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Chapter No. 511
13/HR12/R408SG
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HOUSE BILL NO. 151

Originated in House _____ Clerk

HOUSE BILL NO. 151

AN ACT TO AMEND SECTION 97-5-51, MISSISSIPPI CODE OF 1972, TO REVISE MANDATORY REPORTING OF SEX CRIMES AGAINST MINORS AND TO PROVIDE FOR MANDATORY FILING OF CHARGES BY LAW ENFORCEMENT ON BEHALF OF A VICTIM OF A SEX CRIME AGAINST A MINOR WHEN PROBABLE CAUSE EXISTS; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 97-5-51, Mississippi Code of 1972, is amended as follows:

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, midwife 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) A law enforcement officer who receives a mandated report under this section shall file an affidavit against the offender on

behalf of the State of Mississippi if there is probable cause to believe that the offender has committed a sex crime against a minor.

(* * *5) * * * **Collection of forensic samples.** * * * (a) (i) When an abortion is performed on a minor who is less than fourteen (14) years of age at the time of the abortion procedure, * * * fetal tissue extracted during the abortion shall be collected 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.

(ii) When a minor who is under sixteen (16) years of age gives birth to an infant, umbilical cord blood shall be collected, if possible, in accordance with rules and regulations adopted pursuant to this section if it would be reasonable to suspect that the minor's pregnancy resulted from a sex crime against a minor.

(iii) It shall be reasonable to suspect that a sex crime against a minor has occurred if the mother of an infant was less than sixteen (16) years of age at the time of conception and at least one (1) of the following conditions also applies:

1. The mother of the infant will not identify the father of the infant;

2. The mother of the infant lists the father of the infant as unknown;

3. The person the mother identifies as the father of the infant disputes his fatherhood;

4. The person the mother identifies as the father of the infant is twenty-one (21) years of age or older; or

5. The person the mother identifies as the father is deceased.

(* * *b) 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 or umbilical cord blood to be * * * collected pursuant to this section;

(ii) Procedures for the proper preservation of the tissue or blood for the purpose of DNA testing and examination;

(iii) Procedures for documenting the chain of custody of such tissue or blood for use as evidence;

(iv) Procedures for proper disposal of fetal tissue or umbilical cord blood * * * collected pursuant to this section;

(v) A uniform reporting instrument mandated to be utilized, * * * which shall include the * * * complete residence address and name of the parent or legal guardian of the minor * * * who is the subject of the report required under this subsection (5); and

(vi) Procedures for communication with law enforcement agencies regarding evidence and information obtained pursuant to this section.

* * *

(* * *6) **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.

(* * *7) * * * A health care practitioner or health care facility shall be * * * immune from any penalty * * *, civil or criminal, for good-faith compliance with any rules and regulations adopted pursuant to this section.

SECTION 2. This act shall take effect and be in force from and after July 1, 2013.

PASSED BY THE HOUSE OF REPRESENTATIVES
March 30, 2013

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PASSED BY THE SENATE
April 2, 2013

PRESIDENT OF THE SENATE

APPROVED BY THE GOVERNOR

GOVERNOR

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