MISSISSIPPI LEGISLATURE

2020 Regular Session

To: Judiciary B

By: Representatives McLean, Ford (73rd), Gibbs (72nd)

**House Bill 1386**

**(As Sent to Governor)**

AN ACT TO CREATE THE ADVOCATE CONFIDENTIALITY LAW; TO PROVIDE THAT COMMUNICATIONS OF VICTIMS OF DOMESTIC VIOLENCE, SEXUAL ASSAULT, STALKING AND HUMAN TRAFFICKING WITH ADVOCATES ARE  CONFIDENTIAL; TO ESTABLISH PROCEDURES FOR DISCLOSURE IN LIMITED CIRCUMSTANCES; TO PROVIDE FOR IN-CAMERA REVIEW BEFORE DISCLOSURE; TO AMEND SECTION 93-21-109, MISSISSIPPI CODE OF 1972, TO CONFORM; AND FOR RELATED PURPOSES.

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

**SECTION 1.**  **Communications with advocates deemed confidential.**  (1)  **Definitions.**  The following definitions apply in this section:

          (a)  "Advocate" means an employee, contractor, agent or volunteer of a victim service provider whose primary purpose is to render services to victims of domestic violence, sexual assault, stalking, or human trafficking and who has completed a minimum of twenty (20) hours of training in the areas of dynamics of victimization, substantive laws relating to domestic violence, sexual assault, stalking and human trafficking, crisis intervention techniques, communications skills, working with diverse populations, an overview of the state's criminal and civil justice systems, information regarding pertinent hospital procedures, victim compensation, and information regarding state and community resources for victims of domestic violence, sexual assault, stalking, human trafficking, or mandatory training required by the Office Against Interpersonal Violence, whichever is greater.  "Advocate" also means a person employed by a victim service provider who supervises any employee, contractor, agent or volunteer rendering services.  The term advocate also means a third party (i) present to further the interest of the victim in receiving services; (ii) necessary for the transmission of the communication; or (iii) to whom disclosure is reasonably necessary to accomplish the purposes for the victim seeking services.

          (b)  "Confidential victim communications" means all information, whether written or oral, collected, transmitted or shared between a victim and an advocate in the course of that relationship and maintained by the victim service program in connection with services requested, utilized or denied.  "Confidential victim communications" includes, but is not limited to, information received or given by the advocate in the course of the working relationship, advice, records, reports, notes, memoranda, working papers, electronic communications, case files, history, and statistical data that contain personally identifying information.

          (c)  "Domestic violence" means any alleged misdemeanor or felony act of domestic violence as defined by Section 99-3-7, knowing violation of a domestic abuse protection order under Section 93-21-21, or incidence of abuse as defined by Section 93-21-3(a), whether or not a civil or criminal action arises as a result of the alleged violation.  The term "domestic violence" also includes any pattern of behavior or coercive control resulting in physical, emotional or psychological harm to a victim committed by a spouse or former spouse of the victim, a person with whom the victim lives or lived as a spouse, a person related as parent, child, grandparent, grandchild, or someone similarly situated to the victim, a person having a child in common with the victim, or a person with whom the victim has or had a dating relationship.

          (d)  "Human trafficking" means any alleged criminal act in violation of Section 97-3-54.1, whether or not a civil or criminal action arises as a result of the alleged violation.

          (e)  "Personally identifying information" means any information for or about an individual, including information likely to disclose the location or identity of a victim of domestic violence, sexual assault, stalking, or human trafficking, including:  (i) a first or last name; (ii) a home or other physical address; (iii) contact information, including a postal, email or internet protocol address; (iv) a social security number; or (v) any other information, including, but not limited to, date of birth, racial or ethnic background, marital status, children, disability, or religious affiliation that would serve to identify the individual.

          (f)  "Services" includes, but is not limited to, crisis hotlines, operation of safe homes and shelters, assessment and intake, case management, advocacy, individual and peer counseling, support in medical, legal, administrative, and judicial systems, transportation, relocation, and crisis intervention.

          (g)  "Sexual assault" means any alleged violation of Section 97-3-65, 97-3-95, 97-5-23, 97-5-24, 97-5-41, 97-29-3 or 97-29-7, whether or not a civil or criminal action arises as a result of the alleged violation.

          (h)  "Stalking" means any alleged violation of Section 97-3-107 or 97-45-15, whether or not a civil or criminal action arises as a result of the alleged violation.

          (i)  "Victim" means a person alleging domestic violence, sexual assault, stalking, or human trafficking, who consults a victim advocate for the purpose of obtaining, for the person, advice, counseling, or other services concerning mental, emotional, or physical injuries suffered as a result of the offense, whether or not services are actually received.

