

By: Senator(s) Burton, Dearing, Dawkins

To: Judiciary, Division B

## SENATE BILL NO. 2186

1 AN ACT TO AMEND SECTION 43-47-5, MISSISSIPPI CODE OF 1972, TO  
2 REVISE DEFINITIONS UNDER THE VULNERABLE ADULT ACT; TO CREATE NEW  
3 SECTION 43-47-18, MISSISSIPPI CODE OF 1972, TO CREATE THE OFFENSE  
4 OF SEXUAL BATTERY OF A VULNERABLE ADULT TO INCLUDE CONSENSUAL SEX  
5 WITH A VULNERABLE ADULT BY HEALTH CARE EMPLOYEES WHO ARE NOT  
6 MARRIED TO THE VULNERABLE ADULT AND TO CREATE THE OFFENSE OF  
7 FONDLING OF A VULNERABLE ADULT TO INCLUDE CONSENSUAL SEXUAL  
8 ACTIVITY WITH A VULNERABLE ADULT BY HEALTH CARE EMPLOYEES WHO ARE  
9 NOT MARRIED TO THE VULNERABLE ADULT; TO AMEND SECTION 45-33-23,  
10 MISSISSIPPI CODE OF 1972, TO INCLUDE SEXUAL ABUSE OF A VULNERABLE  
11 ADULT AS A REGISTRABLE OFFENSE UNDER THE SEX OFFENDER REGISTRATION  
12 LAW; AND FOR RELATED PURPOSES.

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

14 **SECTION 1.** Section 43-47-5, Mississippi Code of 1972, is  
15 amended as follows:

16 43-47-5. For the purposes of this chapter, the following  
17 words shall have the meanings ascribed herein unless the context  
18 otherwise requires:

19 (a) "Abuse" means the willful or nonaccidental  
20 infliction of physical pain, injury or mental anguish on a  
21 vulnerable adult, the unreasonable confinement of a vulnerable  
22 adult, or the willful deprivation by a caretaker of services which  
23 are necessary to maintain the mental and physical health of a  
24 vulnerable adult. "Abuse" includes the sexual abuse delineated in  
25 Section 43-47-18. "Abuse" shall not mean conduct which is a part  
26 of the treatment and care of, and in furtherance of the health and  
27 safety of, a patient or resident of a care facility, nor shall it  
28 mean a normal caregiving action or appropriate display of  
29 affection. "Abuse" includes, but is not limited to, a single  
30 incident.

31 (b) "Care facility" means:

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

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

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

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

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

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

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

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

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

(f) "Emergency" means a situation in which:

65                   (i) A vulnerable adult is in substantial danger of  
66 serious harm, death or irreparable harm if protective services are  
67 not provided immediately;

68                   (ii) The vulnerable adult is unable to consent to  
69 services;

70                   (iii) No responsible, able or willing caretaker,  
71 if any, is available to consent to emergency services; and

72                   (iv) There is insufficient time to utilize the  
73 procedure provided in Section 43-47-13.

74                   (g) "Emergency services" means those services necessary  
75 to maintain a vulnerable adult's vital functions and without which  
76 there is reasonable belief that the vulnerable adult would suffer  
77 irreparable harm or death, and may include taking physical custody  
78 of the adult.

79                   (h) "Essential services" means those social work,  
80 medical, psychiatric or legal services necessary to safeguard a  
81 vulnerable adult's rights and resources and to maintain the  
82 physical or mental well-being of the person. These services shall  
83 include, but not be limited to, the provision of medical care for  
84 physical and mental health needs, assistance in personal hygiene,  
85 food, clothing, adequately heated and ventilated shelter,  
86 protection from health and safety hazards, protection from  
87 physical mistreatment and protection from exploitation. The words  
88 "essential services" shall not include taking a vulnerable adult  
89 into physical custody without his consent except as provided for  
90 in Section 43-47-15 and as otherwise provided by the general laws  
91 of the state.

92                   (i) "Exploitation" means the illegal or improper use of  
93 a vulnerable adult or his resources for another's profit or  
94 advantage, with or without the consent of the vulnerable adult,  
95 and includes acts committed pursuant to a power of attorney.  
96 "Exploitation" includes, but is not limited to, a single incident.

97           (j) "Lacks the capacity to consent" means that a  
98 vulnerable adult, because of physical or mental incapacity, lacks  
99 sufficient understanding or capacity to make or communicate  
100 responsible decisions concerning his person, including, but not  
101 limited to, provisions for health care, food, clothing or shelter.  
102 This may be reasonably determined by the department in emergency  
103 situations; in all other instances, the court shall make the  
104 determination following the procedures in Sections 43-47-13 and  
105 43-47-15 or as otherwise provided by the general laws of the  
106 state.

107           (k) "Neglect" means either the inability of a  
108 vulnerable adult who is living alone to provide for himself the  
109 food, clothing, shelter, health care or other services which are  
110 necessary to maintain his mental and physical health, or failure  
111 of a caretaker to supply the vulnerable adult with the food,  
112 clothing, shelter, health care, supervision or other services  
113 which a reasonably prudent person would do to maintain the  
114 vulnerable adult's mental and physical health. "Neglect"  
115 includes, but is not limited to, a single incident.

