

By: Representative Whittington

To: Public Health and Human Services

HOUSE BILL NO. 1129

1 AN ACT TO REENACT AND AMEND SECTION 43-21-355, MISSISSIPPI
 2 CODE OF 1972, TO PROVIDE THAT A LICENSED PROFESSIONAL COUNSELOR
 3 WHO, IN GOOD FAITH, REPORTS CERTAIN INFORMATION TO THE DEPARTMENT
 4 OF HUMAN SERVICES REGARDING A NEGLECTED OR ABUSED CHILD SHALL BE
 5 IMMUNE FROM LIABILITY FOR SUCH REPORTING; TO AMEND SECTION
 6 41-21-97, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT RECORDS OF
 7 PATIENTS BEING TREATED BY LICENSED PROFESSIONAL COUNSELORS SHALL
 8 BE CONFIDENTIAL; TO AMEND SECTION 43-1-55, MISSISSIPPI CODE OF
 9 1972, TO EXTEND THE DATE OF THE REPEALER ON SECTIONS 43-21-353 AND
 10 43-21-355, WHICH REQUIRE THE REPORTING OF CERTAIN INFORMATION TO
 11 THE DEPARTMENT OF HUMAN SERVICES REGARDING A NEGLECTED OR ABUSED
 12 CHILD AND THAT PROVIDE IMMUNITY FOR SUCH REPORTING; TO REENACT
 13 SECTION 43-21-353, MISSISSIPPI CODE OF 1972, WHICH REQUIRES THE
 14 REPORTING OF CERTAIN INFORMATION TO THE DEPARTMENT OF HUMAN
 15 SERVICES REGARDING A NEGLECTED OR ABUSED CHILD; AND FOR RELATED
 16 PURPOSES.

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

18 **SECTION 1.** Section 43-21-355, Mississippi Code of 1972, is
 19 reenact and amend as follows:

20 43-21-355. Any attorney, physician, dentist, intern,
 21 resident, nurse, psychologist, social worker, child protection
 22 specialist, child care giver, minister, law enforcement officer,
 23 school attendance officer, public school district employee,
 24 nonpublic school employee, licensed professional counselor, or any
 25 other person participating in the making of a required report
 26 pursuant to Section 43-21-353 or participating in the judicial
 27 proceeding resulting therefrom shall be presumed to be acting in
 28 good faith. Any person or institution reporting in good faith
 29 shall be immune from any liability, civil or criminal, that might
 30 otherwise be incurred or imposed.

31 **SECTION 2.** Section 41-21-97, Mississippi Code of 1972, is
 32 amended as follows:

33 41-21-97. The hospital records of and information pertaining
 34 to patients at treatment facilities or patients being treated by

35 physicians, psychologists (as defined in Section 73-31-3(e)),
36 licensed professional counselors or licensed master social workers
37 shall be confidential and shall be released only: (a) upon
38 written authorization of the patient; (b) upon order of a court of
39 competent jurisdiction; (c) when necessary for the continued
40 treatment of a patient; (d) when, in the opinion of the director,
41 release is necessary for the determination of eligibility for
42 benefits, compliance with statutory reporting requirements, or
43 other lawful purpose; or (e) when the patient has communicated to
44 the treating physician, psychologist (as defined in Section
45 73-31-3(e)) or master social worker an actual threat of physical
46 violence against a clearly identified or reasonably identifiable
47 potential victim or victims, and then the treating physician,
48 psychologist (as defined in Section 73-31-3(e)) or master social
49 worker may communicate the threat only to the potential victim or
50 victims, a law enforcement agency, or the parent or guardian of a
51 minor who is identified as a potential victim.

52 **SECTION 3.** Section 43-1-55, Mississippi Code of 1972, is
53 amended as follows:

54 43-1-55. (1) The Office of Family and Children's Services
55 shall devise formal social worker standards for employment and
56 service delivery designed to measure the quality of services
57 delivered to clients, as well as the timeliness of services. Each
58 social worker shall be assessed annually by a supervisor who is
59 knowledgeable in the standards promulgated. The standards shall
60 be applicable to all social workers working under the office.

