

By: Senator(s) Wiggins

To: Judiciary, Division B

SENATE BILL NO. 2868

1 AN ACT TO AMEND SECTION 97-5-39, MISSISSIPPI CODE OF 1972, TO
 2 PROVIDE THAT KNOWING SOLICITATION OF A CHILD TO VIOLATE THE
 3 UNIFORM CONTROLLED SUBSTANCE LAW OR TO PARTICIPATE IN GANGS OR
 4 GANG-RELATED ACTIVITIES CONSTITUTES CONTRIBUTING TO THE
 5 DELINQUENCY OF A MINOR; TO AMEND SECTION 97-44-1, MISSISSIPPI CODE
 6 OF 1972, TO REVISE THE SHORT TITLE OF THE MISSISSIPPI STREETGANG
 7 ACT; TO AMEND SECTION 97-44-3, MISSISSIPPI CODE OF 1972, TO REVISE
 8 DEFINITIONS; TO AMEND SECTION 97-44-19, MISSISSIPPI CODE OF 1972,
 9 TO REVISE PENALTIES FOR CRIMINAL GANG ACTIVITY; TO CREATE SECTION
 10 97-44-21, MISSISSIPPI CODE OF 1972, TO RECODIFY THE EXISTING
 11 EVIDENTIARY STANDARDS FOR PROSECUTION UNDER THIS ACT; TO AMEND
 12 SECTION 97-3-2, MISSISSIPPI CODE OF 1972, TO REVISE THE DEFINITION
 13 OF VIOLENT CRIME TO INCLUDE VIOLATIONS OF THE MISSISSIPPI GANG
 14 ACT; AND FOR RELATED PURPOSES.

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

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

18 97-5-39. (1) (a) Except as otherwise provided in this
 19 section, any parent, guardian or other person who intentionally,
 20 knowingly or recklessly commits any act or omits the performance
 21 of any duty, which act or omission contributes to or tends to
 22 contribute to the neglect or delinquency of any child or which act
 23 or omission results in the abuse of any child, as defined in
 24 Section 43-21-105(m) of the Youth Court Law, or who knowingly aids



25 any child in escaping or absenting himself from the guardianship
26 or custody of any person, agency or institution, or knowingly
27 harbors or conceals, or aids in harboring or concealing, any child
28 who has absented himself without permission from the guardianship
29 or custody of any person, agency or institution to which the child
30 shall have been committed by the youth court, or knowingly
31 entices, solicits, coerces, encourages or intimidates any child to
32 violate the Uniform Controlled Substances Law, or knowingly
33 entices, solicits, coerces, encourages or intimidates any child to
34 participate in gang or gang-related activities shall be guilty of
35 a misdemeanor, and upon conviction shall be punished by a fine not
36 to exceed One Thousand Dollars (\$1,000.00), or by imprisonment not
37 to exceed one (1) year in jail, or by both such fine and
38 imprisonment.

39 (b) For the purpose of this section, a child is a
40 person who has not reached his eighteenth birthday. A child who
41 has not reached his eighteenth birthday and is on active duty for
42 a branch of the armed services, or who is married, is not
43 considered a child for the purposes of this statute.

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

48 (d) If the child's deprivation of necessary clothing,
49 shelter, health care or supervision appropriate to the child's age



50 results in substantial harm to the child's physical, mental or
51 emotional health, the person may be sentenced to imprisonment in
52 the custody of the Department of Corrections for not more than
53 five (5) years or to payment of a fine of not more than Five
54 Thousand Dollars (\$5,000.00), or both.

55 (e) A parent, legal guardian or other person who
56 knowingly permits the continuing physical or sexual abuse of a
57 child is guilty of neglect of a child and may be sentenced to
58 imprisonment in the custody of the Department of Corrections for
59 not more than ten (10) years or to payment of a fine of not more
60 than Ten Thousand Dollars (\$10,000.00), or both.

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

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

- 65 (i) Burn any child;
- 66 (ii) Physically torture any child;
- 67 (iii) Strangle, choke, smother or in any way
68 interfere with any child's breathing;
- 69 (iv) Poison a child;
- 70 (v) Starve a child of nourishments needed to
71 sustain life or growth;
- 72 (vi) Use any type of deadly weapon upon any
73 child * * *.



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

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

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

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

81 (iv) Kick, bite, cut or strike a child's genitals;
82 circumcision of a male child is not a violation under this
83 subparagraph (iv) * * *.

