

By: Senator(s) Hill, Seymour

To: Judiciary, Division A;
Public Health and Welfare

SENATE BILL NO. 2075

1 AN ACT PROHIBITING THE MUTILATION OF GIRLS AND YOUNG WOMEN,
 2 CREATING CIVIL REMEDIES FOR VICTIMS OF MUTILATION, AND PROVIDING A
 3 STATUTE OF LIMITATIONS FOR ACTIONS ARISING FROM SUCH ACTS; TO
 4 AMEND SECTION 97-5-39, MISSISSIPPI CODE OF 1972, TO CREATE GENITAL
 5 MUTILATION OF A FEMALE MINOR AS CHILD ABUSE; TO AMEND SECTION
 6 93-15-121, MISSISSIPPI CODE OF 1972, TO CREATE GENITAL MUTILATION
 7 OF A FEMALE MINOR AS A GROUND FOR TERMINATION OF CHILD ABUSE; TO
 8 AMEND SECTION 11-1-60, MISSISSIPPI CODE OF 1972, TO WAIVE THE TORT
 9 CLAIM LIMITS ON CAUSES OF ACTION FOR GENITAL MUTILATION OF A
 10 FEMALE MINOR; TO AMEND SECTION 11-46-15, MISSISSIPPI CODE OF 1972,
 11 TO WAIVE SOVEREIGN IMMUNITY FOR A CAUSE OF ACTION BASED ON THE
 12 GENITAL MUTILATION OF A FEMALE MINOR; TO AMEND SECTION 15-1-35,
 13 MISSISSIPPI CODE OF 1972, TO CREATE A NEW STATUTE OF LIMITATIONS
 14 FOR A CAUSE OF ACTION FOUNDED ON THE GENITAL MUTILATION OF A
 15 FEMALE MINOR; AND FOR RELATED PURPOSES.

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

17 **SECTION 1.** (1) **Definitions.** For the purposes of this act:

18 (a) "Mutilation" means the following actions or
 19 procedures to the genitalia of female minors: (i) the partial or
 20 total removal of the clitoris and/or the prepuce; (ii) the partial
 21 or total removal of the clitoris and the labia minora, with or
 22 without excision of the labia major; or (iii) the narrowing of the
 23 vaginal opening through the creation of a covering seal formed by
 24 cuffing and repositioning the inner, and sometimes outer, labia,



25 with or without removal of the clitoris. "Mutilation" also means
26 all other harmful procedures to the genitalia of female minors,
27 including, but not limited to, pricking, piercing, incising,
28 scraping and cauterizing, unless these harmful procedures are
29 proven to be medically necessary for the minor due to a recognized
30 medical condition by a preponderance of the evidence.

31 (b) "Provider" means the following persons: (i) all
32 health care providers, including, but not limited to, hospitals,
33 clinics, doctors, nurses, and all other natural and legal persons
34 who provide health care services; (ii) teachers; and (iii) all
35 social services providers, including, but not limited to,
36 organizations, social workers, therapists and case workers.

37 (2) **Providers' duty to report mutilation.** Any provider who
38 discovers the mutilation of, or the threat of mutilation to, a
39 female minor shall immediately report such mutilation or
40 threatened mutilation to the Mississippi Department of Child
41 Protection Services and the law enforcement agency in whose
42 jurisdiction the reporter believes the violation or threatened
43 violation of this section occurred and provide written notice of
44 such mutilation or threatened mutilation in writing within twelve
45 (12) hours of the discovery thereof to the Mississippi Department
46 of Child Protection Services and the law enforcement agency in
47 whose jurisdiction the reporter believes the violation or
48 threatened violation of this section occurred. The report shall
49 include the name and address of the victim or potential victim.



50 (3) The Mississippi Department of Child Protection Services
51 shall maintain a confidential registry of reports of violations of
52 this section.

53 (4) **Penalties.** (a) Any person who: (i) mutilates, or (ii)
54 arranges for mutilation, or (iii) knowingly transports a resident
55 of this state outside of this state for mutilation, or (iv)
56 recklessly transports a resident of this state outside of this
57 state to a place where mutilation is reasonably likely to occur,
58 or (v) aids and abets mutilation, or (vi) conspires to mutilate,
59 to arrange for mutilation, to transport a resident of this state
60 outside of this state for mutilation or to a place where
61 mutilation is reasonably likely to occur, or to aid and abet
62 mutilation, shall be guilty of a felony and shall be sentenced to
63 no less than ten (10) years in prison, and shall pay a fine of
64 Fifty Thousand Dollars (\$50,000.00).

