

By: Senator(s) Fillingane

To: Judiciary, Division A

SENATE BILL NO. 2087

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

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

9 **SECTION 1.** (1) **Short title.** This section shall be known  
10 and may be cited as the "Mississippi Child Protection Act of  
11 2012."

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

13 (a) "Sexual abuse" means the involvement of the child  
14 in any sexual act with a parent or another person, or the aiding  
15 or intentional toleration of a parent or caretaker of the child's  
16 sexual involvement with any other person or the child's  
17 involvement in child pornography, or any other involvement of a  
18 child in sexual activity constituting a crime under the laws of  
19 this state, including sexual penetration as defined in Section  
20 97-3-95(1)(b), (c) and (d) or 97-3-97 when committed by an adult  
21 against a minor.

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

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



30 (d) "Mandatory reporter" means any of the following  
31 individuals performing their occupational duties: health care  
32 practitioner, member of the clergy, teaching or child care  
33 provider, police officer or law enforcement officials, or  
34 commercial film or photographic print processor.

35 (e) "Health practitioner" means any individual who  
36 provides health care services, including a physician, surgeon,  
37 physical therapist, psychiatrist, psychologist, medical resident,  
38 medical intern, hospital staff member, licensed nurse, nurse's  
39 aide, any emergency medical technician, paramedic, and any  
40 employee, staff member or volunteer at a reproductive health care  
41 facility.

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

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

56 (h) "Commercial film or photographic print processor"  
57 means any person who develops exposed photographic film into  
58 negatives, slides or prints, or who makes prints from negatives or  
59 slides for compensation.

60 (i) "Reproductive health care facility" means any  
61 office, clinic, or other facility that provides abortions,  
62 abortion counseling, abortion referrals, contraceptives,



63 contraceptive counseling, sex education or gynecological care and  
64 services.

65 (j) "Abortion" means the act of using or prescribing  
66 any instrument, medicine, drug, or any other substance, device or  
67 means with the intent to terminate the clinically diagnosable  
68 pregnancy of a woman with knowledge that the termination by those  
69 means will with reasonable likelihood cause the death of the  
70 unborn child. Such use, prescription or means is not an abortion  
71 if done with the intent to:

72 (i) Save the life or preserve the health of an  
73 unborn child;

74 (ii) Remove a dead unborn child caused by  
75 spontaneous abortion; or

76 (iii) Remove an ectopic pregnancy.

77 (k) "Physician" means any person licensed to practice  
78 medicine and surgery.

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

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

94 (5) **Contents of the report.** The person making the report  
95 shall identify the name and address of the child as well as the



96 name and address of the person who is responsible for the care or  
97 custody of the child. The person making the report shall file any  
98 pertinent information he or she may have relating to the alleged  
99 or suspected sexual abuse.

100 (6) **Failure to report.** Any mandatory reporter who has  
101 reason to believe that a child's physical or mental health or  
102 welfare has been adversely affected due to sexual abuse and  
103 willfully does not report such sexual abuse as provided by this  
104 section, upon conviction thereof, shall be guilty of a misdemeanor  
105 punishable as provided in Section 43-21-353(7). A person who  
106 violates this subsection (6) shall be civilly liable to the minor  
107 and the minor's parent or guardian. A court may award damages to  
108 the person or persons adversely affected by a mandatory reporter's  
109 failure to report, including compensation for emotional injury,  
110 without the need for personal presence at the act or event, and  
111 the court may further award attorney's fees, litigation costs and  
112 punitive damages. Any adult who engages or consents to another  
113 person engaging in a sex act with a minor in violation of the  
114 provisions of Section 97-3-65 or 97-3-95 shall not be awarded  
115 damages under this subsection. The limitations imposed by  
116 Sections 11-1-60 and 11-1-65 do not apply to an action under this  
117 subsection.

118 (7) **Maintenance of forensic samples from abortions performed**  
119 **on certain minors.** Any physician who performs an abortion on a  
120 minor who is less than fourteen (14) years of age at the time of  
121 the abortion procedure shall preserve fetal tissue extracted  
122 during the abortion in accordance with rules and regulations  
123 adopted by the State Board of Health pursuant to this section.  
124 The physician shall submit the tissue to the Mississippi  
125 Department of Public Safety, Bureau of Investigation.

126 (a) The State Board of Health shall adopt rules and  
127 regulations prescribing:



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

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

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

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

136 (v) A uniform reporting instrument mandated to be  
137 utilized by physicians when submitting fetal tissue under this  
138 section which shall include the name of the physician submitting  
139 the fetal tissue and the complete residence address and name of  
140 the parent or legal guardian of the minor upon whom the abortion  
141 was performed; and

142 (vi) Procedures for communication with law  
143 enforcement agencies regarding evidence and information obtained  
144 pursuant to this section.

145 (b) Failure of a physician to comply with any provision  
146 of this subsection or any rule or regulation adopted thereunder:

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

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

154 (8) **Prohibition on procurement of an abortion without**  
155 **parental consent.** (a) No person shall intentionally cause, aid,  
156 or assist a minor under the age of eighteen (18) to obtain an  
157 abortion without the consent or consents required by Section  
158 41-41-53.

159 (b) A person who violates this subsection (8) shall be  
160 civilly liable to the minor and to the person or persons required



161 to give the consent or consents under Section 41-41-53. A court  
162 may award damages to the person or persons adversely affected by a  
163 violation of this subsection (8), including compensation for  
164 emotional injury without the need for personal presence at the act  
165 or event, and the court may further award attorneys' fees,  
166 litigation costs, and punitive damages. Any adult who engages in  
167 or consents to another person engaging in a sex act with a minor  
168 in violation of the provisions of Section 97-3-65 or 97-3-95, and  
169 which results in the minor's pregnancy shall not be awarded  
170 damages under this section. The limitations imposed by Sections  
171 11-1-60 and 11-1-65 do not apply to an action under this  
172 subsection.

173 (c) It shall not be a defense to a claim brought under  
174 this subsection that the abortion was performed or induced  
175 pursuant to consent to the abortion given in a manner that is  
176 otherwise lawful in the state or place where the abortion was  
177 performed or induced.

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

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

185 (i) Is reasonably anticipated to occur in the  
186 future; or

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

190 **SECTION 2.** This act shall take effect and be in force from  
191 and after July 1, 2012.