61 (2) The Office of Family and Children's Services shall
62 devise formal standards for child protection specialists of the
63 Department of Human Services who are not licensed social workers.
64 Those standards shall require that:

65 (a) In order to be employed as a child protection
66 specialist, a person must have a bachelor's degree in either
67 psychology, sociology, nursing, criminal justice or a related

68 field, or a graduate degree in either law, psychology, sociology,
69 nursing, criminal justice or a related field. The determination
70 of what is a related field shall be made by certification of the
71 State Personnel Board; and

72 (b) Before a person may provide services as a child
73 protection specialist, the person shall complete four (4) weeks of
74 intensive training provided by the training unit of the Office of
75 Family and Children's Services, and shall take and receive a
76 passing score on the certification test administered by the
77 training unit upon completion of the four-week training. Upon
78 receiving a passing score on the certification test, the person
79 shall be certified as a child protection specialist by the
80 Department of Human Services. Any person who does not receive a
81 passing score on the certification test shall not be employed or
82 maintain employment as a child protection specialist for the
83 department. Further, a person, qualified as a child protection
84 specialist through the procedures set forth above, shall not
85 conduct forensic interviews of children until the specialist
86 receives additional specialized training in child forensic
87 interview protocols and techniques by a course or curriculum
88 approved by the Department of Human Services to be not less than
89 forty (40) hours.

90 (3) For the purpose of providing services in child abuse or
91 neglect cases, youth court proceedings, vulnerable adults cases,
92 and such other cases as designated by the Executive Director of
93 Human Services, the caseworker or service provider may be a child
94 protection specialist whose work is overseen by a licensed social
95 worker.

96 (4) The Department of Human Services and the Office of
97 Family and Children's Services shall seek to employ and use
98 licensed social workers to provide the services of the office, and
99 may employ and use child protection specialists to provide those
100 services only in counties in which there is not a sufficient

101 number of licensed social workers to adequately provide those
102 services in the county.

103 (5) * * * Sections * * * 43-21-353 and 43-21-355 * * * shall
104 stand repealed on July 1, 2008. This section and Sections
105 43-21-603, 43-27-109, 43-47-7, 93-21-23 and 97-3-7 shall stand
106 repealed on July 1, 2006.

107 **SECTION 4.** Section 43-21-353, Mississippi Code of 1972, is
108 reenacted as follows:

109 43-21-353. (1) Any attorney, physician, dentist, intern,
110 resident, nurse, psychologist, social worker, child protection
111 specialist, child care giver, minister, law enforcement officer,
112 public or private school employee or any other person having
113 reasonable cause to suspect that a child is a neglected child or
114 an abused child, shall cause an oral report to be made immediately
115 by telephone or otherwise and followed as soon thereafter as
116 possible by a report in writing to the Department of Human
117 Services, and immediately a referral shall be made by the
118 Department of Human Services to the youth court intake unit, which
119 unit shall promptly comply with Section 43-21-357. Where
120 appropriate, the Department of Human Services shall additionally
121 make a referral to the youth court prosecutor. Upon receiving a
122 report that a child has been sexually abused, or burned, tortured,
123 mutilated or otherwise physically abused in such a manner as to
124 cause serious bodily harm, or upon receiving any report of abuse
125 that would be a felony under state or federal law, the Department
126 of Human Services shall immediately notify the law enforcement
127 agency in whose jurisdiction the abuse occurred and shall notify
128 the appropriate prosecutor within forty-eight (48) hours, and the
129 Department of Human Services shall have the duty to provide the
130 law enforcement agency all the names and facts known at the time
131 of the report; this duty shall be of a continuing nature. The law
132 enforcement agency and the Department of Human Services shall
133 investigate the reported abuse immediately and shall file a

134 preliminary report with the appropriate prosecutor's office within
135 twenty-four (24) hours and shall make additional reports as new or
136 additional information or evidence becomes available. The
137 Department of Human Services shall advise the clerk of the youth
138 court and the youth court prosecutor of all cases of abuse
139 reported to the department within seventy-two (72) hours and shall
140 update such report as information becomes available.

141 (2) Any report to the Department of Human Services shall
142 contain the names and addresses of the child and his parents or
143 other persons responsible for his care, if known, the child's age,
144 the nature and extent of the child's injuries, including any
145 evidence of previous injuries and any other information that might
146 be helpful in establishing the cause of the injury and the
147 identity of the perpetrator.

