMINAL PENALTY AND CIVIL ACTION FOR FALSELY
3 REPORTING TO THE DEPARTMENT OF HUMAN SERVICES THAT ANOTHER HAS
4 ABUSED OR NEGLECTED A CHILD, KNOWING SUCH REPORT TO BE FALSE, AND
5 TO CLARIFY THE REQUIRED CONTENTS OF REPORTS OF CHILD ABUSE OR
6 NEGLECT; TO REQUIRE THE BUREAU OF VITAL STATISTICS OF THE STATE
7 BOARD OF HEALTH TO NOTIFY THE DEPARTMENT OF HUMAN SERVICES AND
8 DISTRICT ATTORNEYS WHEN IT APPEARS THAT A MINOR BELOW THE AGE OF
9 CONSENT HAS CONCEIVED A CHILD AS THE RESULT OF STATUTORY RAPE OR
10 SEXUAL BATTERY; TO PROVIDE A DUTY TO REPORT SUCH FACTS ON LICENSED
11 EDUCATIONAL PERSONNEL; TO PROVIDE FOR IMMUNITY FOR MAKING SUCH
12 REPORTS; TO CREATE THE "MISSISSIPPI CHILD PROTECTION ACT OF 2010";
13 TO PROVIDE FOR THE MANDATORY REPORTING OF SEXUAL CRIMES AGAINST
14 MINORS; TO PROVIDE FOR THE RETAINING OF THE DNA OF A FETUS FOR THE
15 PURPOSE OF DOCUMENTING THE PERPETRATOR OF A SEX CRIME AGAINST A
16 MINOR; TO CREATE A CIVIL ACTION FOR CAUSING, AIDING OR ASSISTING A
17 MINOR TO OBTAIN AN ABORTION; AND FOR RELATED PURPOSES.

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

19 **SECTION 1.** Section 43-21-353, Mississippi Code of 1972, is
20 amended as follows:

21 43-21-353. (1) Any attorney, physician, dentist, intern,
22 resident, nurse, psychologist, social worker, family protection
23 worker, family protection specialist, child caregiver, minister,
24 law enforcement officer, public or private school employee or any
25 other person having reasonable cause to suspect that a child is a
26 neglected child or an abused child, shall cause an oral report to
27 be made immediately by telephone or otherwise and followed as soon
28 thereafter as possible by a report in writing to the Department of
29 Human Services, and immediately a referral shall be made by the
30 Department of Human Services to the youth court intake unit, which
31 unit shall promptly comply with Section 43-21-357. In the course
32 of an investigation, at the initial time of contact with the
33 individual(s) about whom a report has been made under this Youth



34 Court Act or with the individual(s) responsible for the health or
35 welfare of a child about whom a report has been made under this
36 chapter, the Department of Human Services shall inform the
37 individual of the specific complaints or allegations made against
38 the individual. Consistent with subsection (4), the identity of
39 the person who reported his or her suspicion shall not be
40 disclosed. Where appropriate, the Department of Human Services
41 shall additionally make a referral to the youth court prosecutor.

42 Upon receiving a report that a child has been sexually
43 abused, or burned, tortured, mutilated or otherwise physically
44 abused in such a manner as to cause serious bodily harm, or upon
45 receiving any report of abuse that would be a felony under state
46 or federal law, the Department of Human Services shall immediately
47 notify the law enforcement agency in whose jurisdiction the abuse
48 occurred and shall notify the appropriate prosecutor within
49 forty-eight (48) hours, and the Department of Human Services shall
50 have the duty to provide the law enforcement agency all the names
51 and facts known at the time of the report; this duty shall be of a
52 continuing nature. The law enforcement agency and the Department
53 of Human Services shall investigate the reported abuse immediately
54 and shall file a preliminary report with the appropriate
55 prosecutor's office within twenty-four (24) hours and shall make
56 additional reports as new or additional information or evidence
57 becomes available. The Department of Human Services shall advise
58 the clerk of the youth court and the youth court prosecutor of all
59 cases of abuse reported to the department within seventy-two (72)
60 hours and shall update such report as information becomes
61 available.

62 (2) Any report to the Department of Human Services shall
63 contain, if known, the names and addresses of the child and his
64 parents or other persons responsible for his care, * * * the
65 child's age, the nature and extent of the child's injuries,
66 including any evidence of previous injuries and any other



67 information that might be helpful in establishing the cause of the
68 injury and the identity of the perpetrator.

