

West's Annotated Mississippi Code [Currentness](#)

Title 43. Public Welfare

[Chapter 21.](#) Youth Court [Intake](#)**→§ 43-21-353. Reporting abuse or neglect**

(1) Any attorney, physician, dentist, intern, resident, nurse, psychologist, social worker, child protection specialist, child care giver, 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](#). 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 for the purpose of receiving reports of suspected cases of child abuse; provided that any attorney, physician, dentist, intern, resident, nurse, psychologist, social worker, child protection specialist, child care giver, 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 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 social worker or child 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.

CREDIT(S)

Laws 1979, Ch. 506, § 41; Laws 1980, Ch. 550, § 17; Laws 1984, Ch. 342, § 1; Laws 1985, Ch. 360, § 1; [Laws 1993, Ch. 522, § 1](#); [Laws 1994, Ch. 387, § 1](#); [Laws 1994, Ch. 591, § 3](#); [Laws 1995, Ch. 335, § 1](#); [Laws 1996, Ch. 323, § 2](#); [Laws 1997, Ch. 440, § 10](#); [Laws 1998, Ch. 340, § 1](#); [Laws 1998, Ch. 557, § 1, eff. July 1, 1998](#); [Laws 2004, Ch. 489, § 3, eff. July 1, 2004](#).

REPEALER

<This section is repealed by § 43-1-55(5) on July 1, 2006.>

HISTORICAL AND STATUTORY NOTES

This section was amended by both Laws 1998, Ch. 340, § 1, eff. July 1, 1998 (approved March 16, 1998) and Laws

1998, Ch. 557, § 1, eff. July 1, 1998 (approved April 14, 1998). Pursuant to Section 1-3-79, the amendment by Chapter 557 supersedes the amendment by Chapter 340 since it was approved on a later date.

The 2004 amendment added "child protection specialist," in subsecs. (1) and (3) and in par. (5)(e).

CROSS REFERENCES

Contributing to the delinquency, neglect, felonious assault, battery of a child, see [§ 97-5-39](#).

Disclosing child care facility abuse allegation findings, see [§ 43-20-17](#).

Youth court, disclosure of records, see [§ 43-21-261](#).

Youth court procedures, see [M.R.C.P. 81](#).

LIBRARY REFERENCES

Infants  12, 132.
WESTLAW Topic No. 211.
[C.J.S. Infants § § 5 to 6, 10, 32, 41, 43 to 44, 95](#).

RESEARCH REFERENCES

Encyclopedias

[Encyclopedia of Mississippi Law § 30:17](#), Reports of Abuse.

[Encyclopedia of Mississippi Law § 78:34](#), Intake and Investigation.

UNITED STATES SUPREME COURT

Due process, state duty to protect child from parental abuse, see [DeShaney v. Winnebago County Dept. of Social Services, U.S.Wis.1989, 109 S.Ct. 998, 489 U.S. 189, 103 L.Ed.2d 249](#).

JUDICIAL DECISIONS

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[1](#). In general

Licensed social worker employed by state was not required to inform defendant of his Miranda rights before interview to investigate allegations of sexual battery; social worker was not law enforcement official, lacked authority to arrest defendant, and had duty to report any suspected abuse. [Hennington v. State \(Miss. 1997\) 702 So.2d 403](#).

Question whether public elementary school principal was entitled to qualified immunity for failing to report alleged incident of **child abuse** by teacher's aide depended on whether reasonable cause existed to suspect abuse, based on investigation requiring exercise of personal judgment and discretion; therefore, whether ministerial duty to comply with mandatory **reporting** statute existed could not be determined without factual record of principal's course of action in investigating complaint. [T.M. v. Noblitt \(Miss. 1995\) 650 So.2d 1340](#), rehearing denied. Infants  13

Statutory framework for report by public school district employee of suspected child abuse includes elements of both ministerial and discretionary conduct; duty to investigate report is ministerial, determination whether reasonable cause exists to make incident report is discretionary, and duty to report incident if reasonable cause is found is ministerial. [T.M. v. Noblitt \(Miss. 1995\) 650 So.2d 1340](#), rehearing denied. Infants  13

Child abuse reporting statute pertained to situations when child was presented to physician for treatment, and did not create **child abuse** exception to psychologist-patient privilege for offender seeking treatment from physician. [Everett v. State \(Miss. 1990\) 572 So.2d 838](#). Witnesses  211(1); Witnesses  214.5

It is not unlawful for school officials to allow public welfare workers to interview a child during regular school hours. Op. Atty. Gen. Manning, Jan. 31, 1990.

