

By: Representatives Arnold, Currie,
Martinson, Kinkade, Willis, Crawford

To: Judiciary B

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 625

1 AN ACT TO AMEND SECTIONS 97-5-39 AND 43-21-105, MISSISSIPPI
2 CODE OF 1972, TO CLARIFY THAT LEAVING A CHILD ALONE IN A LOCKED
3 MOTOR VEHICLE IN WHICH THE CHILD IS UNABLE TO EXIT WITHOUT
4 ASSISTANCE FROM AN ADULT IS CHILD NEGLECT AND SUBJECT TO FINES AND
5 PENALTIES; TO CLARIFY THAT LAW ENFORCEMENT IS AUTHORIZED TO RESCUE
6 A CHILD FROM A MOTOR VEHICLE; AND FOR RELATED PURPOSES.

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

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

10 97-5-39. (1) (a) Except as otherwise provided in this
11 section, any parent, guardian or other person who intentionally,
12 knowingly or recklessly commits any act or omits the performance
13 of any duty, which act or omission contributes to or tends to
14 contribute to the neglect or delinquency of any child or which act
15 or omission results in the abuse of any child, as defined in
16 Section 43-21-105(m) of the Youth Court Law, or who knowingly aids
17 any child in escaping or absenting himself from the guardianship
18 or custody of any person, agency or institution, or knowingly
19 harbors or conceals, or aids in harboring or concealing, any child
20 who has absented himself without permission from the guardianship



21 or custody of any person, agency or institution to which the child
22 shall have been committed by the youth court shall be guilty of a
23 misdemeanor, and upon conviction shall be punished by a fine not
24 to exceed One Thousand Dollars (\$1,000.00), or by imprisonment not
25 to exceed one (1) year in jail, or by both such fine and
26 imprisonment.

27 (b) For the purpose of this section, a child is a
28 person who has not reached his eighteenth birthday. A child who
29 has not reached his eighteenth birthday and is on active duty for
30 a branch of the armed services, or who is married, is not
31 considered a child for the purposes of this statute.

32 (c) If a child commits one (1) of the proscribed acts
33 in subsection (2) (a), (b) or (c) of this section upon another
34 child, then original jurisdiction of all such offenses shall be in
35 youth court.

36 (d) If the child's deprivation of necessary clothing,
37 shelter, health care or supervision appropriate to the child's age
38 results in substantial harm to the child's physical, mental or
39 emotional health, the person may be sentenced to imprisonment in
40 custody of the Department of Corrections for not more than five
41 (5) years or to payment of a fine of not more than Five Thousand
42 Dollars (\$5,000.00), or both.

43 (e) A parent, legal guardian or other person who
44 knowingly permits the continuing physical or sexual abuse of a
45 child is guilty of neglect of a child and may be sentenced to



46 imprisonment in the custody of the Department of Corrections for
47 not more than ten (10) years or to payment of a fine of not more
48 than Ten Thousand Dollars (\$10,000.00), or both.

49 (2) Any person shall be guilty of felonious child abuse in
50 the following circumstances:

51 (a) Whether bodily harm results or not, if the person
52 shall intentionally, knowingly or recklessly:

53 (i) Burn any child;

54 (ii) Physically torture any child;

55 (iii) Strangle, choke, smother or in any way
56 interfere with any child's breathing;

57 (iv) Poison a child;

58 (v) Starve a child of nourishments needed to
59 sustain life or growth;

60 (vi) Use any type of deadly weapon upon any child;

61 or

62 (vii) Leaves a child alone in a locked motor
63 vehicle in a manner in which the child is unable to exit without
64 assistance from an adult, if the child's safety appears to be in
65 imminent danger from heat, cold, lack of adequate ventilation or
66 other circumstances.

