

By: Representative McNeal

To: Judiciary B

HOUSE BILL NO. 650

1 AN ACT TO CREATE THE ADVOCATE CONFIDENTIALITY LAW; TO PROVIDE
2 THAT COMMUNICATIONS OF VICTIMS OF DOMESTIC VIOLENCE, SEXUAL
3 ASSAULT, STALKING AND HUMAN TRAFFICKING WITH ADVOCATES ARE
4 CONFIDENTIAL; TO ESTABLISH PROCEDURES FOR DISCLOSURE IN LIMITED
5 CIRCUMSTANCES; TO PROVIDE FOR IN CAMERA REVIEW BEFORE DISCLOSURE;
6 TO AMEND SECTION 93-21-109, MISSISSIPPI CODE OF 1972, TO CONFORM;
7 AND FOR RELATED PURPOSES.

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

9 **SECTION 1. Communications with advocates deemed**

10 **confidential.** (1) **Definitions.** The following definitions apply
11 in this section:

12 (a) "Advocate" means an employee, contractor, agent or
13 volunteer of a victim service provider whose primary purpose is to
14 render services to victims of domestic violence, sexual assault,
15 stalking or human trafficking and who has completed a minimum of
16 twenty (20) hours of training in the areas of dynamics of
17 victimization, substantive laws relating to domestic violence,
18 sexual assault, stalking and human trafficking, crisis
19 intervention techniques, communications skills, working with
20 diverse populations, an overview of the state's criminal and civil



21 justice systems, information regarding pertinent hospital
22 procedures, victim compensation and information regarding state
23 and community resources for victims of domestic violence, sexual
24 assault, stalking, human trafficking, or mandatory training
25 required by the Office Against Interpersonal Violence, whichever
26 is greater. "Advocate" also means a person employed by a victim
27 service provider who supervises any employee, contractor, agent or
28 volunteer rendering services. The term advocate also means a
29 third party (i) present to further the interest of the victim in
30 receiving services; (ii) necessary for the transmission of the
31 communication; or (iii) to whom disclosure is reasonably necessary
32 to accomplish the purposes for the victim who is seeking services.

33 (b) "Confidential victim communications" means all
34 information, whether written or oral, collected, transmitted or
35 shared between a victim and an advocate in the course of that
36 relationship and maintained by the victim service program in
37 connection with services requested, utilized or denied.
38 "Confidential victim communications" includes, but is not limited
39 to, information received or given by the advocate in the course of
40 the working relationship, advice, records, reports, notes,
41 memoranda, working papers, electronic communications, case files,
42 history and statistical data that contains personally identifying
43 information.

44 (c) "Domestic violence" means any alleged misdemeanor
45 or felony act of domestic violence as defined by Section 99-3-7,



46 knowing violation of a domestic abuse protection order under
47 Section 93-21-21, or incidence of abuse as defined by Section
48 93-21-3(a), whether or not a civil or criminal action arises as a
49 result of the alleged violation. The term "domestic violence"
50 also includes any pattern of behavior or coercive control
51 resulting in physical, emotional or psychological harm to a victim
52 committed by a spouse or former spouse of the victim, a person
53 with whom the victim lives or lived as a spouse, a person related
54 as parent, child, grandparent, grandchild or someone similarly
55 situated to the victim, a person having a child in common with the
56 victim, or a person with whom the victim has or had a dating
57 relationship.

58 (d) "Human Trafficking" means any alleged criminal act
59 in violation of Section 97-3-54.1, whether or not a civil or
60 criminal action arises as a result of the alleged violation.

61 (e) "Personally identifying information" means any
62 information for or about an individual including information
63 likely to disclose the location or identity of a victim of
64 domestic violence, sexual assault, stalking or human trafficking
65 including: (i) a first or last name; (ii) a home or other physical
66 address; (iii) contact information, including a postal, email or
67 internet protocol address; (iv) a social security number; or (v)
68 any other information, including but not limited to date of birth,
69 racial or ethnic background, marital status, children, disability



or religious affiliation, that would serve to identify the individual.

(f) "Services" includes, but is not limited to, crisis hotlines, operation of safe homes and shelters, assessment and intake, case management, advocacy, individual and peer counseling, support in medical, legal, administrative, and judicial systems, transportation, relocation, and crisis intervention.

(g) "Sexual assault" means any alleged violation of Section 97-3-65, 97-3-95, 97-5-23, 97-5-24, 97-5-41, 97-29-3 or 97-29-7, whether or not a civil or criminal action arises as a result of the alleged violation.

(h) "Stalking" means any alleged violation of Sections 97-3-107 or 97-45-15, whether or not a civil or criminal action arises as a result of the alleged violation.

(i) "Victim" means a person alleging domestic violence, sexual assault, stalking or human trafficking, who consults a victim advocate for the purpose of obtaining, for the person, advice, counseling, or other services concerning mental, emotional, or physical injuries suffered as a result of the offense, whether or not services are actually received.

