

By: Representatives Rushing, Gipson, Hale,  
Rogers (14th)

To: Judiciary B

HOUSE BILL NO. 1028

1 AN ACT TO AMEND SECTION 43-47-9, MISSISSIPPI CODE OF 1972, TO  
2 CREATE "NANCY'S LAW," WHICH AUTHORIZES THE DEPARTMENT OF HUMAN  
3 SERVICES TO RELOCATE OR PROVIDE NEW CARETAKERS FOR VULNERABLE  
4 PERSONS DURING ANY EVALUATION OR INVESTIGATION REGARDING ABUSE OF  
5 A VULNERABLE PERSON; TO BRING FORWARD SECTIONS 43-47-11, 43-47-13  
6 AND 43-47-15, MISSISSIPPI CODE OF 1972, WHICH PROVIDE FOR THE  
7 PROTECTIVE SERVICES PLANS OF VULNERABLE ADULTS WHO HAVE BEEN  
8 ABUSED OR EXPLOITED; AND FOR RELATED PURPOSES.

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

10 **SECTION 1.** Section 43-47-9, Mississippi Code of 1972, is  
11 amended as follows:

12 43-47-9. (1) (a) Upon receipt of a report pursuant to  
13 Section 43-47-7 that a vulnerable person is in need of protective  
14 services, the department shall initiate an investigation and/or  
15 evaluation within forty-eight (48) hours if immediate attention is  
16 needed, or within seventy-two (72) hours if the vulnerable person  
17 is not in immediate danger, to determine whether the vulnerable  
18 person is in need of protective services and what services are  
19 needed. The evaluation shall include any necessary visits and  
20 interviews with the person, and if appropriate, with the alleged



21 perpetrator of the vulnerable person abuse and with any person  
22 believed to have knowledge of the circumstances of the case. \* \* \*

23 (b) When a caretaker of a vulnerable person refuses to  
24 allow the department reasonable access to conduct an investigation  
25 to determine if the vulnerable person is in need of protective  
26 services, the department may petition the court for an emergency  
27 order for injunctive relief to (i) relocate the vulnerable person  
28 to an appropriate care facility if funding exists and prohibit the  
29 alleged perpetrator from having access to the vulnerable person,  
30 or (ii) remove the caretaker, replace such with a new caretaker  
31 that is recommended by the department, and prohibit the alleged  
32 perpetrator from having access to the vulnerable person. This  
33 paragraph (b) shall be known and may be cited as "Nancy's Law."

34 (2) The staff and physicians of local health departments,  
35 mental health clinics and other public or private agencies,  
36 including law enforcement agencies, shall cooperate fully with the  
37 department in the performance of its duties. These duties include  
38 immediate, in-residence evaluations and medical examinations and  
39 treatment where the department deems it necessary. However, upon  
40 receipt of a report of abuse, neglect or exploitation of a  
41 vulnerable person confined in a licensed hospital or licensed  
42 nursing home facility in the state, the department shall  
43 immediately refer this report to the proper authority at the State  
44 Department of Health for investigation under Section 43-47-37.



45           Upon a showing of probable cause that a vulnerable person has  
46 been abused, a court may authorize a qualified third party to make  
47 an evaluation to enter the residence of, and to examine the  
48 vulnerable person. Upon a showing of probable cause that a  
49 vulnerable person has been financially exploited, a court may  
50 authorize a qualified third party, also authorized by the  
51 department, to make an evaluation, and to gain access to the  
52 financial records of the vulnerable person.

53           (3) The department may contract with an agency or private  
54 physician for the purpose of providing immediate, accessible  
55 evaluations in the location that the department deems most  
56 appropriate.

57           **SECTION 2.** Section 43-47-11, Mississippi Code of 1972, is  
58 brought forward as follows:

59           43-47-11. (1) If, pursuant to an investigation instituted  
60 pursuant to Section 43-47-7, the department determines that a  
61 vulnerable person is in need of protective services, it shall  
62 prepare a plan of services, reviewing that plan with the  
63 vulnerable person and obtaining his consent in writing.

64           (2) When a caretaker of a vulnerable person who consents to  
65 the receipt of protective services refuses to allow the provision  
66 of such services to the vulnerable person, the department may  
67 petition the court for an order for injunctive relief enjoining  
68 the caretaker from interfering with the provision of protective  
69 services to the vulnerable person.



70 (3) If a vulnerable person does not consent to the receipt  
71 of protective services, or if he withdraws his consent, the  
72 services shall not be provided, except as indicated in Section  
73 43-47-13.