67 (b) If some bodily harm to any child actually occurs,
68 and if the person shall intentionally, knowingly or recklessly:

69 (i) Throw, kick, bite, or cut any child;



70 (ii) Strike a child under the age of fourteen (14)
71 about the face or head with a closed fist;

72 (iii) Strike a child under the age of five (5) in
73 the face or head;

74 (iv) Kick, bite, cut or strike a child's genitals;
75 circumcision of a male child is not a violation under this
76 subparagraph (iv);

77 (c) If serious bodily harm to any child actually
78 occurs, and if the person shall intentionally, knowingly or
79 recklessly:

80 (i) Strike any child on the face or head;

81 (ii) Disfigure or scar any child;

82 (iii) Whip, strike or otherwise abuse any child;

83 (d) Any person, upon conviction under paragraph (a) or
84 (c) of this subsection, shall be sentenced by the court to
85 imprisonment in the custody of the Department of Corrections for a
86 term of not less than five (5) years and up to life, as determined
87 by the court. Any person, upon conviction under paragraph (b) of
88 this subsection shall be sentenced by the court to imprisonment in
89 the custody of the Department of Corrections for a term of not
90 less than two (2) years nor more than ten (10) years, as
91 determined by the court. For any second or subsequent conviction
92 under this subsection (2), the person shall be sentenced to
93 imprisonment for life.



94 (e) For the purposes of this subsection (2), "bodily
95 harm" means any bodily injury to a child and includes, but is not
96 limited to, bruising, bleeding, lacerations, soft tissue swelling,
97 and external or internal swelling of any body organ.

98 (f) For the purposes of this subsection (2), "serious
99 bodily harm" means any serious bodily injury to a child and
100 includes, but is not limited to, the fracture of a bone, permanent
101 disfigurement, permanent scarring, or any internal bleeding or
102 internal trauma to any organ, any brain damage, any injury to the
103 eye or ear of a child or other vital organ, and impairment of any
104 bodily function.

105 (g) Nothing contained in paragraph (c) of this
106 subsection shall preclude a parent or guardian from disciplining a
107 child of that parent or guardian, or shall preclude a person in
108 loco parentis to a child from disciplining that child, if done in
109 a reasonable manner, and reasonable corporal punishment or
110 reasonable discipline as to that parent or guardian's child or
111 child to whom a person stands in loco parentis shall be a defense
112 to any violation charged under paragraph (c) of this subsection.

113 (h) Reasonable discipline and reasonable corporal
114 punishment shall not be a defense to acts described in paragraphs
115 (a) and (b) of this subsection or if a child suffers serious
116 bodily harm as a result of any act prohibited under paragraph (c)
117 of this subsection.



118 (3) (a) Nothing contained in this section shall prevent
119 proceedings against the parent, guardian or other person under any
120 statute of this state or any municipal ordinance defining any act
121 as a crime or misdemeanor. Nothing in the provisions of this
122 section shall preclude any person from having a right to trial by
123 jury when charged with having violated the provisions of this
124 section.

125 (b) A law enforcement officer is authorized to rescue a
126 child from a motor vehicle, if the child's safety appears to be in
127 imminent danger from heat, cold, lack of adequate ventilation or
128 other circumstances.

129 (4) (a) A parent, legal guardian or caretaker who endangers
130 a child's person or health by knowingly causing or permitting the
131 child to be present where any person is selling, manufacturing or
132 possessing immediate precursors or chemical substances with intent
133 to manufacture, sell or possess a controlled substance as
134 prohibited under Section 41-29-139 or 41-29-313, is guilty of
135 child endangerment and may be sentenced to imprisonment for not
136 more than ten (10) years or to payment of a fine of not more than
137 Ten Thousand Dollars (\$10,000.00), or both.

138 (b) If the endangerment results in substantial harm to
139 the child's physical, mental or emotional health, the person may
140 be sentenced to imprisonment for not more than twenty (20) years
141 or to payment of a fine of not more than Twenty Thousand Dollars
142 (\$20,000.00), or both.



143 (5) Nothing contained in this section shall prevent
144 proceedings against the parent, guardian or other person under any
145 statute of this state or any municipal ordinance defining any act
146 as a crime or misdemeanor. Nothing in the provisions of this
147 section shall preclude any person from having a right to trial by
148 jury when charged with having violated the provisions of this
149 section.

