

By: Representatives Carpenter, Arnold

To: Judiciary B

HOUSE BILL NO. 202

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

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

7 **SECTION 1.** A pregnant woman who is arrested for a violation
8 of the Uniform Controlled Substances Law shall, in addition to the
9 requirements imposed by the violation, undergo drug testing to
10 determine if any controlled substances are present in her body.
11 If the presence of drugs is determined, the defendant shall be
12 guilty of child abuse and shall be subject to the provisions of
13 Section 97-3-39.

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

16 97-5-39. (1) (a) Except as otherwise provided in this
17 section, any parent, guardian or other person who willfully
18 commits any act or omits the performance of any duty, which act or
19 omission contributes to or tends to contribute to the neglect or



20 delinquency of any child or which act or omission results in the
21 abuse of any child, as defined in Section 43-21-105(m) of the
22 Youth Court Law, or who knowingly aids any child in escaping or
23 absenting himself from the guardianship or custody of any person,
24 agency or institution, or knowingly harbors or conceals, or aids
25 in harboring or concealing, any child who has absented himself
26 without permission from the guardianship or custody of any person,
27 agency or institution to which the child shall have been committed
28 by the youth court shall be guilty of a misdemeanor, and upon
29 conviction shall be punished by a fine not to exceed One Thousand
30 Dollars (\$1,000.00), or by imprisonment not to exceed one (1) year
31 in jail, or by both such fine and imprisonment.

32 (b) If the child's deprivation of necessary food,
33 clothing, shelter, health care or supervision appropriate to the
34 child's age results in substantial harm to the child's physical,
35 mental or emotional health, the person may be sentenced to
36 imprisonment for not more than five (5) years or to payment of a
37 fine of not more than Five Thousand Dollars (\$5,000.00), or both.

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

43 (2) (a) Any person who shall intentionally (i) burn any
44 child, (ii) torture any child * * *, (iii) except in self-defense



45 or in order to prevent bodily harm to a third party, whip, strike
46 or otherwise abuse or mutilate any child in such a manner as to
47 cause serious bodily harm, or (iv) test positive for a controlled
48 substance while pregnant as provided by Section 1 of House Bill
49 No. _____, 2013 Regular Session, shall be guilty of felonious abuse
50 of a child and, upon conviction, shall be sentenced to
51 imprisonment in the custody of the Department of Corrections for
52 life or such lesser term of imprisonment as the court may
53 determine, but not less than ten (10) years. For any second or
54 subsequent conviction under this subsection, the person shall be
55 sentenced to imprisonment for life.

56 (b) (i) A parent, legal guardian or caretaker who
57 endangers a child's person or health by knowingly causing or
58 permitting the child to be present where any person is selling,
59 manufacturing or possessing immediate precursors or chemical
60 substances with intent to manufacture, sell or possess a
61 controlled substance as prohibited under Section 41-29-139 or
62 41-29-313, is guilty of child endangerment and may be sentenced to
63 imprisonment for not more than ten (10) years or to payment of a
64 fine of not more than Ten Thousand Dollars (\$10,000.00), or both.

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



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

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

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

93 (6) Any criminal prosecution arising from a violation of
94 this section shall be tried in the circuit, county, justice or



95 municipal court having jurisdiction; provided, however, that
96 nothing herein shall abridge or dilute the contempt powers of the
97 youth court.

98 **SECTION 3.** This act shall take effect and be in force from
99 and after July 1, 2013.

