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Chapter No. 519

12/HR40/R1067SG

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HOUSE BILL NO. 16

Originated in House  Clerk

HOUSE BILL NO. 16

AN ACT TO ENACT THE MISSISSIPPI CHILD PROTECTION ACT OF 2012; TO CREATE SECTION 97-5-51, MISSISSIPPI CODE OF 1972, TO REQUIRE MANDATORY REPORTING OF SEX CRIMES AGAINST MINORS, TO ENACT DEFINITIONS AND TO SPECIFY EXCEPTIONS; AND FOR RELATED PURPOSES.

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

SECTION 1. The following shall be codified as Section 97-5-51, Mississippi Code of 1972:

97-5-51. (1) **Definitions.** For the purposes of this section:

(a) "Sex crime against a minor" means any offense under at least one (1) of the following statutes when committed by an adult against a minor who is under the age of sixteen (16):

(i) Section 97-3-65 relating to rape;

(ii) Section 97-3-71 relating to rape and assault

with intent to ravish;

(iii) Section 97-3-95 relating to sexual battery;

(iv) Section 97-5-23 relating to the touching of a

child, mentally defective or incapacitated person or physically helpless person for lustful purposes;

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

(vi) Section 97-5-33 relating to exploitation of children;

(vii) Section 97-3-54.1(1)(c) relating to procuring sexual servitude of a minor;

(viii) Section 43-47-18 relating to sexual abuse of a vulnerable person;

(ix) Section 97-1-7 relating to the attempt to commit any of the offenses listed in this subsection.

(b) "Mandatory reporter" means any of the following individuals performing their occupational duties: health care practitioner, clergy member, teaching or child care provider, law enforcement officer, or commercial image processor.

(c) "Health care practitioner" means any individual who provides health care services, including a physician, surgeon, physical therapist, psychiatrist, psychologist, medical resident, medical intern, hospital staff member, licensed nurse and emergency medical technician or paramedic.

(d) "Clergy member" means any priest, rabbi or duly ordained deacon or minister.

(e) "Teaching or child care provider" means anyone who provides training or supervision of a minor under the age of sixteen (16), including a teacher, teacher's aide, principal or staff member of a public or private school, social worker, probation officer, foster home parent, group home or other child care institutional staff member, personnel of residential home facilities, a licensed or unlicensed day care provider.

(f) "Commercial image processor" means any person who, for compensation: (i) develops exposed photographic film into negatives, slides or prints; (ii) makes prints from negatives or slides; or (iii) processes or stores digital media or images from any digital process, including, but not limited to, website applications, photography, live streaming of video, posting, creation of power points or any other means of intellectual property communication or media including conversion or manipulation of still shots or video into a digital show stored on a photography site or a media storage site.

(g) "Caretaker" means any person legally obligated to provide or secure adequate care for a minor under the age of sixteen (16), including a parent, guardian, tutor, legal custodian or foster home parent.

(2) (a) **Mandatory reporter requirement.** A mandatory reporter shall make a report if it would be reasonable for the mandatory reporter to suspect that a sex crime against a minor has occurred.

(b) Failure to file a mandatory report shall be punished as provided in this section.

(c) Reports made under this section and the identity of the mandatory reporter are confidential except when the court determines the testimony of the person reporting to be material to a judicial proceeding or when the identity of the reporter is released to law enforcement agencies and the appropriate prosecutor. The identity of the reporting party shall not be disclosed to anyone other than law enforcement or prosecutors except under court order; violation of this requirement is a misdemeanor. Reports made under this section are for the purpose of criminal investigation and prosecution only and information from these reports is not a public record. Disclosure of any information by the prosecutor shall conform to the Mississippi Uniform Rules of Circuit and County Court Procedure.

(d) Any mandatory reporter who makes a required report under this section or participates in a judicial proceeding resulting from a mandatory report shall be presumed to be acting in good faith. Any person or institution reporting in good faith shall be immune from any liability, civil or criminal, that might otherwise be incurred or imposed.