69 (3) The Department of Human Services shall maintain a
70 statewide incoming wide-area telephone service or similar service
71 for the purpose of receiving reports of suspected cases of child
72 abuse; provided that any attorney, physician, dentist, intern,
73 resident, nurse, psychologist, social worker, family protection
74 worker, family protection specialist, child caregiver, minister,
75 law enforcement officer or public or private school employee who
76 is required to report under subsection (1) of this section shall
77 report in the manner required in subsection (1).

78 (4) Reports of abuse and neglect made under this chapter and
79 the identity of the reporter are confidential except when the
80 court in which the investigation report is filed, in its
81 discretion, determines the testimony of the person reporting to be
82 material to a judicial proceeding or when the identity of the
83 reporter is released to law enforcement agencies and the
84 appropriate prosecutor pursuant to subsection (1). Reports made
85 under this section to any law enforcement agency or prosecutorial
86 officer are for the purpose of criminal investigation and
87 prosecution only and no information from these reports may be
88 released to the public except as provided by Section 43-21-261.
89 Disclosure of any information by the prosecutor shall be according
90 to the Mississippi Uniform Rules of Circuit and County Court
91 Procedure. The identity of the reporting party shall not be
92 disclosed to anyone other than law enforcement officers or
93 prosecutors without an order from the appropriate youth court.
94 Any person disclosing any reports made under this section in a
95 manner not expressly provided for in this section or Section
96 43-21-261, shall be guilty of a misdemeanor and subject to the
97 penalties prescribed by Section 43-21-267.

98 (5) All final dispositions of law enforcement investigations
99 described in subsection (1) of this section shall be determined



100 only by the appropriate prosecutor or court. All final
101 dispositions of investigations by the Department of Human Services
102 as described in subsection (1) of this section shall be determined
103 only by the youth court. Reports made under subsection (1) of
104 this section by the Department of Human Services to the law
105 enforcement agency and to the district attorney's office shall
106 include the following, if known to the department:

107 (a) The name and address of the child;
108 (b) The names and addresses of the parents;
109 (c) The name and address of the suspected perpetrator;
110 (d) The names and addresses of all witnesses, including
111 the reporting party if a material witness to the abuse;

112 (e) A brief statement of the facts indicating that the
113 child has been abused and any other information from the agency
114 files or known to the family protection worker or family
115 protection specialist making the investigation, including medical
116 records or other records, which may assist law enforcement or the
117 district attorney in investigating and/or prosecuting the case;
118 and

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

121 (6) In any investigation of a report made under this chapter
122 of the abuse or neglect of a child as defined in Section
123 43-21-105(m), the Department of Human Services may request the
124 appropriate law enforcement officer with jurisdiction to accompany
125 the department in its investigation, and in such cases the law
126 enforcement officer shall comply with such request.

127 (7) A person who falsely reports that a child is a neglected
128 child or an abused child, knowing such report to be false,
129 violates this section. In addition to the penalty provided in
130 this section, such person may be found liable in a civil suit for
131 any actual damages suffered by the person or persons so reported
132 and for any punitive damages set by the court or jury.



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

137 (9) If a report is made directly to the Department of Human
138 Services that a child has been abused or neglected in an
139 out-of-home setting, a referral shall be made immediately to the
140 law enforcement agency in whose jurisdiction the abuse occurred
141 and the department shall notify the district attorney's office
142 within forty-eight (48) hours of such report. The Department of
143 Human Services shall investigate the out-of-home setting report of
144 abuse or neglect to determine whether the child who is the subject
145 of the report, or other children in the same environment, comes
146 within the jurisdiction of the youth court and shall report to the
147 youth court the department's findings and recommendation as to
148 whether the child who is the subject of the report or other
149 children in the same environment require the protection of the
150 youth court. The law enforcement agency shall investigate the
151 reported abuse immediately and shall file a preliminary report
152 with the district attorney's office within forty-eight (48) hours
153 and shall make additional reports as new information or evidence
154 becomes available. If the out-of-home setting is a licensed
155 facility, an additional referral shall be made by the Department
156 of Human Services to the licensing agency. The licensing agency
157 shall investigate the report and shall provide the Department of
158 Human Services, the law enforcement agency and the district
159 attorney's office with their written findings from such
160 investigation as well as that licensing agency's recommendations
161 and actions taken.

