

By: Senator(s) Wiggins

To: Judiciary, Division B

SENATE BILL NO. 2180

1 AN ACT TO AMEND SECTION 97-5-39, MISSISSIPPI CODE OF 1972, TO
2 REVISE THE OFFENSE OF FELONIOUS ABUSE OR BATTERY OF A CHILD; AND
3 FOR RELATED PURPOSES.

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

5 **SECTION 1.** Section 97-5-39, Mississippi Code of 1972, is
6 amended as follows:

7 97-5-39. (1) (a) Except as otherwise provided in this
8 section, any parent, guardian or other person who willfully
9 commits any act or omits the performance of any duty, which act or
10 omission contributes to or tends to contribute to the neglect or
11 delinquency of any child or which act or omission results in the
12 abuse of any child, as defined in Section 43-21-105(m) of the
13 Youth Court Law, or who knowingly aids any child in escaping or
14 absenting himself from the guardianship or custody of any person,
15 agency or institution, or knowingly harbors or conceals, or aids
16 in harboring or concealing, any child who has absented himself
17 without permission from the guardianship or custody of any person,
18 agency or institution to which the child shall have been committed
19 by the youth court shall be guilty of a misdemeanor, and upon
20 conviction shall be punished by a fine not to exceed One Thousand
21 Dollars (\$1,000.00), or by imprisonment not to exceed one (1) year
22 in jail, or by both such fine and imprisonment.

23 (b) If the child's deprivation of necessary food,
24 clothing, shelter, health care or supervision appropriate to the
25 child's age results in substantial harm to the child's physical,
26 mental or emotional health, the person may be sentenced to



27 imprisonment for not more than five (5) years or to payment of a
28 fine of not more than Five Thousand Dollars (\$5,000.00), or both.

29 (c) A parent, legal guardian or other person who
30 knowingly permits the continuing physical or sexual abuse of a
31 child is guilty of neglect of a child and may be sentenced to
32 imprisonment for not more than ten (10) years or to payment of a
33 fine of not more than Ten Thousand Dollars (\$10,000.00), or both.

34 (2) (a) (i) A person * * * shall be guilty of felonious
35 abuse of a child if the person intentionally and in a manner
36 causing bodily harm shall:

- 37 1. Burn any child;
 - 38 2. Torture any child; * * *
 - 39 3. Strangle or choke any child;
 - 40 4. Disfigure, scar or mutilate any child; or
 - 41 5. Whip, strike or otherwise abuse any child
- 42 except as a result of reasonable discipline, in self-defense or in
43 order to prevent bodily harm to a third party * * *.

44 (ii) A person who is convicted of felonious abuse
45 of a child shall be sentenced to imprisonment in the custody of
46 the Department of Corrections for life or such lesser term of
47 imprisonment as the court may determine, but not less than ten
48 (10) years. For any second or subsequent conviction under this
49 subsection, the person shall be sentenced to imprisonment for
50 life.

51 (iii) Reasonable discipline shall be a defense to
52 any criminal charge brought under this subsection (2).

53 (b) (i) A parent, legal guardian or caretaker who
54 endangers a child's person or health by knowingly causing or
55 permitting the child to be present where any person is selling,
56 manufacturing or possessing immediate precursors or chemical
57 substances with intent to manufacture, sell or possess a
58 controlled substance as prohibited under Section 41-29-139 or
59 41-29-313, is guilty of child endangerment and may be sentenced to



60 imprisonment for not more than ten (10) years or to payment of a
61 fine of not more than Ten Thousand Dollars (\$10,000.00), or both.

62 (ii) If the endangerment results in substantial
63 harm to the child's physical, mental or emotional health, the
64 person may be sentenced to imprisonment for not more than twenty
65 (20) years or to payment of a fine of not more than Twenty
66 Thousand Dollars (\$20,000.00), or both.

67 (3) Nothing contained in this section shall prevent
68 proceedings against the parent, guardian or other person under any
69 statute of this state or any municipal ordinance defining any act
70 as a crime or misdemeanor. Nothing in the provisions of this
71 section shall preclude any person from having a right to trial by
72 jury when charged with having violated the provisions of this
73 section.

74 (4) After consultation with the Department of Human
75 Services, a regional mental health center or an appropriate
76 professional person, a judge may suspend imposition or execution
77 of a sentence provided in subsections (1) and (2) of this section
78 and in lieu thereof require treatment over a specified period of
79 time at any approved public or private treatment facility. A
80 person may be eligible for treatment in lieu of criminal penalties
81 no more than one (1) time.

82 (5) In any proceeding resulting from a report made pursuant
83 to Section 43-21-353 of the Youth Court Law, the testimony of the
84 physician making the report regarding the child's injuries or
85 condition or cause thereof shall not be excluded on the ground
86 that the physician's testimony violates the physician-patient
87 privilege or similar privilege or rule against disclosure. The
88 physician's report shall not be considered as evidence unless
89 introduced as an exhibit to his testimony.

90 (6) Any criminal prosecution arising from a violation of
91 this section shall be tried in the circuit, county, justice or
92 municipal court having jurisdiction; provided, however, that



93 nothing herein shall abridge or dilute the contempt powers of the
94 youth court.

95 **SECTION 2.** This act shall take effect and be in force from
96 and after July 1, 2012.