65 (b) Any provider who knows, or has reason to know, of
66 mutilation or threatened mutilation, and who fails to report such
67 mutilation to the Mississippi Department of Child Protection
68 Services and the law enforcement agency in whose jurisdiction the
69 reporter believes the violation or threatened violation of this
70 section occurred in accordance with the terms of this act shall be
71 guilty of a misdemeanor and shall be sentenced to not more than
72 one (1) year in prison, and a fine not to exceed Five Thousand
73 Dollars (\$5,000.00).



74 (5) **Civil remedies.** (a) In addition to any other remedies
75 she may have under law, the victim of mutilation shall recover
76 treble her damages for pain, suffering, and psychological trauma,
77 exemplary damages, litigation costs, expert fees, and actual
78 attorney fees from any person who: (i) mutilated her; (ii)
79 arranged for her mutilation; (iii) knowingly transported her
80 outside of this state for mutilation; (iv) recklessly transported
81 her outside of this state to a place where mutilation was
82 reasonably likely to occur; (v) aided and abetted her mutilation;
83 or (vi) conspired to mutilate her, to arrange for her mutilation,
84 to transport her outside of this state for mutilation or to a
85 place where mutilation was reasonably likely to occur, or to aid
86 and abet her mutilation.

87 (b) In addition to any other remedies she may have
88 under law, a victim of mutilation that occurs after the effective
89 date of this act may seek and recover treble her damages,
90 including damages for pain, suffering, and psychological trauma,
91 exemplary damages, and actual litigation costs, expert fees, and
92 attorney fees from a provider and/or the secretary, provided that
93 the victim proves that the provider or the secretary failed to
94 comply with their obligations hereunder.

95 **SECTION 2.** Section 97-5-39, Mississippi Code of 1972, is
96 amended as follows:

97 97-5-39. (1) (a) Except as otherwise provided in this
98 section, any parent, guardian or other person who intentionally,



99 knowingly or recklessly commits any act or omits the performance
100 of any duty, which act or omission contributes to or tends to
101 contribute to the neglect or delinquency of any child or which act
102 or omission results in the abuse of any child, as defined in
103 Section 43-21-105(m) of the Youth Court Law, or who knowingly aids
104 any child in escaping or absenting himself from the guardianship
105 or custody of any person, agency or institution, or knowingly
106 harbors or conceals, or aids in harboring or concealing, any child
107 who has absented himself without permission from the guardianship
108 or custody of any person, agency or institution to which the child
109 shall have been committed by the youth court shall be guilty of a
110 misdemeanor, and upon conviction shall be punished by a fine not
111 to exceed One Thousand Dollars (\$1,000.00), or by imprisonment not
112 to exceed one (1) year in jail, or by both such fine and
113 imprisonment.

114 (b) For the purpose of this section, a child is a
115 person who has not reached his eighteenth birthday. A child who
116 has not reached his eighteenth birthday and is on active duty for
117 a branch of the armed services, or who is married, is not
118 considered a child for the purposes of this statute.

119 (c) If a child commits one (1) of the proscribed acts
120 in subsection (2) (a), (b) or (c) of this section upon another
121 child, then original jurisdiction of all such offenses shall be in
122 youth court.



123 (d) If the child's deprivation of necessary clothing,
124 shelter, health care or supervision appropriate to the child's age
125 results in substantial harm to the child's physical, mental or
126 emotional health, the person may be sentenced to imprisonment in
127 the custody of the Department of Corrections for not more than
128 five (5) years or to payment of a fine of not more than Five
129 Thousand Dollars (\$5,000.00), or both.

130 (e) A parent, legal guardian or other person who
131 knowingly permits the continuing physical or sexual abuse of a
132 child is guilty of neglect of a child and may be sentenced to
133 imprisonment in the custody of the Department of Corrections for
134 not more than ten (10) years or to payment of a fine of not more
135 than Ten Thousand Dollars (\$10,000.00), or both.