150 (6) After consultation with the Department of Human
151 Services, a regional mental health center or an appropriate
152 professional person, a judge may suspend imposition or execution
153 of a sentence provided in subsections (1) and (2) of this section
154 and in lieu thereof require treatment over a specified period of
155 time at any approved public or private treatment facility. A
156 person may be eligible for treatment in lieu of criminal penalties
157 no more than one (1) time.

158 (7) In any proceeding resulting from a report made pursuant
159 to Section 43-21-353 of the Youth Court Law, the testimony of the
160 physician making the report regarding the child's injuries or
161 condition or cause thereof shall not be excluded on the ground
162 that the physician's testimony violates the physician-patient
163 privilege or similar privilege or rule against disclosure. The
164 physician's report shall not be considered as evidence unless
165 introduced as an exhibit to his testimony.

166 (8) Any criminal prosecution arising from a violation of
167 this section shall be tried in the circuit, county, justice or



168 municipal court having jurisdiction; provided, however, that
169 nothing herein shall abridge or dilute the contempt powers of the
170 youth court.

171 **SECTION 2.** Section 43-21-105, Mississippi Code of 1972, is
172 amended as follows:

173 43-21-105. The following words and phrases, for purposes of
174 this chapter, shall have the meanings ascribed herein unless the
175 context clearly otherwise requires:

176 (a) "Youth court" means the Youth Court Division.

177 (b) "Judge" means the judge of the Youth Court
178 Division.

179 (c) "Designee" means any person that the judge appoints
180 to perform a duty which this chapter requires to be done by the
181 judge or his designee. The judge may not appoint a person who is
182 involved in law enforcement to be his designee.

183 (d) "Child" and "youth" are synonymous, and each means
184 a person who has not reached his eighteenth birthday. A child who
185 has not reached his eighteenth birthday and is on active duty for
186 a branch of the armed services or is married is not considered a
187 "child" or "youth" for the purposes of this chapter.

188 (e) "Parent" means the father or mother to whom the
189 child has been born, or the father or mother by whom the child has
190 been legally adopted.

191 (f) "Guardian" means a court-appointed guardian of the
192 person of a child.



193 (g) "Custodian" means any person having the present
194 care or custody of a child whether such person be a parent or
195 otherwise.

196 (h) "Legal custodian" means a court-appointed custodian
197 of the child.

198 (i) "Delinquent child" means a child who has reached
199 his tenth birthday and who has committed a delinquent act.

200 (j) "Delinquent act" is any act, which if committed by
201 an adult, is designated as a crime under state or federal law, or
202 municipal or county ordinance other than offenses punishable by
203 life imprisonment or death. A delinquent act includes escape from
204 lawful detention and violations of the Uniform Controlled
205 Substances Law and violent behavior.

206 (k) "Child in need of supervision" means a child who
207 has reached his seventh birthday and is in need of treatment or
208 rehabilitation because the child:

209 (i) Is habitually disobedient of reasonable and
210 lawful commands of his parent, guardian or custodian and is
211 ungovernable; or

212 (ii) While being required to attend school,
213 willfully and habitually violates the rules thereof or willfully
214 and habitually absents himself therefrom; or

215 (iii) Runs away from home without good cause; or

216 (iv) Has committed a delinquent act or acts.

217 (l) "Neglected child" means a child:



218 (i) Whose parent, guardian or custodian or any
219 person responsible for his care or support, neglects or refuses,
220 when able so to do, to provide for him proper and necessary care
221 or support, or education as required by law, or medical, surgical,
222 or other care necessary for his well-being; however, a parent who
223 withholds medical treatment from any child who in good faith is
224 under treatment by spiritual means alone through prayer in
225 accordance with the tenets and practices of a recognized church or
226 religious denomination by a duly accredited practitioner thereof
227 shall not, for that reason alone, be considered to be neglectful
228 under any provision of this chapter; or

229 (ii) Who is otherwise without proper care,
230 custody, supervision or support; or

231 (iii) Who, for any reason, lacks the special care
232 made necessary for him by reason of his mental condition, whether
233 the mental condition is having mental illness or having an
234 intellectual disability; or

235 (iv) Who, for any reason, lacks the care necessary
236 for his health, morals or well-being * * *; or

237 (v) Who, for any reason, leaves a child alone in a
238 locked motor vehicle in a manner in which the child is unable to
239 exit without assistance from an adult.

