

By: Representatives McLean, Ford (73rd),  
Gibbs (72nd)

To: Judiciary B

HOUSE BILL NO. 1386

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 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 contain 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  
66 physical address; (iii) contact information, including a postal,  
67 email or Internet protocol address; (iv) a social security number;  
68 or (v) any other information, including, but not limited to, date  
69 of birth, racial or ethnic background, marital status, children,



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

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

77 (g) "Sexual assault" means any alleged violation of  
78 Section 97-3-65, 97-3-95, 97-5-23, 97-5-24, 97-5-41, 97-29-3 or  
79 97-29-7, whether or not a civil or criminal action arises as a  
80 result of the alleged violation.

81 (h) "Stalking" means any alleged violation of Section  
82 97-3-107 or 97-45-15, whether or not a civil or criminal action  
83 arises as a result of the alleged violation.

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

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



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

98           (2) **Confidential victim communications protected from**  
99 **disclosure.** (a) No advocate shall disclose any confidential  
100 victim communication or personally identifying information of a  
101 victim or be compelled to testify to or surrender any confidential  
102 victim communications or personally identifying information in any  
103 civil or criminal proceeding or in any legislative or  
104 administrative proceeding, without the prior informed, written and  
105 time-limited consent of the victim, except in the following  
106 circumstances: (i) where disclosure is mandated under Section  
107 43-21-353, Section 43-47-7, Section 43-47-37, Section  
108 97-3-54.1(4), Section 97-5-51, Section 97-29-49, or any other  
109 applicable provision of state or federal law; (ii) where failure  
110 to disclose is likely to result in imminent risk of serious bodily  
111 harm or death of the victim or another person, or when the victim  
112 dies or is incapable of giving consent and disclosure is required  
113 for an official law enforcement investigation or criminal  
114 proceedings regarding the cause of the victim's death or  
115 incapacitation; or (iii) where disclosure is required pursuant to  
116 a valid court order.

117           (b) Upon motion of a party in a civil action or of the  
118 defendant in a criminal action, the court may compel disclosure of  
119 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 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 (9) Nothing in this section shall prevent the disclosure of  
179 confidential victim communication by any governmental or private  
180 participant of a meeting of a multidisciplinary child protection  
181 team created pursuant to Miss. Code Ann. Section 43-15-51, such  
182 disclosures to be governed by Section 43-15-51(5).

183 (10) Nothing in this section shall prevent an advocate from  
184 a governmental organization from sharing victim information with  
185 necessary persons to accomplish the duties of the job or to  
186 satisfy statutory or constitutional requirements of disclosure.

187 (11) Nothing in this section shall be construed as creating  
188 a cause of action for damages against the state or any of its  
189 agencies, officials, employees or political subdivisions.

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

192 93-21-109. \* \* \* Records maintained by domestic violence  
193 shelters, except the official minutes of the board of directors of  
194 the shelter, and financial reports filed as required by statute





195 with the board of supervisors or municipal authorities or any  
196 other agency of government, shall be withheld from public  
197 disclosure under the provisions of the Mississippi Public Records  
198 Act of 1983.

199 \* \* \*

200 **SECTION 3.** This act shall take effect and be in force from  
201 and after July 1, 2020.

