

By: Senator(s) Burton, Dearing, Dawkins

To: Judiciary, Division B

SENATE BILL NO. 2186  
(As Passed the Senate)

1 AN ACT TO CODIFY SECTION 43-11-28, MISSISSIPPI CODE OF 1972,  
2 TO REQUIRE NURSING FACILITY RESIDENTS AND THEIR FAMILIES TO BE  
3 PROVIDED VULNERABLE ADULT EDUCATION AWARENESS AND CONTACT  
4 INFORMATION UPON ADMISSION OF THE RESIDENT AND TO PROVIDE CIVIL  
5 FINES FOR FAILURE TO PROVIDE SUCH INFORMATION; TO AMEND SECTION  
6 43-47-5, MISSISSIPPI CODE OF 1972, TO REVISE DEFINITIONS UNDER THE  
7 VULNERABLE ADULT ACT; TO CREATE NEW SECTION 43-47-18, MISSISSIPPI  
8 CODE OF 1972, TO CREATE THE OFFENSE OF SEXUAL BATTERY OF A  
9 VULNERABLE ADULT TO INCLUDE CONSENSUAL SEX WITH A VULNERABLE ADULT  
10 BY HEALTH CARE EMPLOYEES WHO ARE NOT MARRIED TO THE VULNERABLE  
11 ADULT AND TO CREATE THE OFFENSE OF FONDLING OF A VULNERABLE ADULT  
12 TO INCLUDE CONSENSUAL SEXUAL ACTIVITY WITH A VULNERABLE ADULT BY  
13 HEALTH CARE EMPLOYEES WHO ARE NOT MARRIED TO THE VULNERABLE ADULT;  
14 TO AMEND SECTION 45-33-23, MISSISSIPPI CODE OF 1972, TO INCLUDE  
15 SEXUAL ABUSE OF A VULNERABLE ADULT AS A REGISTRABLE OFFENSE UNDER  
16 THE SEX OFFENDER REGISTRATION LAW; AND FOR RELATED PURPOSES.

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

18 SECTION 1. The following provision shall be codified as

19 Section 43-11-28, Mississippi Code of 1972:

20 43-11-28. (1) All care facility residents/patients and  
21 their responsible parties shall be provided at the time of  
22 admission a one-page document, separate and apart from all other  
23 admission documents, which shall contain the contact names and  
24 phone numbers of (a) the ombudsman assigned to the facility; (b)  
25 the head of the care facility's family council or similar  
26 association of residents' families; (c) state government-operated  
27 abuse hotlines, including the Office of the Attorney General and  
28 the Mississippi Department of Health; and (d) information  
29 explaining that in an emergency or life-threatening situation, it  
30 is appropriate to call 911.

31 (2) An identical document shall be prominently posted at all  
32 times in all public places, including, but not limited to,  
33 cafeterias or dining halls, family council meeting rooms and  
34 visiting areas.

35 (3) The facility shall require the resident and the  
36 resident's responsible party to sign a log or similar form to show  
37 receipt of the document.

38 (4) The State Department of Health may require the care  
39 facility to provide additional contact information on the  
40 document.

41 (5) Failure to provide the document to the resident and the  
42 resident's responsible party at admission or prominently post the  
43 document in public areas shall result in (a) a warning for the  
44 first violation; and (b) a Two Hundred Fifty Dollar (\$250.00) fine  
45 for each additional occurrence. All proceeds from these fines  
46 shall be placed in the Vulnerable Adults Education, Training,  
47 Investigation and Prosecution Trust Fund, as defined in Section  
48 43-47-39, Mississippi Code of 1972.

49 **SECTION 2.** Section 43-47-5, Mississippi Code of 1972, is  
50 amended as follows:

51 43-47-5. For the purposes of this chapter, the following  
52 words shall have the meanings ascribed herein unless the context  
53 otherwise requires:

54 (a) "Abuse" means the willful or nonaccidental  
55 infliction of physical pain, injury or mental anguish on a  
56 vulnerable adult, the unreasonable confinement of a vulnerable  
57 adult, or the willful deprivation by a caretaker of services which  
58 are necessary to maintain the mental and physical health of a  
59 vulnerable adult. "Abuse" includes the sexual abuse delineated in  
60 Section 43-47-18. "Abuse" shall not mean conduct which is a part  
61 of the treatment and care of, and in furtherance of the health and  
62 safety of, a patient or resident of a care facility, nor shall it  
63 mean a normal caregiving action or appropriate display of  
64 affection. "Abuse" includes, but is not limited to, a single  
65 incident.

66 (b) "Care facility" means:

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

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

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

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

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

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

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

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

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

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

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

103                   (ii) The vulnerable adult is unable to consent to  
104 services;

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

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

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

114                   (h) "Essential services" means those social work,  
115 medical, psychiatric or legal services necessary to safeguard a  
116 vulnerable adult's rights and resources and to maintain the  
117 physical or mental well-being of the person. These services shall  
118 include, but not be limited to, the provision of medical care for  
119 physical and mental health needs, assistance in personal hygiene,  
120 food, clothing, adequately heated and ventilated shelter,  
121 protection from health and safety hazards, protection from  
122 physical mistreatment and protection from exploitation. The words  
123 "essential services" shall not include taking a vulnerable adult  
124 into physical custody without his consent except as provided for  
125 in Section 43-47-15 and as otherwise provided by the general laws  
126 of the state.

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

132           (j) "Lacks the capacity to consent" means that a  
133 vulnerable adult, because of physical or mental incapacity, lacks  
134 sufficient understanding or capacity to make or communicate  
135 responsible decisions concerning his person, including, but not  
136 limited to, provisions for health care, food, clothing or shelter.  
137 This may be reasonably determined by the department in emergency  
138 situations; in all other instances, the court shall make the  
139 determination following the procedures in Sections 43-47-13 and  
140 43-47-15 or as otherwise provided by the general laws of the  
141 state.