(j) "Victim service provider" means an organization whose primary purpose or mission is to provide services to victims of domestic violence, sexual assault, stalking or human trafficking. This term includes umbrella organizations that have specific victim service programs as part of its organization. Any



provisions regarding confidentiality only extend to the specific program providing victim services and not to the entire organization.

(2) **Confidential victim communications protected from disclosure.** (a) No advocate shall disclose any confidential victim communication or personally identifying information of a victim or be compelled to testify to or surrender any confidential victim communications or personally identifying information in any civil or criminal proceeding or in any legislative or administrative proceeding, without the prior informed, written and time-limited consent of the victim, except in the following circumstances: (i) where disclosure is mandated under Section 43-21-353, Section 43-47-7, Section 43-47-37, Section 97-3-54.1(4), Section 97-5-51, Section 97-29-49, or any other applicable provision of state or federal law; (ii) where failure to disclose is likely to result in imminent risk of serious bodily harm or death of the victim or another person, or when the victim dies or is incapable of giving consent and disclosure is required for an official law enforcement investigation or criminal proceedings regarding the cause of the victim's death or incapacitation; or (iii) where disclosure is required pursuant to a valid court order.

(b) Upon motion of a party in a civil action or of the defendant in a criminal action, the court may compel disclosure of certain confidential victim communications or personally



120 identifying information, if the court determines, after in camera
121 review, that all of the following conditions are met: (i) the
122 information sought is relevant and material evidence of the facts
123 and circumstances involved in an alleged criminal act which is the
124 subject of a criminal proceeding; (ii) the probative value of the
125 information outweighs the harmful effect, if any, of disclosure on
126 the victim, the advocacy relationship and provision and receipt of
127 services; and (iii) the information cannot be obtained by
128 reasonable means from any other source.

129 The court shall document its determination to compel
130 disclosure in writing or place its findings into the record of the
131 proceeding. This proceeding does not entitle the requesting party
132 to examine the records unless those records are made available by
133 the court. The proceeding set in this paragraph (b) shall not
134 supersede the provisions of Section 99-43-25 with regard to the
135 protection of facts that could divulge the identity, residence, or
136 place of employment of a victim.

137 (c) A release of information without the consent of the
138 victim shall be limited in scope to the minimum amount necessary
139 to comply with any mandated disclosure. The advocate or victim
140 service provider must make reasonable attempts to notify the
141 victim of the disclosure, to whom the disclosure was made, and for
142 what purpose.

143 (d) A victim service program may not require consent to
144 release of information as a condition of service to a victim.



145 (e) A legal guardian, guardian ad litem or parent may
146 consent to release of confidential information for a victim who,
147 due to incompetency, incapacity or minority, is incapable of
148 consenting, except that no person who has committed or is alleged
149 to have committed a crime against the victim shall be granted this
150 authority.

151 (3) Under no circumstances shall the location of a shelter,
152 safe house or transitional housing for victims of domestic
153 violence, sexual assault, stalking or human trafficking be
154 disclosed in any civil or criminal proceeding.

155 (4) A communication remains confidential for purposes of
156 this section if made in the presence of or communicated to third
157 parties: (a) present to further the interest of the victim in
158 receiving services; (b) necessary for the transmission of the
159 communication; or (c) to whom disclosure is reasonably necessary
160 to accomplish the purposes for the victim who is seeking services.

161 (5) Nonpersonally identifying information or data in the
162 aggregate regarding services to clients and nonpersonally
163 identifying demographic information may be disclosed by victim
164 service providers for purposes of submitting reports, obtaining
165 funding, conducting evaluation or complying with data collection
166 requirements.

167 (6) An advocate or victim service provider who makes any
168 disclosure in violation of this section shall be civilly liable to
169 the person whose personal information was disclosed in the amount



170 of Ten Thousand Dollars (\$10,000.00), plus any compensatory
171 damages that the individual may have suffered as the result of the
172 disclosure.

173 (7) Nothing in this section shall affect any confidentiality
174 or privilege provisions established by law or court rule.

175 (8) Nothing in this section shall prevent the sharing of law
176 enforcement or court-generated information gathered in furtherance
177 of an investigation or prosecution of a crime.

178 **SECTION 2.** Section 93-21-109, Mississippi Code of 1972, is
179 amended as follows:

180 93-21-109. * * * Records maintained by domestic violence
181 shelters, except the official minutes of the board of directors of
182 the shelter, and financial reports filed as required by statute
183 with the board of supervisors or municipal authorities or any
184 other agency of government, shall be withheld from public
185 disclosure under the provisions of the Mississippi Public Records
186 Act of 1983.

187 * * *

188 **SECTION 3.** This act shall take effect and be in force from
189 and after July 1, 2019.

