

By: Representatives Ellington, Staples,
Mims, Fillingane, Nicholson, Beckett, Denny,
Davis, Barnett, Formby, Moore, Mayhall,
Turner, Wells-Smith, Lott

To: Judiciary B

HOUSE BILL NO. 1526

1 AN ACT TO AMEND SECTION 97-5-35, MISSISSIPPI CODE OF 1972, TO
2 REVISE PENALTIES FOR EXPLOITATION OF CHILDREN; TO AMEND SECTION
3 97-5-39, MISSISSIPPI CODE OF 1972, TO REVISE PENALTIES FOR
4 FELONIOUS ABUSE AND BATTERY OF A CHILD; AND FOR RELATED PURPOSES.

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

6 **SECTION 1.** Section 97-5-35, Mississippi Code of 1972, is
7 amended as follows:

8 97-5-35. Any person who violates any provision of
9 subsections (1) through (6) of Section 97-5-33 shall be guilty of
10 a felony and upon conviction shall pay a fine of not more than
11 Fifty Thousand Dollars (\$50,000.00) not more than Five Hundred
12 Thousand Dollars (\$500,000.00) and shall be imprisoned for not
13 less than five (5) years nor more than forty (40) years, or by
14 both such fine and imprisonment. Any person convicted of a second
15 or subsequent violation of subsections (1) through (6) of Section
16 97-5-33 shall pay a fine of not more than One Hundred Thousand
17 Dollars (\$100,000.00) nor more than One Million Dollars
18 (\$1,000,000.00) and shall be imprisoned for life in the State
19 Penitentiary or such lesser term as the court may determine, or
20 not less than twenty (20) years * * *.

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

23 97-5-39. (1) Any parent, guardian or other person who
24 willfully commits any act or omits the performance of any duty,
25 which act or omission contributes to or tends to contribute to the
26 neglect or delinquency of any child or which act or omission
27 results in the abuse and/or battering of any child, as defined in
28 Section 43-21-105(m) of the Youth Court Law or who knowingly aids

29 any child in escaping or absenting himself from the guardianship
30 or custody of any person, agency or institution, or knowingly
31 harbors or conceals or aids in harboring or concealing any child
32 who has absented himself without permission from the guardianship
33 or custody of any person, agency or institution to which such
34 child shall have been committed by the youth court shall be guilty
35 of a misdemeanor, and upon conviction shall be punished by a fine
36 not to exceed One Thousand Dollars (\$1,000.00), or by imprisonment
37 not to exceed one (1) year in jail, or by both such fine and
38 imprisonment.

39 (2) Any person who shall intentionally (a) burn any child,
40 (b) torture any child or, (c) except in self-defense or in order
41 to prevent bodily harm to a third party, whip, strike or otherwise
42 abuse or mutilate any child in such a manner as to cause serious
43 bodily harm, shall be guilty of felonious abuse and/or battery of
44 a child and, upon conviction, shall be sentenced to imprisonment
45 for life in the State Penitentiary or such lesser term of
46 imprisonment as the court may determine, but not less than ten
47 (10) years. For any second or subsequent conviction thereof, such
48 person shall be sentenced to imprisonment for life.

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

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

62 (5) In any proceeding resulting from a report made pursuant
63 to Section 43-21-353 of the Youth Court Law, the testimony of the
64 physician making the said report regarding the child's injuries or
65 condition or cause thereof shall not be excluded on the ground
66 that such physician's testimony violates the physician-patient
67 privilege or similar privilege or rule against disclosure. The
68 physician's report shall not be considered as evidence unless
69 introduced as an exhibit to his testimony.

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

75 **SECTION 3.** This act shall take effect and be in force from
76 and after July 1, 2005.