162 **SECTION 2.** (1) It shall be the duty of the Bureau of Vital
163 Statistics of the State Board of Health and every county health
164 officer, county medical examiner, county medical examiner
165 investigator, coroner, and principal of a primary or secondary



166 school to immediately notify in writing the law enforcement agency
167 in whose jurisdiction the sexual offense is believed to have
168 occurred upon receiving any information or report indicating that
169 a female under the age of fourteen (14) years has conceived or
170 given birth to a child, alive or stillborn, conceived by relations
171 with a male who is twenty-four (24) or more months older than the
172 female, or that a female who is at least fourteen (14) years of
173 age but under the age of sixteen (16) years has conceived or given
174 birth to a child, alive or stillborn, conceived by relations with
175 a male who is at least seventeen (17) years old, is thirty-six
176 (36) or more months older than the female, and is not her husband.
177 The law enforcement agency shall notify the Department of Human
178 Services and the district attorney having jurisdiction within
179 forty-eight (48) hours with a written request that the violation
180 be prosecuted, as such conduct with a minor below the age of
181 capacity to make informed consent constitutes a felony under
182 either Section 97-3-65 prohibiting statutory rape or Section
183 97-3-95 prohibiting sexual battery. Upon the request of the law
184 enforcement agency, the bureau and any other reporting entity
185 shall have the duty to provide the law enforcement agency the
186 names of the minor child, her parent(s) or other person
187 responsible for her care, and the alleged perpetrator, together
188 with ages, places, addresses, any witnesses and the nature of
189 other evidence known at the time of the report, and the name and
190 address of the institution or individual submitting the
191 information or report; this duty shall be of a continuing nature.
192 The law enforcement agency shall investigate the reported
193 molestation and shall file a preliminary report with the
194 Department of Human Services and the district attorney's office
195 within two (2) weeks of receiving the first notice.

196 (2) Any teacher, guidance counselor, school nurse, or other
197 school employee who has knowledge or reason to believe that a
198 crime as set forth in subsection (1) has occurred shall also



199 report the information to the principal of the school in which the
200 female is enrolled as a student.

201 (3) The duty to report is the same upon learning that any
202 child, male or female, under the age of fourteen (14) years has
203 had sexual relations with a person who is twenty-four (24) or more
204 months older than the child, or that any child, male or female,
205 who is at least fourteen (14) years of age but under the age of
206 sixteen (16) years has had sexual relations with a person who is
207 at least seventeen (17) years old and is thirty-six (36) or more
208 months older than the child.

209 (4) Any superintendent, principal, teacher or other school
210 personnel participating in the making of a required report
211 pursuant to this section shall be presumed to be acting in good
212 faith. Any person reporting in good faith shall be immune from
213 any civil liability that might otherwise be insured or imposed.

214 **SECTION 3.** (1) This section shall be known and may be cited
215 as the "Mississippi Child Protection Act of 2010."

216 (2) (a) **Definitions.** For the purposes of this subsection:

217 (i) "Abortion" means the act of using or
218 prescribing any instrument, medicine, drug, or any other
219 substance, device or means with the intent to terminate the
220 clinically diagnosable pregnancy of a woman with knowledge that
221 the termination by those means will with reasonable likelihood
222 cause the death of the unborn child. Such use, prescription or
223 means is not an abortion if done with the intent to:

- 224 1. Save the life or preserve the health of an
225 unborn child;
226 2. Remove a dead unborn child caused by
227 spontaneous abortion; or
228 3. Remove an ectopic pregnancy.

229 (ii) "Abuse" means the involvement of the child in
230 any sexual act with a parent or another person, or the aiding or
231 intentional toleration of a parent or caretaker of the child's



232 sexual involvement with any other person or the child's
233 involvement in pornographic displays, or any other involvement of
234 a child in sexual activity constituting a crime under the laws of
235 this state.

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

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

244 (v) "Mandatory reporter" means any of the
245 following individuals performing their occupational duties:

246 1. "Health practitioner" means any individual
247 who provides health care services, including a physician, surgeon,
248 physical therapist, psychiatrist, psychologist, medical resident,
249 medical intern, hospital staff member, licensed nurse, nurse's
250 aide, any emergency medical technician, paramedic, and any
251 employee, staff member or volunteer at a reproductive health care
252 facility.

253 2. "Member of the clergy" means any priest,
254 rabbi, duly ordained deacon or minister, except that he is not
255 required to report a confidential communication that is protected
256 as a function of the church, but shall then encourage that person
257 to come forward and report the allegations to the proper
258 authorities.

