

MANDATORY REPORTING STATUTES

A. CHILD ABUSE OR NEGLECT STATUTES

We do not have the right to remain silent!

Child Abuse Kills, and Child Neglect can result in lifelong adverse affects for a child. Thousands of children are impacted by abuse and neglect in Mississippi each year, yet we rarely hear anything about it, because Child Protection proceedings in our Youth Courts are confidential. How do we do a better job protecting our children? Following the mandatory reporting statute is an essential first step.

1. General Child Abuse Reporting Statute - - Miss. Code Ann. § 43-21-353 (2018)

(1) **Any attorney, physician, dentist, intern, resident, nurse, psychologist, social worker, family protection worker, family protection specialist, child caregiver, minister, law enforcement officer, public or private school employee OR ANY OTHER PERSON having reasonable cause to suspect that a child is a neglected child or an abused child, shall cause an oral report to be made immediately by telephone or otherwise and followed as soon thereafter as possible by a report in writing to the Department of Human Services,** and immediately a referral shall be made by the Department of Human Services to the youth court intake unit, which unit shall promptly comply with Section 43-21-357. In the course of an investigation, at the initial time of contact with the individual(s) about whom a report has been made under this Youth Court Act or with the individual(s) responsible for the health or welfare of a child about whom a report has been made under this chapter, the Department of Human Services shall inform the individual of the specific complaints or allegations made against the individual. Consistent with subsection (4), **the identity of the person who reported his or her suspicion shall not be disclosed.** Where appropriate, the Department of Human Services shall additionally make a referral to the youth court prosecutor.

Upon receiving a report that a child has been sexually abused, or burned, tortured, mutilated or otherwise physically abused in such a manner as to cause serious bodily harm, or upon receiving **any report of abuse that would be a felony** under state or federal law, the Department of Human Services shall immediately **notify the law enforcement agency** in whose jurisdiction the abuse occurred and shall notify the appropriate prosecutor within forty-eight (48) hours, and the Department of Human Services shall have the duty to provide the law enforcement agency all the names and facts known at the time of the report; this duty shall be of a continuing nature. The law enforcement agency and the Department of Human Services shall investigate the reported abuse immediately and shall file a preliminary report with the appropriate prosecutor's office within twenty-four (24) hours and shall make additional reports as new or additional information or evidence becomes available. The Department of Human Services shall advise the clerk of the youth court and the youth court prosecutor of all cases of abuse reported to the department within seventy-two (72) hours and shall update such report as information becomes available.

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

(3) The Department of Human Services shall maintain a **statewide incoming wide-area telephone service or similar service** **[WE NOW HAVE AN APP FOR THAT]** for the purpose of receiving **reports of suspected cases of child abuse**; provided that any attorney, physician, dentist, intern, resident, nurse, psychologist, social worker, family protection worker, family protection specialist, child caregiver, minister, law enforcement officer or public or private school employee who is required to report under subsection (1) of this section shall report in the manner required in subsection (1).

(4) **Reports of abuse and neglect** made under this chapter and the identity of the reporter **are confidential except** **[LIMITED DISCLOSURE OF REPORTER'S IDENTITY]** when the court in which the investigation report is filed, in its discretion, 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 pursuant to subsection (1). Reports made under this section to any law enforcement agency or prosecutorial officer are for the purpose of criminal investigation and prosecution only and no information from these reports may be released to the public except as provided by Section 43-21-261. Disclosure of any information by the prosecutor shall be according to the Mississippi Uniform Rules of Circuit and County Court Procedure. **The identity of the reporting party shall not be disclosed to anyone other than law enforcement officers or prosecutors without an order from the appropriate youth court. Any person disclosing any reports made under this section in a manner not expressly provided for in this section or Section 43-21-261 shall be guilty of a misdemeanor and subject to the penalties prescribed by Section 43-21-267.**

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

- (a) The name and address of the child;
- (b) The names and addresses of the parents;
- (c) The name and address of the suspected perpetrator;
- (d) The names and addresses of all witnesses, including the reporting party if a material witness to the abuse;
- (e) A brief statement of the facts indicating that the child has been abused and any other information from the agency files or known to the family protection worker

or family protection specialist making the investigation, including medical records or other records, which may assist law enforcement or the district attorney in investigating and/or prosecuting the case; and

