

By: Senator(s) Nunnelee, Browning, Burton,  
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To: Judiciary, Division A

SENATE BILL NO. 2238  
(As Passed the Senate)

1 AN ACT TO PROVIDE FOR THE MANDATORY REPORTING OF SEXUAL  
2 CRIMES AGAINST MINORS; TO CREATE A CIVIL ACTION FOR FAILURE TO  
3 MAKE A MANDATORY REPORT OF ABUSE; TO PROVIDE FOR THE RETAINING OF  
4 THE DNA OF A FETUS FOR THE PURPOSE OF DOCUMENTING THE PERPETRATOR  
5 OF A SEX CRIME AGAINST A MINOR; TO CREATE A CIVIL ACTION FOR  
6 CAUSING, AIDING OR ASSISTING A MINOR TO OBTAIN AN ABORTION; AND  
7 FOR RELATED PURPOSES.

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

9 **SECTION 1.** (1) This section shall be known and may be cited  
10 as the "Mississippi Child Protection Act of 2010."

11 (2) **Definitions.** For the purposes of this section:

12 (a) "Sexual abuse" means the involvement of the child  
13 in any sexual act with a parent or another person, or the aiding  
14 or intentional toleration of a parent or caretaker of the child's  
15 sexual involvement with any other person or the child's  
16 involvement in child pornography, or any other involvement of a  
17 child in sexual activity constituting a crime under the laws of  
18 this state, including sexual penetration as defined in Section  
19 97-3-95(1)(b), (c) and (d) or 97-3-97 when committed by an adult  
20 against a minor.

21 (b) "Caretaker" means any person legally obligated to  
22 provide or secure adequate care for the child including parent,  
23 guardian, tutor, legal custodian, foster home parent, or anyone  
24 else providing the child with a residence.

25 (c) "Child pornography" means visual depiction of a  
26 child engaged in actual or simulated sexual intercourse, deviate  
27 sexual intercourse, bestiality, masturbation, sadomasochistic  
28 abuse, or lewd exhibition of the genitals.



29 (d) "Mandatory reporter" means any of the following  
30 individuals performing their occupational duties: health care  
31 practitioner, member of the clergy, teaching or child care  
32 provider, police officer or law enforcement officials, or  
33 commercial film or photographic print processor.

34 (e) "Health practitioner" means any individual who  
35 provides healthcare services, including a physician, surgeon,  
36 physical therapist, psychiatrist, psychologist, medical resident,  
37 medical intern, hospital staff member, licensed nurse, nurse's  
38 aide, any emergency medical technician, paramedic, and any  
39 employee, staff member or volunteer at a reproductive healthcare  
40 facility.

41 (f) "Member of the clergy" means any priest, rabbi, or  
42 duly-ordained deacon or minister, except that the clergy member is  
43 not required to report a confidential communication that is  
44 protected as a function of the church, but shall then encourage  
45 that person to come forward and report the allegations to the  
46 proper authorities.

47 (g) "Teaching or child care provider" means anyone who  
48 provides training and supervision of a child, including any public  
49 or private teacher, teacher's aide, school principal, school staff  
50 member, social worker, probation officer, foster home parent,  
51 group home or other child care institutional staff member,  
52 personnel of residential home facilities, a licensed or unlicensed  
53 day care provider, or any individual who provides such services to  
54 a child.

55 (h) "Commercial film or photographic print processor"  
56 means any person who develops exposed photographic film into  
57 negatives, slides, or prints, or who makes prints from negatives  
58 or slides for compensation.

59 (i) "Reproductive healthcare facility" means any  
60 office, clinic, or other facility that provides abortions,  
61 abortion counseling, abortion referrals, contraceptives,



62 contraceptive counseling, sex education, or gynecological care  
63 and services.

64 (j) "Abortion" means the act of using or prescribing  
65 any instrument, medicine, drug, or any other substance, device or  
66 means with the intent to terminate the clinically diagnosable  
67 pregnancy of a woman with knowledge that the termination by those  
68 means will with reasonable likelihood cause the death of the  
69 unborn child. Such use, prescription or means is not an abortion  
70 if done with the intent to:

71 (i) Save the life or preserve the health of an  
72 unborn child;

73 (ii) Remove a dead unborn child caused by  
74 spontaneous abortion; or

75 (iii) Remove an ectopic pregnancy.

76 (k) "Physician" means any person licensed to practice  
77 medicine and surgery.

78 (3) **Mandatory reporter requirements.** A mandatory reporter  
79 shall report every instance of alleged or suspected sexual abuse.  
80 The mandatory reporter may not use the reporter's own discretion  
81 in deciding what cases should or should not be reported to the  
82 appropriate law enforcement or relevant state agency.

83 (4) **Mandatory reporting procedure.** If a mandatory reporter  
84 has cause to believe that a child has been subjected to sexual  
85 abuse, the mandatory reporter shall make a report no later than  
86 the forty-eighth hour after the abuse has been brought to the  
87 reporter's attention if the reporter suspects sexual abuse. A  
88 mandatory reporter may not delegate the responsibility to report  
89 sexual abuse to any other person but shall make the report  
90 personally. The mandatory reporter shall make a report to the  
91 local law enforcement agency, the Mississippi Department of Public  
92 Safety or the Mississippi Department of Human Services.