136 (2) Any person shall be guilty of felonious child abuse in
137 the following circumstances:

138 (a) Whether bodily harm results or not, if the person
139 shall intentionally, knowingly or recklessly:

140 (i) Burn any child;

141 (ii) Physically torture any child;

142 (iii) Strangle, choke, smother or in any way
143 interfere with any child's breathing;

144 (iv) Poison a child;

145 (v) Starve a child of nourishments needed to
146 sustain life or growth;

147 (vi) Use any type of deadly weapon upon any child;



148 (b) If some bodily harm to any child actually occurs,
149 and if the person shall intentionally, knowingly or recklessly:
150 (i) Throw, kick, bite, or cut any child;
151 (ii) Strike a child under the age of fourteen (14)
152 about the face or head with a closed fist;
153 (iii) Strike a child under the age of five (5) in
154 the face or head;
155 (iv) Kick, bite, cut or strike a child's genitals;
156 circumcision of a male child is not a violation under this
157 subparagraph (iv);
158 (c) If serious bodily harm to any child actually
159 occurs, and if the person shall intentionally, knowingly or
160 recklessly:
161 (i) Strike any child on the face or head;
162 (ii) Disfigure or scar any child;
163 (iii) Whip, strike or otherwise abuse any child;
164 (d) If the person violates Section 1 of this act;
165 (* * *e) Any person, upon conviction under paragraph
166 (a) or (c) of this subsection, shall be sentenced by the court to
167 imprisonment in the custody of the Department of Corrections for a
168 term of not less than five (5) years and up to life, as determined
169 by the court. Any person, upon conviction under paragraph (b) of
170 this subsection shall be sentenced by the court to imprisonment in
171 the custody of the Department of Corrections for a term of not
172 less than two (2) years nor more than ten (10) years, as



173 determined by the court. For any second or subsequent conviction
174 under this subsection (2), the person shall be sentenced to
175 imprisonment for life * * *;

176 (* * *f) For the purposes of this subsection (2),
177 "bodily harm" means any bodily injury to a child and includes, but
178 is not limited to, bruising, bleeding, lacerations, soft tissue
179 swelling, and external or internal swelling of any body
180 organ * * *;

181 (* * *g) For the purposes of this subsection (2),
182 "serious bodily harm" means any serious bodily injury to a child
183 and includes, but is not limited to, the fracture of a bone,
184 permanent disfigurement, permanent scarring, or any internal
185 bleeding or internal trauma to any organ, any brain damage, any
186 injury to the eye or ear of a child or other vital organ, and
187 impairment of any bodily function * * *;

188 (* * *h) Nothing contained in paragraph (c) of this
189 subsection shall preclude a parent or guardian from disciplining a
190 child of that parent or guardian, or shall preclude a person in
191 loco parentis to a child from disciplining that child, if done in
192 a reasonable manner, and reasonable corporal punishment or
193 reasonable discipline as to that parent or guardian's child or
194 child to whom a person stands in loco parentis shall be a defense
195 to any violation charged under paragraph (c) of this
196 subsection * * *;



197 (* * *i) Reasonable discipline and reasonable corporal
198 punishment shall not be a defense to acts described in paragraphs
199 (a) and (b) of this subsection or if a child suffers serious
200 bodily harm as a result of any act prohibited under paragraph (c)
201 of this subsection.

202 (3) Nothing contained in this section shall prevent
203 proceedings against the parent, guardian or other person under any
204 statute of this state or any municipal ordinance defining any act
205 as a crime or misdemeanor. Nothing in the provisions of this
206 section shall preclude any person from having a right to trial by
207 jury when charged with having violated the provisions of this
208 section.

209 (4) (a) A parent, legal guardian or caretaker who endangers
210 a child's person or health by knowingly causing or permitting the
211 child to be present where any person is selling, manufacturing or
212 possessing immediate precursors or chemical substances with intent
213 to manufacture, sell or possess a controlled substance as
214 prohibited under Section 41-29-139 or 41-29-313, is guilty of
215 child endangerment and may be sentenced to imprisonment for not
216 more than ten (10) years or to payment of a fine of not more than
217 Ten Thousand Dollars (\$10,000.00), or both.

218 (b) If the endangerment results in substantial harm to
219 the child's physical, mental or emotional health, the person may
220 be sentenced to imprisonment for not more than twenty (20) years



221 or to payment of a fine of not more than Twenty Thousand Dollars
222 (\$20,000.00), or both.

223 (5) Nothing contained in this section shall prevent
224 proceedings against the parent, guardian or other person under any
225 statute of this state or any municipal ordinance defining any act
226 as a crime or misdemeanor. Nothing in the provisions of this
227 section shall preclude any person from having a right to trial by
228 jury when charged with having violated the provisions of this
229 section.