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

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

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

(8) If a report is made directly to the Department of Human Services that a child has been **abused or neglected in an out-of-home setting**, a referral shall be made immediately to the law enforcement agency in whose jurisdiction the abuse occurred and the department shall notify the district attorney's office within forty-eight (48) hours of such report. The Department of Human Services shall investigate the out-of-home setting report of abuse or neglect to determine whether the child who is the subject of the report, or other children in the same environment, comes within the jurisdiction of the youth court and shall report to the youth court the department's findings and recommendation as to whether the child who is the subject of the report or other children in the same environment require the protection of the youth court. The law enforcement agency shall investigate the reported abuse immediately and shall file a preliminary report with the district attorney's office within forty-eight (48) hours and shall make additional reports as new information or evidence becomes available. **If the out-of-home setting is a licensed facility, an additional referral shall be made by the Department of Human Services to the licensing agency.** The licensing agency shall investigate the report and shall provide the Department of Human Services, the law enforcement agency and the district attorney's office with their written findings from such investigation as well as that licensing agency's recommendations and actions taken.

NOTE: The responsibility of DHS under the amendment to Subsection (8) requires only a determination of whether the reported abuse or neglect was done by a "parent, guardian or custodian or any person responsible for his care or support."; once this question has been answered in the negative, any investigation of the abuse or neglect would be sole responsibility of law enforcement agencies. Op.Atty.Gen. No. 98-0318, Taylor, June 19, 1998.

(9) If a child protective investigation does not result in an out-of-home placement, a child protective investigator must provide information to the parent or guardians about community service programs that provide respite care, voluntary guardianship or other support services for families in crisis.

2. Miss. Code Ann. § 97-5-24 - - Specific Statute concerning sexual involvement between school employees and students.

1. Miss. Code Ann. § 97-5-24. Sexual involvement of school employee with student.

If any person eighteen (18) years or older who is employed by any public school district or private school in this state is **accused** of fondling or having any type of sexual involvement with any child under the age of eighteen (18) years who is enrolled in such school, the principal of such school and the superintendent of such school district shall timely notify the district attorney with jurisdiction where the school is located of such accusation, the Mississippi Department of Education and the Department of Human Services, **provided that such accusation is reported to the principal and to the school superintendent and that there is a reasonable basis to believe that such accusation is true.** Any superintendent, or his designee, who fails to make a report required by this section shall be subject to the penalties provided in Section 37-11-35. Any superintendent, principal, teacher or other school personnel participating in the making of a required report pursuant to this section or participating in any judicial proceeding resulting therefrom shall be presumed to be acting in good faith. Any person reporting in good faith shall be immune from any civil liability that might otherwise be incurred or imposed.

2. J.M. ex rel. V.M. v. Bailey, 42 So.3d 618, 623 (¶ 18) (Miss. App. 2010) (School officials have duties to report child abuse under both Miss. Code Ann. § 97-5-24 and Miss. Code Ann. §43-21-353.)

3. Miss. Code Ann. 97-5-51 - - Mississippi Child Protection Act of 2012 - - reporting sex crimes against minors.

(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.

B. IMMUNITY OF THE REPORTER FOR REPORTS MADE UNDER Miss. Code Ann. § 43-21-353.

1. Miss. Code Ann. § 43-21-355 (2018). Civil and criminal immunity.

Any attorney, physician, dentist, intern, resident, nurse, psychologist, social worker, family protection worker, family protection specialist, child caregiver, minister, law enforcement officer, school attendance officer, public school district employee, nonpublic school employee, licensed professional counselor or any other person participating in the making of a required report pursuant to Section 43-21-353 or participating in the judicial proceeding resulting therefrom **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.

2. Howe v. Andereck, 882 So.2d 240, 243-45 (Miss. App. 2004) (civil case alleging wrongful reporting)

a. The language of the statute unequivocally commands reporting to be a mandatory duty.

b. The enactment of this mandatory reporting legislation was for the single purpose of advancing the State's fundamental objective of eliminating child abuse and neglect.

c. The statute provides two devices to encourage the reporting of suspected abuse:

(1) **CRIMINAL PENALTY FOR FAILING TO REPORT:** The first device is a sanction that provides that anyone who willfully violates any provision of the mandatory reporting statute "... shall be, upon being found guilty, punished by a fine not to exceed Five Thousand Dollars (\$5,000.00), or by imprisonment in jail not to exceed one (1) year, or both."

(2) **GOOD FAITH IMMUNITY FOR REPORTERS:** The second device is a grant of "good faith immunity" to reporters who have "reasonable cause" to suspect that a child is being abused or neglected. The Court held that any person reporting in good faith would be immune from any liability, civil or criminal, that might otherwise be incurred or imposed." The Court based this holding on general common law principles, and not any specific statutory provisions.