116           (l) "Protective services" means services provided by  
117 the state or other government or private organizations, agencies  
118 or individuals which are necessary to protect a vulnerable adult  
119 from abuse, neglect or exploitation. They shall include, but not  
120 be limited to, investigation, evaluation of the need for services  
121 and provision of essential services on behalf of a vulnerable  
122 adult.

123           (m) "Sexual penetration" shall have the meaning  
124 ascribed in Section 97-3-97.

125           (n) "Vulnerable adult" means a person, whether a minor  
126 or adult, whose ability to perform the normal activities of daily  
127 living or to provide for his or her own care or protection from  
128 abuse, neglect, exploitation or improper sexual contact is  
129 impaired due to a mental, emotional, physical or developmental

disability or dysfunction, or brain damage or the infirmities of aging. The term "vulnerable adult" also includes all residents or patients, regardless of age, in a care facility for the purposes of Sections 43-47-19 and 43-47-37 only. The department shall not be prohibited from investigating, and shall have the authority and responsibility to fully investigate, in accordance with the provisions of this chapter, any allegation of abuse, neglect, or exploitation regarding a patient in a care facility, if the alleged abuse, neglect or exploitation occurred at a private residence.

**SECTION 2.** The following shall be codified as Section 43-47-18, Mississippi Code of 1972:

43-47-18. (1) (a) A person who engages in sexual penetration with a vulnerable adult is guilty of sexual battery if the person is a volunteer at, or an employee of, or contracted to work for, a health care facility in which the vulnerable adult is a patient or resident.

(b) A person who engages in sexual penetration with a vulnerable adult is guilty of sexual battery if the person is in a position of trust or authority over the vulnerable adult, including, without limitation, the vulnerable adult's teacher, counselor, physician, psychiatrist, psychologist, nurse, certified nursing assistant, direct care worker, technical assistant, minister, priest, physical therapist, chiropractor, legal guardian, parent, stepparent, other relative, caretaker or conservator.

(c) Every person who is convicted of sexual battery under this subsection (1) shall be imprisoned in the custody of the State Department of Corrections for a period of not more than thirty (30) years, and for a second or subsequent such offense shall be imprisoned in the custody of the State Department of Corrections for a period of not more than forty (40) years.

162           (2)   (a)   Any person who, for the purpose of gratifying the  
163 person's lust, or indulging the person's depraved licentious  
164 sexual desires, shall handle, touch or rub with hands or any part  
165 of the person's body or any member thereof, any vulnerable adult,  
166 with or without the vulnerable adult's consent, when the person is  
167 a volunteer at, or an employee of, or contracted to work for, a  
168 health care facility in which the vulnerable adult is a patient or  
169 resident, shall be guilty of a felony and, upon conviction  
170 thereof, shall be fined in a sum not less than One Thousand  
171 Dollars (\$1,000.00) nor more than Five Thousand Dollars  
172 (\$5,000.00), or be committed to the custody of the Department of  
173 Corrections not less than two (2) nor more than fifteen (15)  
174 years, or be punished by both fine and imprisonment, at the  
175 discretion of the court.

176           (b)   Any person who, for the purpose of gratifying the  
177 person's lust, or indulging the person's depraved licentious  
178 sexual desires, shall handle, touch or rub with hands or any part  
179 of the person's body or any member thereof, any vulnerable adult,  
180 with or without the vulnerable adult's consent, when the person  
181 occupies a position of trust or authority over the vulnerable  
182 adult, shall be guilty of a felony and, upon conviction thereof,  
183 shall be fined in a sum not less than One Thousand Dollars  
184 (\$1,000.00) nor more than Five Thousand Dollars (\$5,000.00), or be  
185 committed to the custody of the Department of Corrections not less  
186 than two (2) nor more than fifteen (15) years, or be punished by  
187 both fine and imprisonment, at the discretion of the court. A  
188 person in a position of trust or authority over a vulnerable adult  
189 includes, without limitation, the vulnerable adult's teacher,  
190 counselor, physician, psychiatrist, psychologist, nurse, certified  
191 nursing assistant, direct care worker, technical assistant,  
192 minister, priest, physical therapist, chiropractor, legal  
193 guardian, parent, stepparent, other relative, caretaker or  
194 conservator.

(3) A person is not guilty of any offense under this section if the alleged victim is that person's legal spouse; however, the legal spouse of the alleged victim may be found guilty of sexual battery if the legal spouse engaged in forcible sexual penetration without the consent of the alleged victim.

**SECTION 3.** Section 45-33-23, Mississippi Code of 1972, is amended as follows:

45-33-23. For the purposes of this chapter, the following words shall have the meanings ascribed herein unless the context clearly requires otherwise:

(a) "Conviction" shall mean that, regarding the person's offense, there has been a determination or judgment of guilt as a result of a trial or the entry of a plea of guilty or nolo contendere regardless of whether adjudication is withheld. "Conviction of similar offenses" includes, but is not limited to, a conviction by a federal or military tribunal, including a court martial conducted by the Armed Forces of the United States, a conviction for an offense committed on an Indian Reservation or other federal property, and a conviction in any state of the United States.