230 (6) After consultation with the Department of Human
231 Services, a regional mental health center or an appropriate
232 professional person, a judge may suspend imposition or execution
233 of a sentence provided in subsections (1) and (2) of this section
234 and in lieu thereof require treatment over a specified period of
235 time at any approved public or private treatment facility. A
236 person may be eligible for treatment in lieu of criminal penalties
237 no more than one (1) time.

238 (7) In any proceeding resulting from a report made pursuant
239 to Section 43-21-353 of the Youth Court Law, the testimony of the
240 physician making the report regarding the child's injuries or
241 condition or cause thereof shall not be excluded on the ground
242 that the physician's testimony violates the physician-patient
243 privilege or similar privilege or rule against disclosure. The
244 physician's report shall not be considered as evidence unless
245 introduced as an exhibit to his testimony.



246 (8) Any criminal prosecution arising from a violation of
247 this section shall be tried in the circuit, county, justice or
248 municipal court having jurisdiction; provided, however, that
249 nothing herein shall abridge or dilute the contempt powers of the
250 youth court.

251 **SECTION 3.** Section 93-15-121, Mississippi Code of 1972, is
252 amended as follows:

253 93-15-121. Any of the following, if established by clear and
254 convincing evidence, may be grounds for termination of the
255 parent's parental rights if reunification between the parent and
256 child is not desirable toward obtaining a satisfactory permanency
257 outcome:

258 (a) The parent has been medically diagnosed by a
259 qualified mental health professional with a severe mental illness
260 or deficiency that is unlikely to change in a reasonable period of
261 time and which, based upon expert testimony or an established
262 pattern of behavior, makes the parent unable or unwilling to
263 provide an adequate permanent home for the child;

264 (b) The parent has been medically diagnosed by a
265 qualified health professional with an extreme physical
266 incapacitation that is unlikely to change in a reasonable period
267 of time and which, based upon expert testimony or an established
268 pattern of behavior, prevents the parent, despite reasonable
269 accommodations, from providing minimally acceptable care for the
270 child;



271 (c) The parent is suffering from habitual alcoholism or
272 other drug addiction and has failed to successfully complete
273 alcohol or drug treatment;

274 (d) The parent is unwilling to provide reasonably
275 necessary food, clothing, shelter, or medical care for the child;
276 reasonably necessary medical care does not include recommended or
277 optional vaccinations against childhood or any other disease;

278 (e) The parent has failed to exercise reasonable
279 visitation or communication with the child;

280 (f) The parent's abusive or neglectful conduct has
281 caused, at least in part, an extreme and deep-seated antipathy by
282 the child toward the parent, or some other substantial erosion of
283 the relationship between the parent and the child;

284 (g) The parent has committed an abusive act for which
285 reasonable efforts to maintain the children in the home would not
286 be required under Section 43-21-603, or a series of physically,
287 mentally, or emotionally abusive incidents, against the child or
288 another child, whether related by consanguinity or affinity or
289 not, making future contacts between the parent and child
290 undesirable; or

291 (h) (i) The parent has been convicted of any of the
292 following offenses against any child:

- 293 1. Rape of a child under Section 97-3-65;
294 2. Sexual battery of a child under Section
295 97-3-95(c);



- 296 3. Touching a child for lustful purposes
297 under Section 97-5-23;
- 298 4. Exploitation of a child under Sections
299 97-5-31 through 97-5-37;
- 300 5. Felonious abuse or battery of a child
301 under Section 97-5-39(2);
- 302 6. Carnal knowledge of a step or adopted
303 child or a child of a cohabitating partner under Section 97-5-41;
304 or
- 305 7. Human trafficking of a child under Section
306 97-3-54.1; or
- 307 (ii) The parent has been convicted of:
- 308 1. Murder or voluntary manslaughter of
309 another child of the parent;
- 310 2. Aiding, abetting, attempting, conspiring
311 or soliciting to commit murder or voluntary manslaughter of the
312 child or another child of the parent; * * *
- 313 3. A felony assault that results in the
314 serious bodily injury to the child or another child of the
315 parent * * *; or
- 316 4. Violating Section 1 of this act.

317 **SECTION 4.** Section 11-1-60, Mississippi Code of 1972, is
318 amended as follows:



319 11-1-60. (1) For the purposes of this section, the
320 following words and phrases shall have the meanings ascribed
321 herein unless the context clearly requires otherwise:

322 (a) "Noneconomic damages" means subjective,
323 nonpecuniary damages arising from death, pain, suffering,
324 inconvenience, mental anguish, worry, emotional distress, loss of
325 society and companionship, loss of consortium, bystander injury,
326 physical impairment, disfigurement, injury to reputation,
327 humiliation, embarrassment, loss of the enjoyment of life, hedonic
328 damages, other nonpecuniary damages, and any other theory of
329 damages such as fear of loss, illness or injury. The term
330 "noneconomic damages" shall not include punitive or exemplary
331 damages.