240 (m) "Abused child" means a child whose parent, guardian
241 or custodian or any person responsible for his care or support,
242 whether legally obligated to do so or not, has caused or allowed



243 to be caused, upon the child, sexual abuse, sexual exploitation,
244 emotional abuse, mental injury, nonaccidental physical injury or
245 other maltreatment. However, physical discipline, including
246 spanking, performed on a child by a parent, guardian or custodian
247 in a reasonable manner shall not be deemed abuse under this
248 section.

249 (n) "Sexual abuse" means obscene or pornographic
250 photographing, filming or depiction of children for commercial
251 purposes, or the rape, molestation, incest, prostitution or other
252 such forms of sexual exploitation of children under circumstances
253 which indicate that the child's health or welfare is harmed or
254 threatened.

255 (o) "A child in need of special care" means a child
256 with any mental or physical illness that cannot be treated with
257 the dispositional alternatives ordinarily available to the youth
258 court.

259 (p) A "dependent child" means any child who is not a
260 child in need of supervision, a delinquent child, an abused child
261 or a neglected child, and which child has been voluntarily placed
262 in the custody of the Department of Human Services by his parent,
263 guardian or custodian.

264 (q) "Custody" means the physical possession of the
265 child by any person.

266 (r) "Legal custody" means the legal status created by a
267 court order which gives the legal custodian the responsibilities



268 of physical possession of the child and the duty to provide him
269 with food, shelter, education and reasonable medical care, all
270 subject to residual rights and responsibilities of the parent or
271 guardian of the person.

272 (s) "Detention" means the care of children in
273 physically restrictive facilities.

274 (t) "Shelter" means care of children in physically
275 nonrestrictive facilities.

276 (u) "Records involving children" means any of the
277 following from which the child can be identified:

278 (i) All youth court records as defined in Section
279 43-21-251;

280 (ii) All social records as defined in Section
281 43-21-253;

282 (iii) All law enforcement records as defined in
283 Section 43-21-255;

284 (iv) All agency records as defined in Section
285 43-21-257; and

286 (v) All other documents maintained by any
287 representative of the state, county, municipality or other public
288 agency insofar as they relate to the apprehension, custody,
289 adjudication or disposition of a child who is the subject of a
290 youth court cause.

291 (v) "Any person responsible for care or support" means
292 the person who is providing for the child at a given time. This



293 term shall include, but is not limited to, stepparents, foster
294 parents, relatives, nonlicensed baby-sitters or other similar
295 persons responsible for a child and staff of residential care
296 facilities and group homes that are licensed by the Department of
297 Human Services.

298 (w) The singular includes the plural, the plural the
299 singular and the masculine the feminine when consistent with the
300 intent of this chapter.

301 (x) "Out-of-home" setting means the temporary
302 supervision or care of children by the staff of licensed day care
303 centers, the staff of public, private and state schools, the staff
304 of juvenile detention facilities, the staff of unlicensed
305 residential care facilities and group homes and the staff of, or
306 individuals representing, churches, civic or social organizations.

307 (y) "Durable legal custody" means the legal status
308 created by a court order which gives the durable legal custodian
309 the responsibilities of physical possession of the child and the
310 duty to provide him with care, nurture, welfare, food, shelter,
311 education and reasonable medical care. All these duties as
312 enumerated are subject to the residual rights and responsibilities
313 of the natural parent(s) or guardian(s) of the child or children.

314 (z) "Status offense" means conduct subject to
315 adjudication by the youth court that would not be a crime if
316 committed by an adult.



317 (aa) "Financially able" means a parent or child who is
318 ineligible for a court-appointed attorney.

319 **SECTION 3.** This act shall take effect and be in force from
320 and after July 1, 2015.

