

By: Senator(s) Hill

To: Judiciary, Division A

SENATE BILL NO. 2001

1 AN ACT TO AMEND SECTION 43-21-105, MISSISSIPPI CODE OF 1972,
 2 TO CLARIFY THAT MUNCHAUSEN BY PROXY COMMITTED AGAINST A CHILD
 3 CONSTITUTES CHILD ABUSE; TO AMEND SECTION 43-47-5, MISSISSIPPI
 4 CODE OF 1972, TO CLARIFY THAT MUNCHAUSEN BY PROXY COMMITTED
 5 AGAINST A VULNERABLE PERSON CONSTITUTES ABUSE OF A VULNERABLE
 6 PERSON; AND FOR RELATED PURPOSES.

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

8 **SECTION 1.** Section 43-21-105, Mississippi Code of 1972, is
 9 amended as follows:

10 43-21-105. The following words and phrases, for purposes of
 11 this chapter, shall have the meanings ascribed herein unless the
 12 context clearly otherwise requires:

13 (a) "Youth court" means the Youth Court Division.

14 (b) "Judge" means the judge of the Youth Court
 15 Division.

16 (c) "Designee" means any person that the judge appoints
 17 to perform a duty which this chapter requires to be done by the
 18 judge or his designee. The judge may not appoint a person who is
 19 involved in law enforcement or who is an employee of the
 20 Mississippi Department of Human Services to be his designee.



21 (d) "Child" and "youth" are synonymous, and each means
22 a person who has not reached his eighteenth birthday. A child who
23 has not reached his eighteenth birthday and is on active duty for
24 a branch of the armed services or is married is not considered a
25 "child" or "youth" for the purposes of this chapter.

26 (e) "Parent" means the father or mother to whom the
27 child has been born, or the father or mother by whom the child has
28 been legally adopted.

29 (f) "Guardian" means a court-appointed guardian of the
30 person of a child.

31 (g) "Custodian" means any person having the present
32 care or custody of a child whether such person be a parent or
33 otherwise.

34 (h) "Legal custodian" means a court-appointed custodian
35 of the child.

36 (i) "Delinquent child" means a child who has reached
37 his tenth birthday and who has committed a delinquent act.

38 (j) "Delinquent act" is any act, which if committed by
39 an adult, is designated as a crime under state or federal law, or
40 municipal or county ordinance other than offenses punishable by
41 life imprisonment or death. A delinquent act includes escape from
42 lawful detention and violations of the Uniform Controlled
43 Substances Law and violent behavior.



44 (k) "Child in need of supervision" means a child who
45 has reached his seventh birthday and is in need of treatment or
46 rehabilitation because the child:

47 (i) Is habitually disobedient of reasonable and
48 lawful commands of his parent, guardian or custodian and is
49 ungovernable; or

50 (ii) While being required to attend school,
51 willfully and habitually violates the rules thereof or willfully
52 and habitually absents himself therefrom; or

53 (iii) Runs away from home without good cause; or

54 (iv) Has committed a delinquent act or acts.

55 (1) "Neglected child" means a child:

56 (i) Whose parent, guardian or custodian or any
57 person responsible for his care or support, neglects or refuses,
58 when able so to do, to provide for him proper and necessary care
59 or support, or education as required by law, or medical, surgical,
60 or other care necessary for his well-being; however, a parent who
61 withholds medical treatment from any child who in good faith is
62 under treatment by spiritual means alone through prayer in
63 accordance with the tenets and practices of a recognized church or
64 religious denomination by a duly accredited practitioner thereof
65 shall not, for that reason alone, be considered to be neglectful
66 under any provision of this chapter; or

67 (ii) Who is otherwise without proper care,
68 custody, supervision or support; or



69 (iii) Who, for any reason, lacks the special care
70 made necessary for him by reason of his mental condition, whether
71 the mental condition is having mental illness or having an
72 intellectual disability; or

73 (iv) Who, for any reason, lacks the care necessary
74 for his health, morals or well-being.

75 (m) "Abused child" means a child whose parent, guardian
76 or custodian or any person responsible for his care or support,
77 whether legally obligated to do so or not, has caused or allowed
78 to be caused, upon the child, sexual abuse, sexual exploitation,
79 emotional abuse, mental injury, nonaccidental physical injury,
80 Munchausen by proxy, or other maltreatment. However, physical
81 discipline, including spanking, performed on a child by a parent,
82 guardian or custodian in a reasonable manner shall not be deemed
83 abuse under this section. "Abused child" also means a child who
84 is or has been trafficked within the meaning of the Mississippi
85 Human Trafficking Act by any person, without regard to the
86 relationship of the person to the child.

87 (n) "Sexual abuse" means obscene or pornographic
88 photographing, filming or depiction of children for commercial
89 purposes, or the rape, molestation, incest, prostitution or other
90 such forms of sexual exploitation of children under circumstances
91 which indicate that the child's health or welfare is harmed or
92 threatened.



93 (o) "A child in need of special care" means a child
94 with any mental or physical illness that cannot be treated with
95 the dispositional alternatives ordinarily available to the youth
96 court.