259 3. "Teaching or child care provider" means
260 anyone who provides training and supervision of a child, including
261 any public or private teacher, teacher's aide, school principal,
262 school staff member, social worker, probation officer, foster home
263 parent, group home or other child care institutional staff member,
264 personnel of residential home facilities, a licensed or unlicensed



265 day care provider, or any individual who provides such services to
266 a child.

267 4. Police officers or law enforcement
268 officials.

269 5. "Commercial film and photographic print
270 processor" is any person who develops exposed photographic film
271 into negatives, slides, or prints, or who makes prints from
272 negatives or slides for compensation.

273 (vi) "Reproductive health care facility" means any
274 office, clinic, or other facility that provides abortions,
275 abortion counseling, abortion referrals, contraceptives,
276 contraceptive counseling, sex education, or gynecological care
277 and services.

278 (vii) "Sexual abuse" means any sexual battery
279 conduct or sexual penetration as defined in Sections
280 97-3-95(1)(b), (c) and (d) and 97-3-97 and committed against a
281 minor by an adult.

282 (b) **Mandatory reporter requirements.** A mandatory
283 reporter shall report every instance of alleged or suspected
284 sexual abuse. The mandatory reporter may not use his or her
285 discretion in deciding what cases should or should not be reported
286 to the appropriate law enforcement or relevant state agency.

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



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

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

309 (3) (a) **Child Rape Protection Act; submission of fetal**
310 **tissue from certain abortions; physicians' duties; rules and**
311 **regulations; noncompliance; penalties.** As used in this
312 subsection:

313 (i) "Abortion" has the meaning provided in Section
314 41-41-31, Mississippi Code of 1972.

315 (ii) "Physician" means any person licensed to
316 practice medicine and surgery.

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

325 (c) The State Board of Health shall adopt rules and
326 regulations prescribing:

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



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

331 (iii) Procedures for documenting the chain of
332 custody of such tissue for use as evidence;

333 (iv) Procedures for proper disposal of fetal
334 tissue preserved pursuant to this section;

335 (v) A uniform reporting instrument mandated to be
336 utilized by physicians when submitting fetal tissue under this
337 section which shall include the name of the physician submitting
338 the fetal tissue and the name, complete address of residence and
339 name of the parent or legal guardian of the minor upon whom the
340 abortion was performed; and

341 (vi) Procedures for communication with law
342 enforcement agencies regarding evidence and information obtained
343 pursuant to this section.

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

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

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

353 (4) (a) No person shall intentionally cause, aid, or assist
354 a minor to obtain an abortion without the consent or consents
355 required by Section 41-41-53, Mississippi Code of 1972.

356 (b) A person who violates paragraph (a) of this
357 subsection shall be civilly liable to the minor and to the person
358 or persons required to give the consent or consents under Section
359 41-41-53. A court may award damages to the person or persons
360 adversely affected by a violation of this subsection, including
361 compensation for emotional injury without the need for personal



362 presence at the act or event, and the court may further award
363 attorney's fees, litigation costs, and punitive damages. Any
364 adult who engages in or consents to another person engaging in a
365 sex act with a minor in violation of the provisions of Section
366 97-3-65, which results in the minor's pregnancy, shall not be
367 awarded damages under this section.

368 (c) It shall not be a defense to a claim brought under
369 this subsection that the abortion was performed or induced
370 pursuant to consent to the abortion given in a manner that is
371 otherwise lawful in the state or place where the abortion was
372 performed or induced.

373 (d) An unemancipated minor does not have capacity to
374 consent to any action in violation of this subsection.

375 (e) A court may enjoin conduct that would be in
376 violation of this subsection upon petition by the Attorney
377 General, a prosecuting or district attorney, or any person
378 adversely affected or who reasonably may be adversely affected by
379 such conduct, upon a showing that such conduct:

380 (i) Is reasonably anticipated to occur in the
381 future; or

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

385 (5) **Severability.** Any provision of this section held to be
386 invalid or unenforceable by its terms, or as applied to any person
387 or circumstance, shall be construed so as to give it the maximum
388 effect permitted by law, unless such holding shall be one of utter
389 invalidity or unenforceability, in which event such provision
390 shall be deemed severable herefrom and shall not effect the
391 remainder hereof or the application of such provision to other
392 persons not similarly situated or to other dissimilar
393 circumstances.



394 **SECTION 4.** This act shall take effect and be in force from
395 and after July 1, 2010.