(b) "Jurisdiction" shall mean any state court, federal court, military court or Indian tribunal.

(c) "Permanent residence" is defined as a place where the person abides, lodges, or resides for a period of fourteen (14) or more consecutive days.

(d) "Registration" means providing information to the appropriate agency within the time frame specified as required by this chapter.

(e) "Registration duties" means obtaining the registration information required on the form specified by the department as well as the photograph, fingerprints, and biological sample of the registrant. Biological samples are to be forwarded to the State Crime Laboratory pursuant to Section 45-33-37; the

228 photograph, fingerprints and other registration information are to  
229 be forwarded to the Department of Public Safety within three (3)  
230 days of registration.

231 (f) "Responsible agency" is defined as the person or  
232 government entity whose duty it is to obtain information from a  
233 criminal sex offender upon conviction and to transmit that  
234 information to the Mississippi Department of Public Safety.

235 (i) For a criminal sex offender being released  
236 from the custody of the Department of Corrections, the responsible  
237 agency is the Department of Corrections.

238 (ii) For a criminal sex offender being released  
239 from a county jail, the responsible agency is the sheriff of that  
240 county.

241 (iii) For a criminal sex offender being released  
242 from a municipal jail, the responsible agency is the police  
243 department of that municipality.

244 (iv) For a sex offender in the custody of youth  
245 court, the responsible agency is the youth court.

246 (v) For a criminal sex offender who is being  
247 placed on probation, including conditional discharge or  
248 unconditional discharge, without any sentence of incarceration,  
249 the responsible agency is the sentencing court.

250 (vi) For an offender who has been committed to a  
251 mental institution following an acquittal by reason of insanity,  
252 the responsible agency is the facility from which the offender is  
253 released. Specifically, the director of said facility shall  
254 notify the Department of Public Safety prior to the offender's  
255 release.

256 (vii) For a criminal sex offender who is being  
257 released from a jurisdiction outside this state or who has a prior  
258 conviction in another state and who is to reside in this state,  
259 the responsible agency is the Department of Public Safety.

260 (g) "Sex offense" means any of the following offenses:



261                   (i) Section 97-3-53 relating to kidnapping, if the  
262 victim was below the age of eighteen (18);

263                   (ii) Section 97-3-65 relating to rape; however,  
264 conviction or adjudication under Section 97-3-65(1)(a) on or after  
265 July 1, 1998, when the offender was eighteen (18) years of age or  
266 younger at the time of the alleged offense, shall not be a  
267 registrable sex offense;

268                   (iii) Section 97-3-71 relating to rape and assault  
269 with intent to ravish;

270                   (iv) Section 97-3-95 relating to sexual battery;  
271 however, conviction or adjudication under Section 97-3-95(1)(c) on  
272 or after July 1, 1998, when the offender was eighteen (18) years  
273 of age or younger at the time of the alleged offense, shall not be  
274 a registrable sex offense;

275                   (v) Section 97-5-5 relating to enticing child for  
276 concealment, prostitution or marriage;

277                   (vi) Section 97-5-23 relating to the touching of a  
278 child for lustful purposes;

279                   (vii) Section 97-5-27 relating to the  
280 dissemination of sexually oriented material to children;

281                   (viii) Section 97-5-33 relating to the  
282 exploitation of children;

283                   (ix) Section 97-5-41 relating to the carnal  
284 knowledge of a stepchild, adopted child or child of a cohabiting  
285 partner;

286                   (x) Section 97-29-59 relating to unnatural  
287 intercourse;

288                   (xi) Section 97-1-7 relating to attempt to commit  
289 any of the above-referenced offenses;

290                   (xii) Section 97-29-3 relating to adultery or  
291 fornication between teacher and pupil;

292                   (xiii) Section 43-47-18 relating to sexual abuse  
293 of a vulnerable adult;

294                   (xiv) Any other offense resulting in a conviction  
295 in another jurisdiction, whether state, federal or military,  
296 which, if committed in this state, would be deemed to be such a  
297 crime without regard to its designation elsewhere;

298                   (xv) Any offense resulting in a conviction in  
299 another jurisdiction, whether state, federal or military, for  
300 which registration is required in the jurisdiction where the  
301 conviction was had.

302                   (h) "Temporary residence" is defined as a place where  
303 the person abides, lodges, or resides for a period of fourteen  
304 (14) or more days in the aggregate during any calendar year and  
305 which is not the person's permanent address; for a person whose  
306 permanent residence is not in this state, the place where the  
307 person is employed, practices a vocation, or is enrolled as a  
308 student for any period of time in the state; or a place where a  
309 person routinely abides, lodges or resides for a period of four  
310 (4) or more consecutive or nonconsecutive days in any month and  
311 which is not the person's permanent residence.

312                   (i) "Department" unless otherwise specified is defined  
313 as the Mississippi Department of Public Safety.

314                   **SECTION 4.** This act shall take effect and be in force from  
315 and after July 1, 2005.