

By: Representatives Gunn, Fleming

To: Public Health and Human Services; Judiciary B

HOUSE BILL NO. 779

1 AN ACT TO AMEND SECTIONS 43-21-353 AND 43-21-355, MISSISSIPPI  
2 CODE OF 1972, TO PROVIDE A PENALTY FOR FRIVOLOUS OR MALICIOUS  
3 ABUSE REPORTS; AND FOR RELATED PURPOSES.

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

5 **SECTION 1.** Section 43-21-353, Mississippi Code of 1972, is  
6 amended as follows:

7 43-21-353. (1) Any attorney, physician, dentist, intern,  
8 resident, nurse, psychologist, social worker, child protection  
9 specialist, child care giver, minister, law enforcement officer,  
10 public or private school employee or any other person having  
11 reasonable cause to suspect that a child is a neglected child or  
12 an abused child, shall cause an oral report to be made immediately  
13 by telephone or otherwise and followed as soon thereafter as  
14 possible by a report in writing to the Department of Human  
15 Services, and immediately a referral shall be made by the  
16 Department of Human Services to the youth court intake unit, which  
17 unit shall promptly comply with Section 43-21-357. Where  
18 appropriate, the Department of Human Services shall additionally  
19 make a referral to the youth court prosecutor. Upon receiving a  
20 report that a child has been sexually abused, or burned, tortured,  
21 mutilated or otherwise physically abused in such a manner as to  
22 cause serious bodily harm, or upon receiving any report of abuse  
23 that would be a felony under state or federal law, the Department  
24 of Human Services shall immediately notify the law enforcement  
25 agency in whose jurisdiction the abuse occurred and shall notify  
26 the appropriate prosecutor within forty-eight (48) hours, and the  
27 Department of Human Services shall have the duty to provide the

28 law enforcement agency all the names and facts known at the time  
29 of the report; this duty shall be of a continuing nature. The law  
30 enforcement agency and the Department of Human Services shall  
31 investigate the reported abuse immediately and shall file a  
32 preliminary report with the appropriate prosecutor's office within  
33 twenty-four (24) hours and shall make additional reports as new or  
34 additional information or evidence becomes available. The  
35 Department of Human Services shall advise the clerk of the youth  
36 court and the youth court prosecutor of all cases of abuse  
37 reported to the department within seventy-two (72) hours and shall  
38 update such report as information becomes available.

39 (2) Any report to the Department of Human Services shall  
40 contain the names and addresses of the child and his parents or  
41 other persons responsible for his care, if known, the child's age,  
42 the nature and extent of the child's injuries, including any  
43 evidence of previous injuries and any other information that might  
44 be helpful in establishing the cause of the injury and the  
45 identity of the perpetrator.

46 (3) The Department of Human Services shall maintain a  
47 statewide incoming wide-area telephone service or similar service  
48 for the purpose of receiving reports of suspected cases of child  
49 abuse; provided that any attorney, physician, dentist, intern,  
50 resident, nurse, psychologist, social worker, child protection  
51 specialist, child care giver, minister, law enforcement officer or  
52 public or private school employee who is required to report under  
53 subsection (1) of this section shall report in the manner required  
54 in subsection (1).

55 (4) Reports of abuse and neglect made under this chapter and  
56 the identity of the reporter are confidential except when the  
57 court in which the investigation report is filed, in its  
58 discretion, determines the testimony of the person reporting to be  
59 material to a judicial proceeding or when the identity of the  
60 reporter is released to law enforcement agencies and the

61 appropriate prosecutor pursuant to subsection (1). Reports made  
62 under this section to any law enforcement agency or prosecutorial  
63 officer are for the purpose of criminal investigation and  
64 prosecution only and no information from these reports may be  
65 released to the public except as provided by Section 43-21-261.  
66 Disclosure of any information by the prosecutor shall be according  
67 to the Mississippi Uniform Rules of Circuit and County Court  
68 Procedure. The identity of the reporting party shall not be  
69 disclosed to anyone other than law enforcement officers or  
70 prosecutors without an order from the appropriate youth court.  
71 Any person disclosing any reports made under this section in a  
72 manner not expressly provided for in this section or Section  
73 43-21-261, shall be guilty of a misdemeanor and subject to the  
74 penalties prescribed by Section 43-21-267.

