

By: Senator(s) Tindell, Hill, McDaniel,
Burton, Wiggins, Watson, Blount, Longwitz,
Jackson (11th)

To: Public Health and
Welfare; Judiciary, Division
B

SENATE BILL NO. 2367

1 AN ACT TO AMEND SECTION 43-47-5, MISSISSIPPI CODE OF 1972, TO
2 REVISE DEFINITIONS THAT APPLY TO THE VULNERABLE PERSON ACT AND TO
3 CLARIFY THAT ABUSE OR NEGLECT OF A VULNERABLE PERSON APPLIES TO
4 BOTH THE MENTAL AND PHYSICAL HEALTH OF THE VULNERABLE PERSON; TO
5 AMEND SECTION 43-47-19, MISSISSIPPI CODE OF 1972, TO CONFORM; TO
6 AMEND SECTION 99-1-5, MISSISSIPPI CODE OF 1972, TO REVISE THE
7 STATUTE OF LIMITATION FOR THE PROSECUTION OF FELONIOUS ABUSE OF
8 VULNERABLE PERSONS; AND FOR RELATED PURPOSES.

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

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

12 43-47-5. For the purposes of this chapter, the following
13 words shall have the meanings ascribed herein unless the context
14 otherwise requires:

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

29 (b) "Care facility" means:



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

33 (ii) Any long-term care facility as defined in
34 Section 43-7-55;

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

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

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

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

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

58 (d) "Court" means the chancery court of the county in
59 which the vulnerable person resides or is located.

60 (e) "Department" means the Department of Human
61 Services.

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



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

66 (ii) The vulnerable person is unable to consent to
67 services;

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

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

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

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

90 (i) "Exploitation" means the illegal or improper use of
91 a vulnerable person or his resources for another's profit,
92 advantage or unjust enrichment, with or without the consent of the
93 vulnerable person, and may include actions taken pursuant to a
94 power of attorney. "Exploitation" includes, but is not limited
95 to, a single incident.



96 (j) "Illegal use" means any action defined under
97 Mississippi law as a criminal act.

98 (k) "Improper use" means any use without the consent of
99 the vulnerable person, any use with the consent of the vulnerable
100 person if the consent is obtained by undue means, or any use that
101 deprives the vulnerable person of his ability to obtain essential
102 services or a lifestyle to which the vulnerable person has become
103 accustomed and could have otherwise afforded.

104 (l) "Lacks the capacity to consent" means that a
105 vulnerable person, because of physical or mental incapacity, lacks
106 sufficient understanding or capacity to make or communicate
107 responsible decisions concerning his person, including, but not
108 limited to, provisions for health care, food, clothing or shelter.
109 This may be reasonably determined by the department in emergency
110 situations; in all other instances, the court shall make the
111 determination following the procedures in Sections 43-47-13 and
112 43-47-15 or as otherwise provided by the general laws of the
113 state.

114 (m) "Neglect" means either the inability of a
115 vulnerable person who is living alone to provide for himself the
116 food, clothing, shelter, health care or other services which are
117 necessary to maintain his mental or physical health, or failure of
118 a caretaker to supply the vulnerable person with the food,
119 clothing, shelter, health care, supervision or other services
120 which a reasonably prudent person would do to maintain the
121 vulnerable person's mental and physical health. "Neglect"
122 includes, but is not limited to, a single incident.

123 (n) "Protective services" means services provided by
124 the state or other government or private organizations, agencies
125 or individuals which are necessary to protect a vulnerable person
126 from abuse, neglect or exploitation. They shall include, but not
127 be limited to, investigation, evaluation of the need for services



128 and provision of essential services on behalf of a vulnerable
129 person.

130 (o) "Sexual penetration" shall have the meaning
131 ascribed in Section 97-3-97.

132 (p) "Undue means" means the use of deceit, power, or
133 persuasion over a vulnerable person resulting in the vulnerable
134 person being influenced to act otherwise than by his own free will
135 or without adequate attention to the consequences.

136 (q) "Vulnerable person" means a person, whether a minor
137 or adult, whose ability to perform the normal activities of daily
138 living or to provide for his or her own care or protection from
139 abuse, neglect, exploitation or improper sexual contact is
140 impaired due to a mental, emotional, physical or developmental
141 disability or dysfunction, or brain damage or the infirmities of
142 aging. The term "vulnerable person" also includes all residents
143 or patients, regardless of age, in a care facility * * *. The
144 department shall not be prohibited from investigating, and shall
145 have the authority and responsibility to fully investigate, in
146 accordance with the provisions of this chapter, any allegation of
147 abuse, neglect or exploitation regarding a patient in a care
148 facility, if the alleged abuse, neglect or exploitation occurred
149 at a private residence.