97 (p) A "dependent child" means any child who is not a
98 child in need of supervision, a delinquent child, an abused child
99 or a neglected child, and which child has been voluntarily placed
100 in the custody of the Department of Human Services by his parent,
101 guardian or custodian.

102 (q) "Custody" means the physical possession of the
103 child by any person.

104 (r) "Legal custody" means the legal status created by a
105 court order which gives the legal custodian the responsibilities
106 of physical possession of the child and the duty to provide him
107 with food, shelter, education and reasonable medical care, all
108 subject to residual rights and responsibilities of the parent or
109 guardian of the person.

110 (s) "Detention" means the care of children in
111 physically restrictive facilities.

112 (t) "Shelter" means care of children in physically
113 nonrestrictive facilities.

114 (u) "Records involving children" means any of the
115 following from which the child can be identified:

116 (i) All youth court records as defined in Section
117 43-21-251;



118 (ii) All social records as defined in Section
119 43-21-253;

120 (iii) All law enforcement records as defined in
121 Section 43-21-255;

122 (iv) All agency records as defined in Section
123 43-21-257; and

124 (v) All other documents maintained by any
125 representative of the state, county, municipality or other public
126 agency insofar as they relate to the apprehension, custody,
127 adjudication or disposition of a child who is the subject of a
128 youth court cause.

129 (v) "Any person responsible for care or support" means
130 the person who is providing for the child at a given time. This
131 term shall include, but is not limited to, stepparents, foster
132 parents, relatives, nonlicensed babysitters or other similar
133 persons responsible for a child and staff of residential care
134 facilities and group homes that are licensed by the Department of
135 Human Services.

136 (w) The singular includes the plural, the plural the
137 singular and the masculine the feminine when consistent with the
138 intent of this chapter.

139 (x) "Out-of-home" setting means the temporary
140 supervision or care of children by the staff of licensed day care
141 centers, the staff of public, private and state schools, the staff
142 of juvenile detention facilities, the staff of unlicensed



143 residential care facilities and group homes and the staff of, or
144 individuals representing, churches, civic or social organizations.

145 (y) "Durable legal custody" means the legal status
146 created by a court order which gives the durable legal custodian
147 the responsibilities of physical possession of the child and the
148 duty to provide him with care, nurture, welfare, food, shelter,
149 education and reasonable medical care. All these duties as
150 enumerated are subject to the residual rights and responsibilities
151 of the natural parent(s) or guardian(s) of the child or children.

152 (z) "Status offense" means conduct subject to
153 adjudication by the youth court that would not be a crime if
154 committed by an adult.

155 (aa) "Financially able" means a parent or child who is
156 ineligible for a court-appointed attorney.

157 (bb) "Assessment" means an individualized examination
158 of a child to determine the child's psychosocial needs and
159 problems, including the type and extent of any mental health,
160 substance abuse or co-occurring mental health and substance abuse
161 disorders and recommendations for treatment. The term includes,
162 but is not limited to, a drug and alcohol, psychological or
163 psychiatric evaluation, records review, clinical interview or the
164 administration of a formal test and instrument.

165 (cc) "Screening" means a process, with or without the
166 administration of a formal instrument, that is designed to
167 identify a child who is at increased risk of having mental health,



168 substance abuse or co-occurring mental health and substance abuse
169 disorders that warrant immediate attention, intervention or more
170 comprehensive assessment.

171 (dd) "Durable legal relative guardianship" means the
172 legal status created by a youth court order that conveys the
173 physical and legal custody of a child or children by durable legal
174 guardianship to a relative or fictive kin who is licensed as a
175 foster or resource parent.

176 (ee) "Relative" means a person related to the child by
177 affinity or consanguinity within the third degree.

178 (ff) "Fictive kin" means a person not related to the
179 child legally or biologically but who is considered a relative due
180 to a significant, familial-like and ongoing relationship with the
181 child and family.

182 (gg) "Reasonable efforts" means the exercise of
183 reasonable care and due diligence by the Department of Human
184 Services, the Department of Child Protection Services, or any
185 other appropriate entity or person to use appropriate and
186 available services to prevent the unnecessary removal of the child
187 from the home or provide other services related to meeting the
188 needs of the child and the parents.

189 **SECTION 2.** Section 43-47-5, Mississippi Code of 1972, is
190 amended as follows:



191 43-47-5. For the purposes of this chapter, the following
192 words shall have the meanings ascribed herein unless the context
193 otherwise requires:

194 (a) "Abuse" means the commission of a willful act, or
195 the willful omission of the performance of a duty, which act or
196 omission contributes, tends to contribute to, or results in the
197 infliction of physical pain, injury or mental anguish on or to a
198 vulnerable person, the unreasonable confinement of a vulnerable
199 person, or the willful deprivation by a caretaker of services
200 which are necessary to maintain the mental or physical health of a
201 vulnerable person, including Munchausen by proxy. "Abuse"
202 includes the sexual abuse delineated in Section 43-47-18. "Abuse"
203 does not mean conduct that is a part of the treatment and care of,
204 and in furtherance of the health and safety of, a patient or
205 resident of a care facility, nor shall it mean a normal caregiving
206 action or appropriate display of affection. "Abuse" includes, but
207 is not limited to, a single incident.