75 (5) All final dispositions of law enforcement investigations  
76 described in subsection (1) of this section shall be determined  
77 only by the appropriate prosecutor or court. All final  
78 dispositions of investigations by the Department of Human Services  
79 as described in subsection (1) of this section shall be determined  
80 only by the youth court. Reports made under subsection (1) of  
81 this section by the Department of Human Services to the law  
82 enforcement agency and to the district attorney's office shall  
83 include the following, if known to the department:

- 84 (a) The name and address of the child;
- 85 (b) The names and addresses of the parents;
- 86 (c) The name and address of the suspected perpetrator;
- 87 (d) The names and addresses of all witnesses, including  
88 the reporting party if a material witness to the abuse;
- 89 (e) A brief statement of the facts indicating that the  
90 child has been abused and any other information from the agency  
91 files or known to the social worker or child protection specialist  
92 making the investigation, including medical records or other

93 records, which may assist law enforcement or the district attorney  
94 in investigating and/or prosecuting the case; and

95 (f) What, if any, action is being taken by the  
96 Department of Human Services.

97 (6) In any investigation of a report made under this chapter  
98 of the abuse or neglect of a child as defined in Section  
99 43-21-105(m), the Department of Human Services may request the  
100 appropriate law enforcement officer with jurisdiction to accompany  
101 the department in its investigation, and in such cases the law  
102 enforcement officer shall comply with such request.

103 (7) Anyone who willfully violates any provision of this  
104 section shall be, upon being found guilty, punished by a fine not  
105 to exceed Five Thousand Dollars (\$5,000.00), or by imprisonment in  
106 jail not to exceed one (1) year, or both.

107 (8) If a report is made directly to the Department of Human  
108 Services that a child has been abused or neglected in an  
109 out-of-home setting, a referral shall be made immediately to the  
110 law enforcement agency in whose jurisdiction the abuse occurred  
111 and the department shall notify the district attorney's office  
112 within forty-eight (48) hours of such report. The Department of  
113 Human Services shall investigate the out-of-home setting report of  
114 abuse or neglect to determine whether the child who is the subject  
115 of the report, or other children in the same environment, comes  
116 within the jurisdiction of the youth court and shall report to the  
117 youth court the department's findings and recommendation as to  
118 whether the child who is the subject of the report or other  
119 children in the same environment require the protection of the  
120 youth court. The law enforcement agency shall investigate the  
121 reported abuse immediately and shall file a preliminary report  
122 with the district attorney's office within forty-eight (48) hours  
123 and shall make additional reports as new information or evidence  
124 becomes available. If the out-of-home setting is a licensed  
125 facility, an additional referral shall be made by the Department

126 of Human Services to the licensing agency. The licensing agency  
127 shall investigate the report and shall provide the Department of  
128 Human Services, the law enforcement agency and the district  
129 attorney's office with their written findings from such  
130 investigation as well as that licensing agency's recommendations  
131 and actions taken.

132 (9) Any person who causes a report to be made which is  
133 frivolous or malicious shall, upon conviction, be guilty of a  
134 misdemeanor and shall be fined Two Hundred Fifty Dollars  
135 (\$250.00).

136 **SECTION 2.** Section 43-21-355, Mississippi Code of 1972, is  
137 amended as follows:

138 43-21-355. Any attorney, physician, dentist, intern,  
139 resident, nurse, psychologist, social worker, child protection  
140 specialist, child care giver, minister, law enforcement officer,  
141 school attendance officer, public school district employee,  
142 nonpublic school employee, or any other person participating in  
143 the making of a required report pursuant to Section 43-21-353 or  
144 participating in the judicial proceeding resulting therefrom shall  
145 be presumed to be acting in good faith. Any person or institution  
146 reporting in good faith shall be immune from any liability, civil  
147 or criminal, that might otherwise be incurred or imposed. Any  
148 person who makes a frivolous or malicious report shall be subject  
149 to a fine as provided in Section 43-21-353.

150 **SECTION 3.** This act shall take effect and be in force from  
151 and after July 1, 2005.