142           (k) "Neglect" means either the inability of a  
143 vulnerable adult who is living alone to provide for himself the  
144 food, clothing, shelter, health care or other services which are  
145 necessary to maintain his mental and physical health, or failure  
146 of a caretaker to supply the vulnerable adult with the food,  
147 clothing, shelter, health care, supervision or other services  
148 which a reasonably prudent person would do to maintain the  
149 vulnerable adult's mental and physical health. "Neglect"  
150 includes, but is not limited to, a single incident.

151           (l) "Protective services" means services provided by  
152 the state or other government or private organizations, agencies  
153 or individuals which are necessary to protect a vulnerable adult  
154 from abuse, neglect or exploitation. They shall include, but not  
155 be limited to, investigation, evaluation of the need for services  
156 and provision of essential services on behalf of a vulnerable  
157 adult.

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

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

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

175 **SECTION 3.** The following shall be codified as Section  
176 43-47-18, Mississippi Code of 1972:

177 43-47-18. (1) (a) A person who engages in sexual  
178 penetration with a vulnerable adult is guilty of sexual battery if  
179 the person is a volunteer at, or an employee of, or contracted to  
180 work for, a health care facility in which the vulnerable adult is  
181 a patient or resident.

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

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

197           (2) (a) Any person who, for the purpose of gratifying the  
198 person's lust, or indulging the person's depraved licentious  
199 sexual desires, shall handle, touch or rub with hands or any part  
200 of the person's body or any member thereof, any vulnerable adult,  
201 with or without the vulnerable adult's consent, when the person is  
202 a volunteer at, or an employee of, or contracted to work for, a  
203 health care facility in which the vulnerable adult is a patient or  
204 resident, shall be guilty of a felony and, upon conviction  
205 thereof, shall be fined in a sum not less than One Thousand  
206 Dollars (\$1,000.00) nor more than Five Thousand Dollars  
207 (\$5,000.00), or be committed to the custody of the Department of  
208 Corrections not less than two (2) nor more than fifteen (15)  
209 years, or be punished by both fine and imprisonment, at the  
210 discretion of the court.

211           (b) Any person who, for the purpose of gratifying the  
212 person's lust, or indulging the person's depraved licentious  
213 sexual desires, shall handle, touch or rub with hands or any part  
214 of the person's body or any member thereof, any vulnerable adult,  
215 with or without the vulnerable adult's consent, when the person  
216 occupies a position of trust or authority over the vulnerable  
217 adult, shall be guilty of a felony and, upon conviction thereof,  
218 shall be fined in a sum not less than One Thousand Dollars  
219 (\$1,000.00) nor more than Five Thousand Dollars (\$5,000.00), or be  
220 committed to the custody of the Department of Corrections not less  
221 than two (2) nor more than fifteen (15) years, or be punished by  
222 both fine and imprisonment, at the discretion of the court. A  
223 person in a position of trust or authority over a vulnerable adult  
224 includes, without limitation, the vulnerable adult's teacher,  
225 counselor, physician, psychiatrist, psychologist, nurse, certified  
226 nursing assistant, direct care worker, technical assistant,  
227 minister, priest, physical therapist, chiropractor, legal  
228 guardian, parent, stepparent, other relative, caretaker or  
229 conservator.

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

235 **SECTION 4.** Section 45-33-23, Mississippi Code of 1972, is  
236 amended as follows:

237 45-33-23. For the purposes of this chapter, the following  
238 words shall have the meanings ascribed herein unless the context  
239 clearly requires otherwise:

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

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

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

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

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



263 photograph, fingerprints and other registration information are to  
264 be forwarded to the Department of Public Safety within three (3)  
265 days of registration.

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

270 (i) For a criminal sex offender being released  
271 from the custody of the Department of Corrections, the responsible  
272 agency is the Department of Corrections.

273 (ii) For a criminal sex offender being released  
274 from a county jail, the responsible agency is the sheriff of that  
275 county.

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

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

281 (v) For a criminal sex offender who is being  
282 placed on probation, including conditional discharge or  
283 unconditional discharge, without any sentence of incarceration,  
284 the responsible agency is the sentencing court.

285 (vi) For an offender who has been committed to a  
286 mental institution following an acquittal by reason of insanity,  
287 the responsible agency is the facility from which the offender is  
288 released. Specifically, the director of said facility shall  
289 notify the Department of Public Safety prior to the offender's  
290 release.

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

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

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

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

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

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

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

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

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

316 (viii) Section 97-5-33 relating to the  
317 exploitation of children;

318 (ix) Section 97-5-41 relating to the carnal  
319 knowledge of a stepchild, adopted child or child of a cohabiting  
320 partner;

321 (x) Section 97-29-59 relating to unnatural  
322 intercourse;

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

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

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

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

333                   (xv) Any offense resulting in a conviction in  
334 another jurisdiction, whether state, federal or military, for  
335 which registration is required in the jurisdiction where the  
336 conviction was had.

337                   (h) "Temporary residence" is defined as a place where  
338 the person abides, lodges, or resides for a period of fourteen  
339 (14) or more days in the aggregate during any calendar year and  
340 which is not the person's permanent address; for a person whose  
341 permanent residence is not in this state, the place where the  
342 person is employed, practices a vocation, or is enrolled as a  
343 student for any period of time in the state; or a place where a  
344 person routinely abides, lodges or resides for a period of four  
345 (4) or more consecutive or nonconsecutive days in any month and  
346 which is not the person's permanent residence.

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

349                   **SECTION 5.** This act shall take effect and be in force from  
350 and after July 1, 2005.