74 **SECTION 3.** Section 43-47-13, Mississippi Code of 1972, is  
75 brought forward as follows:

76 43-47-13. (1) Every reasonable effort shall be made to  
77 secure the consent and participation of the vulnerable person in  
78 an evaluation and resolution of the need for protective services.  
79 If those efforts fail and if the department has reasonable cause  
80 to believe that a vulnerable person is being abused, neglected or  
81 exploited and lacks the capacity to consent to protective  
82 services, then the department may petition the court for an order  
83 for injunctive relief authorizing the provision of protective  
84 services. The petition must allege specific facts sufficient to  
85 show that the vulnerable person is in need of protective services  
86 and lacks the capacity to consent to them.

87 (2) The court shall set the case for hearing within fourteen  
88 (14) days after the filing of the petition. The vulnerable person  
89 must receive at least five (5) days' notice of the hearing. Where  
90 good cause is shown, the court may direct that a shorter notice be  
91 given. The vulnerable person has the right to be present and  
92 represented by counsel at the hearing. If the person, in the  
93 determination of the court, lacks the capacity to waive the right  
94 to counsel, then the court shall appoint a guardian ad litem. If



95 the person is indigent, the cost of representation shall be borne  
96 by the department or by the court.

97 (3) If, at the hearing, the court finds by clear and  
98 convincing evidence that the vulnerable person is in need of  
99 protective services and lacks the capacity to consent to those  
100 services, the court may issue an order relative thereto. This  
101 order may include the designation of an individual, organization  
102 or agency to be responsible for the performing or obtaining of  
103 essential services on behalf of the vulnerable person or otherwise  
104 consenting to protective services in his behalf. The order may  
105 provide for protective services for a period not to exceed  
106 eighteen (18) months, at which time the vulnerable person's need  
107 for protective services may be reviewed by the department filing a  
108 petition requesting such review with the court. Should the court  
109 determine that the vulnerable person is in further need of  
110 protective services, it may order the provision of such protective  
111 services as provided herein.

112 (4) The court may appoint a guardian or conservator for the  
113 vulnerable person, but the court shall not appoint the department  
114 as a guardian of the vulnerable person. No vulnerable person may  
115 be committed to a mental health facility under this chapter.  
116 However, nothing contained herein shall prohibit the filing of  
117 petitions under other applicable provisions of the laws of this  
118 state.



119           **SECTION 4.** Section 43-47-15, Mississippi Code of 1972, is  
120 brought forward as follows:

121           43-47-15. (1) The department shall have the authority to  
122 provide immediate medical care, food, clothing, heat, shelter,  
123 supervision or other essential services in the absence of consent  
124 if it is determined that:

125                   (a) The vulnerable person is in imminent danger of  
126 death or irreparable harm;

127                   (b) Provision of emergency and/or protective services  
128 will alleviate the endangerment; and

129                   (c) No other statutory or otherwise appropriate remedy  
130 is immediately available.

131           (2) Within forty-eight (48) hours, excluding Saturdays,  
132 Sundays and legal holidays, the department shall petition the  
133 court for an order for injunctive relief authorizing the provision  
134 of emergency services.

135           (3) Upon petition of the Commissioner of Public Welfare, the  
136 court may order the provision of emergency services to a  
137 vulnerable person after finding that there is reasonable cause to  
138 believe that:

139                   (a) The vulnerable person lacks the capacity to consent  
140 and that he is in need of protective services;

141                   (b) An emergency exists; and



142 (c) No other person authorized by law or order to give  
143 consent is available and willing to arrange for emergency  
144 services.

145 If there is reasonable cause to believe that the conditions  
146 listed above exist and no other custodian is available, then upon  
147 a written petition for emergency services filed by the department,  
148 the court may issue an order for injunctive relief for the  
149 department to provide emergency services to a vulnerable person.

150 (4) The petition for emergency services shall set forth the  
151 name, address and authority of the petitioners; the name, age and  
152 residence of the vulnerable person; the nature of the emergency;  
153 the proposed emergency services; the petitioner's reasonable  
154 belief as to the existence of the conditions set forth in  
155 subsection (1) of this section; and facts showing petitioner's  
156 attempts to obtain the vulnerable person's consent to the  
157 services.

158 (5) If the provision of emergency and/or protective services  
159 alleviates the imminent danger of death or irreparable harm and  
160 the department has reasonable cause to believe that the vulnerable  
161 person remains in need of protective services, the department  
162 shall proceed according to Sections 43-47-11 and 43-47-13.

163 (6) Where it is necessary to enter a premises without the  
164 vulnerable person's consent after obtaining a court order in  
165 compliance with subsection (3) of this section, the representative  
166 of the petitioner shall do so.



167           (7) No petitioner shall be held liable in any action brought  
168 by the vulnerable person if the petitioner acted in good faith.

169           **SECTION 5.** This act shall take effect and be in force from  
170 and after July 1, 2018.