148 (3) The Department of Human Services shall maintain a
149 statewide incoming wide-area telephone service or similar service
150 for the purpose of receiving reports of suspected cases of child
151 abuse; provided that any attorney, physician, dentist, intern,
152 resident, nurse, psychologist, social worker, child protection
153 specialist, child care giver, minister, law enforcement officer or
154 public or private school employee who is required to report under
155 subsection (1) of this section shall report in the manner required
156 in subsection (1).

157 (4) Reports of abuse and neglect made under this chapter and
158 the identity of the reporter are confidential except when the
159 court in which the investigation report is filed, in its
160 discretion, determines the testimony of the person reporting to be
161 material to a judicial proceeding or when the identity of the
162 reporter is released to law enforcement agencies and the
163 appropriate prosecutor pursuant to subsection (1). Reports made
164 under this section to any law enforcement agency or prosecutorial
165 officer are for the purpose of criminal investigation and
166 prosecution only and no information from these reports may be

167 released to the public except as provided by Section 43-21-261.
168 Disclosure of any information by the prosecutor shall be according
169 to the Mississippi Uniform Rules of Circuit and County Court
170 Procedure. The identity of the reporting party shall not be
171 disclosed to anyone other than law enforcement officers or
172 prosecutors without an order from the appropriate youth court.
173 Any person disclosing any reports made under this section in a
174 manner not expressly provided for in this section or Section
175 43-21-261, shall be guilty of a misdemeanor and subject to the
176 penalties prescribed by Section 43-21-267.

177 (5) All final dispositions of law enforcement investigations
178 described in subsection (1) of this section shall be determined
179 only by the appropriate prosecutor or court. All final
180 dispositions of investigations by the Department of Human Services
181 as described in subsection (1) of this section shall be determined
182 only by the youth court. Reports made under subsection (1) of
183 this section by the Department of Human Services to the law
184 enforcement agency and to the district attorney's office shall
185 include the following, if known to the department:

186 (a) The name and address of the child;
187 (b) The names and addresses of the parents;
188 (c) The name and address of the suspected perpetrator;
189 (d) The names and addresses of all witnesses, including
190 the reporting party if a material witness to the abuse;

191 (e) A brief statement of the facts indicating that the
192 child has been abused and any other information from the agency
193 files or known to the social worker or child protection specialist
194 making the investigation, including medical records or other
195 records, which may assist law enforcement or the district attorney
196 in investigating and/or prosecuting the case; and

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

199 (6) In any investigation of a report made under this chapter
200 of the abuse or neglect of a child as defined in Section
201 43-21-105(m), the Department of Human Services may request the
202 appropriate law enforcement officer with jurisdiction to accompany
203 the department in its investigation, and in such cases the law
204 enforcement officer shall comply with such request.

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

209 (8) If a report is made directly to the Department of Human
210 Services that a child has been abused or neglected in an
211 out-of-home setting, a referral shall be made immediately to the
212 law enforcement agency in whose jurisdiction the abuse occurred
213 and the department shall notify the district attorney's office
214 within forty-eight (48) hours of such report. The Department of
215 Human Services shall investigate the out-of-home setting report of
216 abuse or neglect to determine whether the child who is the subject
217 of the report, or other children in the same environment, comes
218 within the jurisdiction of the youth court and shall report to the
219 youth court the department's findings and recommendation as to
220 whether the child who is the subject of the report or other
221 children in the same environment require the protection of the
222 youth court. The law enforcement agency shall investigate the
223 reported abuse immediately and shall file a preliminary report
224 with the district attorney's office within forty-eight (48) hours
225 and shall make additional reports as new information or evidence
226 becomes available. If the out-of-home setting is a licensed
227 facility, an additional referral shall be made by the Department
228 of Human Services to the licensing agency. The licensing agency
229 shall investigate the report and shall provide the Department of
230 Human Services, the law enforcement agency and the district
231 attorney's office with their written findings from such

232 investigation as well as that licensing agency's recommendations
233 and actions taken.

234 **SECTION 5.** This act shall take effect and be in force from
235 and after July 1, 2006.