          (j)  "Victim service provider" means an organization whose primary purpose or mission is to provide services to victims of domestic violence, sexual assault, stalking, or human trafficking.  This term includes umbrella organizations that have specific victim service programs as part of its organization.  Any provisions regarding confidentiality only extend to the specific program providing victim services and not to the entire organization.

     (2)  **Confidential victim communications protected from disclosure.**  (a)  No advocate shall disclose any confidential victim communication or personally identifying information of a victim or be compelled to testify to or surrender any confidential victim communications or personally identifying information in any civil or criminal proceeding or in any legislative or administrative proceeding, without the prior informed, written and time-limited consent of the victim, except in the following circumstances:  (i) where disclosure is mandated under Section 43-21-353, Section 43-47-7, Section 43-47-37, Section 97-3-54.1(4), Section 97-5-51, Section 97-29-49, or any other applicable provision of state or federal law; (ii) where failure to disclose is likely to result in imminent risk of serious bodily harm or death of the victim or another person, or when the victim dies or is incapable of giving consent and disclosure is required for an official law enforcement investigation or criminal proceedings regarding the cause of the victim's death or incapacitation; or (iii) where disclosure is required pursuant to a valid court order.

          (b)  Upon motion of a party in a civil action or of the defendant in a criminal action, the court may compel disclosure of certain confidential victim communications or personally identifying information, if the court determines, after in-camera review, that all of the following conditions are met:  (i) the information sought is relevant and material evidence of the facts and circumstances involved in an alleged criminal act which is the subject of a criminal proceeding; (ii) the probative value of the information outweighs the harmful effect, if any, of disclosure on the victim, the advocacy relationship and provision and receipt of services; and (iii) the information cannot be obtained by reasonable means from any other source.

     The court shall document its determination to compel disclosure in writing or place its findings into the record of the proceeding.  This proceeding does not entitle the requesting party to examine the records unless those records are made available by the court.  The proceeding set in this paragraph (b) shall not supersede the provisions of Section 99-43-25 with regard to the protection of facts that could divulge the identity, residence, or place of employment of a victim.

          (c)  A release of information without the consent of the victim shall be limited in scope to the minimum amount necessary to comply with any mandated disclosure.  The advocate or victim service provider must make reasonable attempts to notify the victim of the disclosure, to whom the disclosure was made, and for what purpose.

          (d)  A victim service program may not require consent to release of information as a condition of service to a victim.

          (e)  A legal guardian, guardian ad litem or parent may consent to release of confidential information for a victim who, due to incompetency, incapacity or minority, is incapable of consenting, except that no person who has committed or is alleged to have committed a crime against the victim shall be granted this authority.

     (3)  Under no circumstances shall the location of a shelter, safe house or transitional housing for victims of domestic violence, sexual assault, stalking, or human trafficking be disclosed in any civil or criminal proceeding.

     (4)  A communication remains confidential for purposes of this section if made in the presence of or communicated to third parties:  (a) present to further the interest of the victim in receiving services; (b) necessary for the transmission of the communication; or (c) to whom disclosure is reasonably necessary to accomplish the purposes for the victim is seeking services.

     (5)  Nonpersonally identifying information or data in the aggregate regarding services to clients and nonpersonally identifying demographic information may be disclosed by victim service providers for purposes of submitting reports, obtaining funding, conducting evaluation or complying with data collection requirements.

     (6)  An advocate or victim service provider who makes any disclosure in violation of this section shall be civilly liable to the person whose personal information was disclosed in the amount of Ten Thousand Dollars ($10,000.00), plus any compensatory damages that the individual may have suffered as the result of the disclosure.

     (7)  Nothing in this section shall affect any confidentiality or privilege provisions established by law or court rule.

     (8)  Nothing in this section shall prevent the sharing of law enforcement or court-generated information gathered in furtherance of an investigation or prosecution of a crime.

     (9)  Nothing in this section shall prevent the disclosure of confidential victim communication by any governmental or private participant of a meeting of a multidisciplinary child protection team created pursuant to Section 43-15-51, such disclosures to be governed by Section 43-15-51(5).

     (10)  Nothing in this section shall prevent an advocate from a governmental organization from sharing victim information with necessary persons to accomplish the duties of the job or to satisfy statutory or constitutional requirements of disclosure, including, but not limited to, a right to due process in connection with an educational or other property interest.

     (11)  Nothing in this section shall be construed as creating a cause of action for damages against the state or any of its agencies, officials, employees or political subdivisions.

**SECTION 2.**  Section 93-21-109, Mississippi Code of 1972, is amended as follows:

     93-21-109.**\* \* \***  Records maintained by domestic violence shelters, except the official minutes of the board of directors of the shelter, and financial reports filed as required by statute with the board of supervisors or municipal authorities or any other agency of government, shall be withheld from public disclosure under the provisions of the Mississippi Public Records Act of 1983.

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**SECTION 3.**  This act shall take effect and be in force from and after July 1, 2020.