150 **SECTION 2.** Section 43-47-19, Mississippi Code of 1972, is
151 amended as follows:

152 43-47-19. (1) It shall be unlawful for any person to abuse,
153 neglect or exploit any vulnerable person.

154 (2) (a) Any person who willfully commits an act or
155 willfully omits the performance of any duty, which act or omission
156 contributes to, tends to contribute to, or results in neglect,
157 physical pain, injury, mental anguish, unreasonable confinement or
158 deprivation of services which are necessary to maintain the mental
159 or physical health of a vulnerable person, * * * shall be guilty
160 of a misdemeanor and, upon conviction thereof, shall be punished



161 by a fine not to exceed One Thousand Dollars (\$1,000.00) or by
162 imprisonment not to exceed one (1) year in the county jail, or by
163 both such fine and imprisonment. Any accepted medical procedure
164 performed in the usual scope of practice shall not be a violation
165 of this subsection.

166 (b) Any person who willfully exploits a vulnerable
167 person, where the value of the exploitation is less than Two
168 Hundred Fifty Dollars (\$250.00), shall be guilty of a misdemeanor
169 and, upon conviction thereof, shall be punished by a fine not to
170 exceed Five Thousand Dollars (\$5,000.00) or by imprisonment not to
171 exceed one (1) year in the county jail, or by both such fine and
172 imprisonment; where the value of the exploitation is Two Hundred
173 Fifty Dollars (\$250.00) or more, the person who exploits a
174 vulnerable person shall be guilty of a felony and, upon conviction
175 thereof, shall be punished by imprisonment in the custody of the
176 Department of Corrections for not more than ten (10) years.

177 (3) Any person who willfully inflicts physical pain or
178 injury upon a vulnerable person shall be guilty of felonious abuse
179 or battery, or both, of a vulnerable person and, upon conviction
180 thereof, may be punished by imprisonment in the State Penitentiary
181 for not more than twenty (20) years.

182 (4) For any third or subsequent misdemeanor conviction of
183 any person violating any part of this section, the offenses being
184 committed within a period of five (5) years, such person shall be
185 guilty of a felony and shall be sentenced to not less than one (1)
186 year nor more than five (5) years in the custody of the Department
187 of Corrections and shall be fined not less than Two Thousand
188 Dollars (\$2,000.00) nor more than Five Thousand Dollars
189 (\$5,000.00).

190 (5) Nothing contained in this section shall prevent
191 proceedings against a person under any statute of this state or
192 municipal ordinance defining any act as a crime or misdemeanor.



193 **SECTION 3.** Section 99-1-5, Mississippi Code of 1972, is
194 amended as follows:

195 99-1-5. The passage of time shall never bar prosecution
196 against any person for the offenses of murder, manslaughter,
197 aggravated assault, kidnapping, arson, burglary, forgery,
198 counterfeiting, robbery, larceny, rape, embezzlement, obtaining
199 money or property under false pretenses or by fraud, felonious
200 abuse or battery of a child as described in Section 97-5-39,
201 touching or handling a child for lustful purposes as described in
202 Section 97-5-23, sexual battery of a child as described in Section
203 97-3-95(1)(c), (d) or (2), or exploitation of children as
204 described in Section 97-5-33. A person shall not be prosecuted
205 for conspiracy, as described in Section 97-1-1, * * * for
206 felonious assistance-program fraud, as described in Section
207 97-19-71, or for felonious abuse of vulnerable persons, as
208 described in Sections 43-47-18 and 43-47-19, unless the
209 prosecution for the offense is commenced within five (5) years
210 next after the commission thereof. A person shall not be
211 prosecuted for larceny of timber as described in Section 97-17-59,
212 unless the prosecution for the offense is commenced within six (6)
213 years next after the commission thereof. A person shall not be
214 prosecuted for any other offense not listed in this section unless
215 the prosecution for the offense is commenced within two (2) years
216 next after the commission thereof. Nothing contained in this
217 section shall bar any prosecution against any person who shall
218 abscond or flee from justice, or shall absent himself from this
219 state or out of the jurisdiction of the court, or so conduct
220 himself that he cannot be found by the officers of the law, or
221 that process cannot be served upon him.

222 **SECTION 4.** This act shall take effect and be in force from
223 and after July 1, 2012.

