

By: Representatives Rushing, Gipson, Hale,
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To: Judiciary B

COMMITTEE SUBSTITUTE
FOR
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) If at any time during the evaluation and/or
24 investigation, the department has probable cause to believe that
25 the alleged perpetrator or caretaker is interfering or in any way
26 causing harm or undue influence upon the vulnerable person, the
27 department may, in its discretion, (i) upon notice to the
28 caretaker, relocate the vulnerable person to a care facility and
29 prohibit the alleged perpetrator from having access to the
30 vulnerable person, or (ii) upon notice to the caretaker, remove
31 the caretaker, replace such with a new caretaker that is chosen by
32 the department, and prohibit the alleged perpetrator from having
33 access to the vulnerable person. This paragraph (b) shall be
34 known and may be cited as "Nancy's Law."

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



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

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

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

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

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



71 (3) If a vulnerable person does not consent to the receipt
72 of protective services, or if he withdraws his consent, the
73 services shall not be provided, except as indicated in Section
74 43-47-13.

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

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

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



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

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

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



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

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

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

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

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

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

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

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

142 (b) An emergency exists; and



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

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

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

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

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



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

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