208 (b) "Care facility" means:

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

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

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



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

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

221 (vi) Any adult day services facility, which means
222 a community-based group program for adults designed to meet the
223 needs of adults with impairments through individual plans of care,
224 which are structured, comprehensive, planned, nonresidential
225 programs providing a variety of health, social and related support
226 services in a protective setting, enabling participants to live in
227 the community. Exempted from this definition shall be any program
228 licensed and certified by the Mississippi Department of Mental
229 Health and any adult day services program provided to ten (10) or
230 fewer individuals by a licensed institution for the aged or
231 infirm.

232 (c) "Caretaker" means an individual, corporation,
233 partnership or other organization which has assumed the
234 responsibility for the care of a vulnerable person, but shall not
235 include the Division of Medicaid, a licensed hospital, or a
236 licensed nursing home within the state.

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

239 (e) "Department" means the Department of Human
240 Services.



241 (f) "Emergency" means a situation in which:
242 (i) A vulnerable person is in substantial danger
243 of serious harm, death or irreparable harm if protective services
244 are not provided immediately;
245 (ii) The vulnerable person is unable to consent to
246 services;
247 (iii) No responsible, able or willing caretaker,
248 if any, is available to consent to emergency services; and
249 (iv) There is insufficient time to utilize the
250 procedure provided in Section 43-47-13.
251 (g) "Emergency services" means those services necessary
252 to maintain a vulnerable person's vital functions and without
253 which there is reasonable belief that the vulnerable person would
254 suffer irreparable harm or death, and may include taking physical
255 custody of the person.
256 (h) "Essential services" means those social work,
257 medical, psychiatric or legal services necessary to safeguard a
258 vulnerable person's rights and resources and to maintain the
259 physical or mental well-being of the person. These services shall
260 include, but not be limited to, the provision of medical care for
261 physical and mental health needs, assistance in personal hygiene,
262 food, clothing, adequately heated and ventilated shelter,
263 protection from health and safety hazards, protection from
264 physical mistreatment and protection from exploitation. The words
265 "essential services" shall not include taking a vulnerable person



266 into physical custody without his consent, except as provided for
267 in Section 43-47-15 and as otherwise provided by the general laws
268 of the state.

269 (i) "Exploitation" means the illegal or improper use of
270 a vulnerable person or his resources for another's profit,
271 advantage or unjust enrichment, with or without the consent of the
272 vulnerable person, and may include actions taken pursuant to a
273 power of attorney. "Exploitation" includes, but is not limited
274 to, a single incident.

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

277 (k) "Improper use" means any use without the consent of
278 the vulnerable person, any use with the consent of the vulnerable
279 person if the consent is obtained by undue means, or any use that
280 deprives the vulnerable person of his ability to obtain essential
281 services or a lifestyle to which the vulnerable person has become
282 accustomed and could have otherwise afforded.

283 (l) "Lacks the capacity to consent" means that a
284 vulnerable person, because of physical or mental incapacity, lacks
285 sufficient understanding or capacity to make or communicate
286 responsible decisions concerning his person, including, but not
287 limited to, provisions for health care, food, clothing or shelter.
288 This may be reasonably determined by the department in emergency
289 situations; in all other instances, the court shall make the
290 determination following the procedures in Sections 43-47-13 and



291 43-47-15 or as otherwise provided by the general laws of the
292 state.

293 (m) "Neglect" means either the inability of a
294 vulnerable person who is living alone to provide for himself the
295 food, clothing, shelter, health care or other services which are
296 necessary to maintain his mental or physical health, or failure of
297 a caretaker to supply the vulnerable person with the food,
298 clothing, shelter, health care, supervision or other services
299 which a reasonably prudent person would do to maintain the
300 vulnerable person's mental and physical health. "Neglect"
301 includes, but is not limited to, a single incident.

302 (n) "Protective services" means services provided by
303 the state or other government or private organizations, agencies
304 or individuals which are necessary to protect a vulnerable person
305 from abuse, neglect or exploitation. They shall include, but not
306 be limited to, investigation, evaluation of the need for services
307 and provision of essential services on behalf of a vulnerable
308 person.

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

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



315 (q) "Vulnerable person" means a person, whether a minor
316 or adult, whose ability to perform the normal activities of daily
317 living or to provide for his or her own care or protection from
318 abuse, neglect, exploitation or improper sexual contact is
319 impaired due to a mental, emotional, physical or developmental
320 disability or dysfunction, or brain damage or the infirmities of
321 aging. The term "vulnerable person" also includes all residents
322 or patients, regardless of age, in a care facility. The
323 department shall not be prohibited from investigating, and shall
324 have the authority and responsibility to fully investigate, in
325 accordance with the provisions of this chapter, any allegation of
326 abuse, neglect or exploitation regarding a patient in a care
327 facility, if the alleged abuse, neglect or exploitation occurred
328 at a private residence.

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