93 (5) **Contents of the report.** The person making the report  
94 shall identify the name and address of the child as well as the



95 name and address of the person who is responsible for the care or  
96 custody of the child. The person making the report shall file any  
97 pertinent information he or she may have relating to the alleged  
98 or suspected sexual abuse.

99       (6) **Failure to report.** Any mandatory reporter who has  
100 reason to believe that a child's physical or mental health or  
101 welfare has been adversely affected due to sexual abuse and  
102 willfully does not report such sexual abuse as provided by this  
103 section, upon conviction thereof, shall be guilty of a misdemeanor  
104 punishable as provided in Section 43-21-353(7). A person who  
105 violates this subsection (3) shall be civilly liable to the minor  
106 and the minor's parent or guardian. A court may award damages to  
107 the person or persons adversely affected by a mandatory reporter's  
108 failure to report, including compensation for emotional injury,  
109 without the need for personal presence at the act or event, and  
110 the court may further award attorney's fees, litigation costs and  
111 punitive damages. Any adult who engages or consents to another  
112 person engaging in a sex act with a minor in violation of the  
113 provisions of Section 97-3-65 or 97-3-95 shall not be awarded  
114 damages under this subsection. The limitations imposed by  
115 Sections 11-1-60 and 11-1-65 do not apply to an action under this  
116 subsection.

117       (7) **Maintenance of forensic samples from abortions performed**  
118 **on certain minors.** Any physician who performs an abortion on a  
119 minor who is less than fourteen (14) years of age at the time of  
120 the abortion procedure shall preserve fetal tissue extracted  
121 during the abortion in accordance with rules and regulations  
122 adopted by the State Board of Health pursuant to this section.  
123 The physician shall submit the tissue to the Mississippi  
124 Department of Public Safety, Bureau of Investigation.

125       (a) The State Board of Health shall adopt rules and  
126 regulations prescribing:



127 (i) The amount and type of fetal tissue to be  
128 preserved and submitted by a physician pursuant to this section;

129 (ii) Procedures for the proper preservation of  
130 such tissue for the purpose of DNA testing and examination;

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

133 (iv) Procedures for proper disposal of fetal  
134 tissue preserved pursuant to this section;

135 (v) A uniform reporting instrument mandated to be  
136 utilized by physicians when submitting fetal tissue under this  
137 section which shall include the name of the physician submitting  
138 the fetal tissue and the complete residence address and name of  
139 the parent or legal guardian of the minor upon whom the abortion  
140 was performed; and

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

144 (b) Failure of a physician to comply with any provision  
145 of this subsection or any rule or regulation adopted thereunder:

146 (i) Shall constitute unprofessional conduct for  
147 the purposes of Section 73-25-29; and

148 (ii) Is a misdemeanor upon a first conviction  
149 punishable as provided in Section 43-21-353(7), and a felony upon  
150 a second or subsequent conviction, punishable by a fine of Ten  
151 Thousand Dollars (\$10,000.00) and imprisonment for up to five (5)  
152 years.

153 (8) **Prohibition on procurement of an abortion without**  
154 **parental consent.** (a) No person shall intentionally cause, aid,  
155 or assist a minor under the age of eighteen (18) to obtain an  
156 abortion without the consent or consents required by Section  
157 41-41-53.

158 (b) A person who violates this subsection (8) shall be  
159 civilly liable to the minor and to the person or persons required



160 to give the consent or consents under Section 41-41-53. A court  
161 may award damages to the person or persons adversely affected by a  
162 violation of this subsection (8), including compensation for  
163 emotional injury without the need for personal presence at the act  
164 or event, and the court may further award attorneys' fees,  
165 litigation costs, and punitive damages. Any adult who engages in  
166 or consents to another person engaging in a sex act with a minor  
167 in violation of the provisions of Section 97-3-65 or 97-3-95, and  
168 which results in the minor's pregnancy shall not be awarded  
169 damages under this section. The limitations imposed by Sections  
170 11-1-60 and 11-1-65 do not apply to an action under this  
171 subsection.

172 (c) It shall not be a defense to a claim brought under  
173 this subsection that the abortion was performed or induced  
174 pursuant to consent to the abortion given in a manner that is  
175 otherwise lawful in the state or place where the abortion was  
176 performed or induced.

177 (d) An unemancipated minor does not have capacity to  
178 consent to any action in violation of this section.

179 (e) A court may enjoin conduct that would be in  
180 violation of this section upon petition by the Attorney General, a  
181 prosecuting or district attorney, or any person adversely affected  
182 or who reasonably may be adversely affected by such conduct, upon  
183 a showing that such conduct:

184 (i) Is reasonably anticipated to occur in the  
185 future; or

186 (ii) Has occurred in the past, whether with the  
187 same minor or others, and that it is not unreasonable to expect  
188 that such conduct will be repeated.

189 **SECTION 2.** This act shall take effect and be in force from  
190 and after July 1, 2010.

