

By: Representative Dedeaux

To: Judiciary A

HOUSE BILL NO. 1393

1 AN ACT TO REQUIRE DRUG TESTING OF PREGNANT WOMEN ARRESTED FOR
2 VIOLATIONS OF THE UNIFORM CONTROLLED SUBSTANCES LAW; TO PROVIDE
3 FOR REHABILITATION; TO PROVIDE THAT A SUBSEQUENT POSITIVE TEST
4 SHALL CONSTITUTE CHILD ABUSE; TO AMEND SECTION 97-5-39,
5 MISSISSIPPI CODE OF 1972, TO CONFORM TO THE PROVISIONS OF THIS
6 ACT; AND FOR RELATED PURPOSES.

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

8 **SECTION 1.** A pregnant woman who is arrested for a first
9 violation of the Uniform Controlled Substances Law shall, in
10 addition to the requirements imposed by the initial violation,
11 undergo drug testing to determine if any controlled substances are
12 present in her body. If the presence of drugs is determined, the
13 court may require the defendant to undergo drug rehabilitation and
14 shall require random and sequential testing of the defendant. If
15 subsequent testing determines that a controlled substance is
16 present, the defendant shall be guilty of child abuse and shall be
17 subject to the provisions of Section 97-3-39.

18 **SECTION 2.** Section 97-5-39, Mississippi Code of 1972, is
19 amended as follows:

20 97-5-39. (1) Any parent, guardian or other person who
21 willfully commits any act or omits the performance of any duty,
22 which act or omission contributes to or tends to contribute to the
23 neglect or delinquency of any child or which act or omission
24 results in the abuse and/or battering of any child, as defined in
25 Section 43-21-105(m) of the Youth Court Law or who knowingly aids
26 any child in escaping or absenting himself from the guardianship
27 or custody of any person, agency or institution, or knowingly
28 harbors or conceals or aids in harboring or concealing any child
29 who has absented himself without permission from the guardianship



30 or custody of any person, agency or institution to which such
31 child shall have been committed by the youth court shall be guilty
32 of a misdemeanor, and upon conviction shall be punished by a fine
33 not to exceed One Thousand Dollars (\$1,000.00), or by imprisonment
34 not to exceed one (1) year in jail, or by both such fine and
35 imprisonment.

36 (2) Any person who shall intentionally (a) burn any child,
37 (b) torture any child * * *, (c) except in self-defense or in
38 order to prevent bodily harm to a third party, whip, strike or
39 otherwise abuse or mutilate any child in such a manner as to cause
40 serious bodily harm, or (d) test positive for a controlled
41 substance for a second time while pregnant as provided by Section
42 1 of House Bill No. _____, 2002 Regular Session, shall be guilty of
43 felonious abuse and/or battery of a child and, upon conviction,
44 may be punished by imprisonment in the penitentiary for not more
45 than twenty (20) years.

46 (3) Nothing contained in this section shall prevent
47 proceedings against such parent, guardian or other person under
48 any statute of this state or any municipal ordinance defining any
49 act as a crime or misdemeanor. Nothing in the provisions of this
50 section shall preclude any person from having a right to trial by
51 jury when charged with having violated the provisions of this
52 section.

53 (4) After consultation with the Department of Public
54 Welfare, a regional mental health center or an appropriate
55 professional person, a judge may suspend imposition or execution
56 of a sentence provided in subsections (1) and (2) of this section
57 and in lieu thereof require treatment over a specified period of
58 time at any approved public or private treatment facility.

59 (5) In any proceeding resulting from a report made pursuant
60 to Section 43-21-353 of the Youth Court Law, the testimony of the
61 physician making the said report regarding the child's injuries or
62 condition or cause thereof shall not be excluded on the ground



63 that such physician's testimony violates the physician-patient
64 privilege or similar privilege or rule against disclosure. The
65 physician's report shall not be considered as evidence unless
66 introduced as an exhibit to his testimony.

67 (6) Any criminal prosecution arising from a violation of
68 this section shall be tried in the circuit, county, justice or
69 municipal court having jurisdiction; provided, however, that
70 nothing herein shall abridge or dilute the contempt powers of the
71 youth court.

72 **SECTION 3.** This act shall take effect and be in force from
73 and after July 1, 2002.