(3) (a) **Mandatory reporting procedure.** A report required under subsection (2) must be made immediately to the law enforcement agency in whose jurisdiction the reporter believes the sex crime against the minor occurred. Except as otherwise

provided in this subsection (3), a mandatory reporter may not delegate to any other person the responsibility to report, but shall make the report personally.

(i) The reporting requirement under this subsection (3) is satisfied if a mandatory reporter in good faith reports a suspected sex crime against a minor to the Department of Human Services under Section 43-21-353.

(ii) The reporting requirement under this subsection (3) is satisfied if a mandatory reporter reports a suspected sex crime against a minor by following a reporting procedure that is imposed:

1. By state agency rule as part of licensure of any person or entity holding a state license to provide services that include the treatment or education of abused or neglected children; or

2. By statute.

(b) **Contents of the report.** The report shall identify, to the extent known to the reporter, the following:

(i) The name and address of the minor victim;

(ii) The name and address of the minor's

caretaker;

(iii) Any other pertinent information known to the reporter.

(4) **Maintenance of forensic samples.** Any physician who performs an abortion on a minor who is less than fourteen (14) years of age at the time of the abortion procedure shall preserve fetal tissue extracted during the abortion in accordance with rules and regulations adopted pursuant to this section if it would be reasonable to suspect that the pregnancy being terminated is the result of a sex crime against a minor.

(a) The State Medical Examiner shall adopt rules and regulations consistent with Section 99-49-1 that prescribe:

- (i) The amount and type of fetal tissue to be preserved and submitted by a physician pursuant to this section;
- (ii) Procedures for the proper preservation of the tissue for the purpose of DNA testing and examination;
- (iii) Procedures for documenting the chain of custody of such tissue for use as evidence;
- (iv) Procedures for proper disposal of fetal tissue preserved pursuant to this section;
- (v) A uniform reporting instrument mandated to be utilized by physicians when submitting fetal tissue under this section which shall include the name of the physician submitting the fetal tissue and the complete residence address and name of the parent or legal guardian of the minor upon whom the abortion was performed; and
- (vi) Procedures for communication with law enforcement agencies regarding evidence and information obtained pursuant to this section.

(b) Failure of a physician to comply with any provision of this subsection (4) or any rule or regulation adopted under this subsection (4) may constitute unprofessional conduct for the purposes of Section 73-25-29, and also shall be punished as provided in this section.

(5) **Penalties.** (a) A person who is convicted of a first offense under this section shall be guilty of a misdemeanor and fined not more than Five Hundred Dollars (\$500.00).

(b) A person who is convicted of a second offense under this section shall be guilty of a misdemeanor and fined not more than One Thousand Dollars (\$1,000.00), or imprisoned for not more than thirty (30) days, or both.

(c) A person who is convicted of a third or subsequent offense under this section shall be guilty of a misdemeanor and fined not more than Five Thousand Dollars (\$5,000.00), or imprisoned for not more than one (1) year, or both.

(6) No physician shall be liable for any penalty under this section for good faith compliance with any rules and regulations adopted pursuant to this section.

SECTION 2. Severability. Any provision of this act held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, shall be construed so as to give it the maximum effect permitted by law, unless such holding shall be one of utter invalidity or unenforceability, in which event such provision shall be deemed severable herefrom and shall not affect the remainder hereof or the application of such provision to other persons not similarly situated or to other dissimilar circumstances.

SECTION 3. This act shall take effect and be in force from and after July 1, 2012.

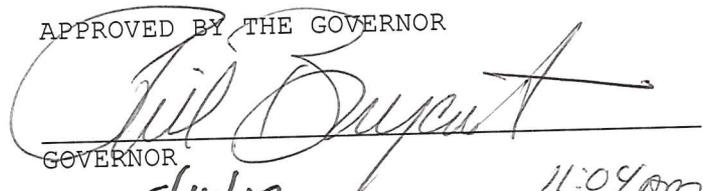
PASSED BY THE HOUSE OF REPRESENTATIVES
May 1, 2012


SPEAKER OF THE HOUSE OF REPRESENTATIVES

PASSED BY THE SENATE
May 1, 2012


PRESIDENT OF THE SENATE

APPROVED BY THE GOVERNOR


GOVERNOR
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