

By: Senator(s) Doty

To: Judiciary, Division A

SENATE BILL NO. 2557
(As Passed the Senate)

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 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 communications by any governmental or private
180 participant of a meeting of a multidisciplinary child protection
181 team created under Section 43-15-51; such disclosure is governed
182 by Section 43-15-51.

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, and shall stand repealed from and after
202 June 30, 2020.