(3) **PRESUMPTION OF GOOD FAITH IMMUNITY CAN BE REBUTTED:**

The immunity afforded by Section 43–21–355 is not absolute. The Court explained that any person who makes a false report may be found civilly and criminally liable, if the plaintiff can produce **evidence demonstrating that the report was made in “bad faith.” The Court held that this requires a showing of ill-will or actual malice.** The statutorily mandated presumption of good faith, therefore, is rebuttable. The presumption can be rebutted only by the presentation of evidence that demonstrates that the reporter acted with ill-will or actual malice. Mere conclusory allegations and accusations in a complaint are insufficient to overcome the presumption.

In Howe, the Court rejected the plaintiffs’ argument that they were not allowed adequate time for discovery of evidence concerning the “bad faith” of the reporter of the alleged abuse, even though eight months had passed from the time the complaint was filed until the Order of dismissal was entered, and the plaintiffs failed to conduct any discovery during that time. **Because there was no evidence presented outside the bare allegations of the complaint, which contained no specific factual assertions that, if proven, would create a legitimate disputed issue of whether the reporter was proceeding in bad faith, the COA held that the trial court properly dismissed the Complaint.**

C. PUNISHMENT FOR FALSE REPORTING.

1. Miss. Code Ann. § 97-35-47 (2018 version) (criminal offense for false reports).

It shall be unlawful for any person to report a crime or any element of a crime to any law enforcement or any officer of any court, by any means, knowing that such report is false. A violation of this section shall be punishable by imprisonment in the county jail not to exceed one (1) year or by fine not to exceed Five Thousand Dollars (\$5,000.00), or both. In addition to any fine and imprisonment, and upon proper showing made to the court, the defendant shall be ordered to pay as restitution to the law enforcement agency reimbursement for any reasonable costs directly related to the investigation of the falsely reported crime and the prosecution of any person convicted under this section.

Miss Code Ann. § 97-35-47 (2019 Version - - new language underlined)

It shall be **unlawful** for any person to report a crime or any element of a crime, **including an allegation of child abuse or neglect,** to any law enforcement agency or officer, the Department of Child Protection Services, or any officer of any court, by any means, knowing that the report is false. **A violation of this section shall be punishable by imprisonment in the county jail not to exceed one (1) year or by fine not to exceed Five Thousand Dollars (\$5,000.00), or both.** In addition to any fine and imprisonment, and upon proper showing made to the court, the defendant shall be ordered to pay as restitution to the law enforcement agency reimbursement for any reasonable costs directly related to the investigation of the falsely reported crime and the prosecution of any person convicted under this section.

A report is false under this section if no rational argument can be advanced in its

support, when it is unsupported by any credible evidence, when a reasonable person could not have expected its success, or when it is completely untenable.

C. HOW TO REPORT CHILD ABUSE OR NEGLECT

1. **Child abuse and Neglect Hotline** maintained by the Mississippi Department of Child Protection Services: 1 (800) 222-2000.
2. **On-line reporting** through Mississippi DCPS: <https://reportabuse.mdcps.ms.gov/>
3. **Phone App** for Apple and Android: “MDCPS Report Child Abuse.”
4. *Watkins v. Mississippi Dept. of Human Services*, 132 So.3d 1037, 1044 (Miss. 2014)

FACTS: Biological mother brought wrongful-death action against the Department of Human Services (DHS) in connection with child's death from starvation after child was removed from mother's home, DHS was awarded custody of child, and DHS placed child in the home of his paternal grandmother, to whom durable legal custody was later awarded. At age 3, the child was treated at UMMC for dehydration and malnutrition, and the doctors reported to DHS that he reported to DHS that the child's family either was intentionally not feeding him properly, or did not understand how to feed him properly. However, the child was returned to the grandmother by DHS. The child died of starvation a year later, and the mother sued DHS. The Circuit Court granted summary judgment in favor of DHS, on grounds that DHS was entitled to sovereign immunity from liability for acts alleged in mother's complaint. Mother appealed.

HOLDING: The Supreme Court held that genuine issue of material fact as to whether DHS received a “report” that the child was being abused or neglected, so as to trigger DHS's ministerial duty to investigate such report. This precluded summary judgment for DHS on issue of its entitlement to discretionary-function immunity under Mississippi Tort Claims Act (MTCA).

Nothing in the statute mandates that reporters use “magic words” such as “report,” “abuse,” or “neglect” to convey that they are reporting abuse or neglect. In *Watkins*, the medical personnel at UMMC testified that they informed DHS that the child likely being starved, either intentionally or unintentionally. The credibility of the witnesses was a jury issue, so the MSSC held that the trial court improperly granted summary judgment to DHS in a case involving allegations that DHS failed to take timely action based on the report.