332 (b) "Actual economic damages" means objectively
333 verifiable pecuniary damages arising from medical expenses and
334 medical care, rehabilitation services, custodial care,
335 disabilities, loss of earnings and earning capacity, loss of
336 income, burial costs, loss of use of property, costs of repair or
337 replacement of property, costs of obtaining substitute domestic
338 services, loss of employment, loss of business or employment
339 opportunities, and other objectively verifiable monetary losses.

340 (2) Except as provided in paragraph (d) of this subsection
341 (2):

342 (a) In any cause of action filed on or after September
343 1, 2004, for injury based on malpractice or breach of standard of



344 care against a provider of health care, including institutions for
345 the aged or infirm, in the event the trier of fact finds the
346 defendant liable, they shall not award the plaintiff more than
347 Five Hundred Thousand Dollars (\$500,000.00) for noneconomic
348 damages.

349 (b) In any civil action filed on or after September 1,
350 2004, other than those actions described in paragraph (a) of this
351 subsection, in the event the trier of fact finds the defendant
352 liable, they shall not award the plaintiff more than One Million
353 Dollars (\$1,000,000.00) for noneconomic damages.

354 It is the intent of this section to limit all noneconomic
355 damages to the above.

356 (c) The trier of fact shall not be advised of the
357 limitations imposed by this subsection (2) and the judge shall
358 appropriately reduce any award of noneconomic damages that exceeds
359 the applicable limitation.

360 (d) The limitations of paragraphs (a) and (b) of this
361 subsection (2) shall not apply to any cause of action brought
362 under Section 1 of this act.

363 (3) Nothing contained in subsection (1) of this section
364 shall be construed as creating a cause of action or as setting
365 forth elements of or types of damages that are or are not
366 recoverable in any type of cause of action.

367 **SECTION 5.** Section 11-46-15, Mississippi Code of 1972, is
368 amended as follows:



369 11-46-15. (1) In any claim or suit for damages against a
370 governmental entity or its employee brought under the provisions
371 of this chapter, the liability shall not exceed the following for
372 all claims arising out of a single occurrence for all damages
373 permitted under this chapter:

374 (a) For claims or causes of action arising from acts or
375 omissions occurring on or after July 1, 1993, but before July 1,
376 1997, the sum of Fifty Thousand Dollars (\$50,000.00);

377 (b) For claims or causes of action arising from acts or
378 omissions occurring on or after July 1, 1997, but before July 1,
379 2001, the sum of Two Hundred Fifty Thousand Dollars (\$250,000.00);

380 (c) For claims or causes of action arising from acts or
381 omissions occurring on or after July 1, 2001, the sum of Five
382 Hundred Thousand Dollars (\$500,000.00), except that this limit
383 shall not apply to a cause of action brought under Section 1 of
384 this act.

385 (2) No judgment against a governmental entity or its
386 employee for any act or omission for which immunity is waived
387 under this chapter shall include an award for exemplary or
388 punitive damages or for interest prior to judgment, or an award of
389 attorney's fees unless attorney's fees are specifically authorized
390 by law.

391 (3) Except as otherwise provided in Section 11-46-17(4), in
392 any suit brought under the provisions of this chapter, if the
393 verdict which is returned, when added to costs and any attorney's



394 fees authorized by law, would exceed the maximum dollar amount of
395 liability provided in subsection (1) of this section, the court
396 shall reduce the verdict accordingly and enter judgment in an
397 amount not to exceed the maximum dollar amount of liability
398 provided in subsection (1) of this section.

399 **SECTION 6.** Section 15-1-35, Mississippi Code of 1972, is
400 amended as follows:

401 15-1-35. All actions for assault, assault and battery,
402 maiming, false imprisonment, malicious arrest, or menace, and all
403 actions for slanderous words concerning the person or title, for
404 failure to employ, and for libels, shall be commenced within one
405 (1) year next after the cause of such action accrued, and not
406 after, except that an action founded on a violation of Section 1
407 of this act shall be commenced within ten (10) years next after
408 the cause of such action accrued.

409 **SECTION 7.** This act shall take effect and be in force from
410 and after July 1, 2020.