The legislative intent of HB 1449 of the 1998 Regular Session, amending Section 43-21-353, was to facilitate the exchange of information between the agencies charged with the investigation and prosecution of child abuse cases; "new or additional" information would consist of any information which would fit into the above parameters and which is imparted to Department of Human Services after the initial report is made; if additional information which would be pertinent to the prosecution of the case or to a law enforcement investigation becomes available to the department after the DHS investigation has been completed, this also should be provided; the update to the youth court prosecutor would consist of any information which becomes available to the department which would be pertinent to the youth court prosecutor's decision of whether or not to file a petition in the youth court; 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.

1.5. Due process and equal protection

State being sued under § § 1983 did not violate equal protection rights of suing children, allegedly in need of protection, when due to budget constraints suing children were denied benefits of child protection system while others were extended those benefits; necessary showing was not made that suing children were excluded from benefits based on illegitimate animus directed against them individually or as identifiable class. [Olivia Y. ex rel. Johnson v. Barbour \(S.D. Miss. 2004\) 351 F. Supp. 2d 543](#). Infants  17

Lack of any protected state-created liberty interest precluded claim, under § § 1983, that state violated federal procedural due process rights of children allegedly in need of protection by not enforcing state statute mandating procedure by which state Department of Human Services (DHS) was required to submit all reports of suspected child abuse or neglect to Youth Court, which in turn was required to take no action, dispose of matter informally, monitor situation, or initiate formal proceedings; statute did not confer on children right to certain outcome, as required for due process, but rather guaranteed certain procedure, which was insufficient for due process purposes. [Olivia Y. ex rel. Johnson v. Barbour \(S.D. Miss. 2004\) 351 F. Supp. 2d 543](#). Constitutional Law  255(4)

2. Purpose

Single purpose for enactment of mandatory **reporting** duty under **child abuse reporting** statute was to advance state's fundamental objective of eliminating **child abuse** and neglect. [Howe v. Andreck, 2004, 882 So.2d 240](#), rehearing denied, certiorari denied [882 So.2d 772](#). Infants  12(2)

3. Standard for reporting

Duty to report suspected **child abuse** under **child abuse reporting** statute attaches to individual at moment they are presented with situation producing "reasonable cause" for such suspicion; hence, standard for **reporting** is possessing suspicion of **child abuse** that is founded upon reasonable cause. [Howe v. Andreck, 2004, 882 So.2d](#)

[240](#), rehearing denied, certiorari denied [882 So.2d 772](#). Infants  13.5(1)

4. Immunity

Persons under duty to report **child abuse**, who have reasonable cause to suspect **child abuse** must, under **child abuse reporting** statute, report their suspicion, and if suspicion is reported in good faith, they are immune from civil liability for doing so; immunity, therefore, is conditioned on report being made in good faith. [Howe v. Andereck, 2004, 882 So.2d 240](#), rehearing denied, certiorari denied [882 So.2d 772](#). Infants  13.5(2)

5. Discovery

Parents, who brought action against nonpublic school's acting principal to recover damages for defamation, libel, slander, false light, and intentional infliction of emotional distress, after acting principal made report under **child abuse reporting** statute that parents' child may have been subject of **child abuse**, were not improperly hindered in pursuing evidence that acting principal had not been acting in good faith in making report of suspected abuse; parents conducted no discovery, during eight month period between filing of original complaint and dismissal of action, to gather evidence for purpose of overcoming presumption of good faith, and parents neglected to submit any discovery even after trial court extended discovery for additional 11 days. [Howe v. Andereck, 2004, 882 So.2d 240](#), rehearing denied, certiorari denied [882 So.2d 772](#). Infants  13.5(2)

Miss. Code Ann. § 43-21-353, MS ST § 43-21-353

Current through End of 2005 Reg. and 1st Ex. Sess.

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