84 (c) If serious bodily harm to any child actually
85 occurs, and if the person shall intentionally, knowingly or
86 recklessly:

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

88 (ii) Disfigure or scar any child;

89 (iii) Whip, strike or otherwise abuse any
90 child * * *.

91 (d) Any person, upon conviction under paragraph (a) or
92 (c) of this subsection, shall be sentenced by the court to
93 imprisonment in the custody of the Department of Corrections for a
94 term of not less than five (5) years and up to life, as determined
95 by the court. Any person, upon conviction under paragraph (b) of
96 this subsection shall be sentenced by the court to imprisonment in
97 the custody of the Department of Corrections for a term of not
98 less than two (2) years nor more than ten (10) years, as



99 determined by the court. For any second or subsequent conviction
100 under this subsection (2), the person shall be sentenced to
101 imprisonment for life.

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

106 (f) For the purposes of this subsection (2), "serious
107 bodily harm" means any serious bodily injury to a child and
108 includes, but is not limited to, the fracture of a bone, permanent
109 disfigurement, permanent scarring, or any internal bleeding or
110 internal trauma to any organ, any brain damage, any injury to the
111 eye or ear of a child or other vital organ, and impairment of any
112 bodily function.

113 (g) Nothing contained in paragraph (c) of this
114 subsection shall preclude a parent or guardian from disciplining a
115 child of that parent or guardian, or shall preclude a person in
116 loco parentis to a child from disciplining that child, if done in
117 a reasonable manner, and reasonable corporal punishment or
118 reasonable discipline as to that parent or guardian's child or
119 child to whom a person stands in loco parentis shall be a defense
120 to any violation charged under paragraph (c) of this subsection.

121 (h) Reasonable discipline and reasonable corporal
122 punishment shall not be a defense to acts described in paragraphs
123 (a) and (b) of this subsection or if a child suffers serious



124 bodily harm as a result of any act prohibited under paragraph (c)
125 of this subsection.

126 (3) Nothing contained in this section shall prevent
127 proceedings against the parent, guardian or other person under any
128 statute of this state or any municipal ordinance defining any act
129 as a crime or misdemeanor. Nothing in the provisions of this
130 section shall preclude any person from having a right to trial by
131 jury when charged with having violated the provisions of this
132 section.

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

142 (b) If the endangerment results in substantial harm to
143 the child's physical, mental or emotional health, the person may
144 be sentenced to imprisonment for not more than twenty (20) years
145 or to payment of a fine of not more than Twenty Thousand Dollars
146 (\$20,000.00), or both.

147 (5) Nothing contained in this section shall prevent
148 proceedings against the parent, guardian or other person under any



149 statute of this state or any municipal ordinance defining any act
150 as a crime or misdemeanor. Nothing in the provisions of this
151 section shall preclude any person from having a right to trial by
152 jury when charged with having violated the provisions of this
153 section.

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

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

170 (8) Any criminal prosecution arising from a violation of
171 this section shall be tried in the circuit, county, justice or
172 municipal court having jurisdiction; provided, however, that



173 nothing herein shall abridge or dilute the contempt powers of the
174 youth court.

175 **SECTION 2.** Section 97-44-1, Mississippi Code of 1972, is
176 amended as follows:

177 97-44-1. This chapter shall be known as the
178 "Mississippi * * * Gang Act."

179 **SECTION 3.** Section 97-44-3, Mississippi Code of 1972, is
180 amended as follows:

181 97-44-3. For the purposes of this chapter, the following
182 words and phrases shall have the meanings ascribed * * *:

183 (a) "Streetgang" or "gang" or "organized gang" or
184 "criminal streetgang" means * * * an association of three (3) or
185 more persons whose members are involved in criminal gang activity
186 and who collectively identify themselves by adopting a group
187 identity by employing one or more of the following:

188 (i) A common name, slogan, identifying sign,
189 symbol, tattoo or other physical marking;

190 (ii) Style or color of clothing or hairstyle;

191 (iii) Hand sign, hand gesture or finger position;

192 or

193 (iv) Graffiti.

194 The terms "gang," "streetgang," "organized gang" or "criminal
195 streetgang" do not include any group of persons, associated in law
196 or in fact, who are not engaged in criminal gang activity, to a
197 sports team, or to a group who are associated through a legally



198 created business or charitable entity created under Mississippi
199 law, except for those instances where the State of Mississippi has
200 proof beyond a reasonable doubt that the sports team, legally
201 created business or charitable entity is a pretext for criminal
202 gang activity.

203 * * *

204 (b) "Public authority" means the state and political
205 subdivisions as defined in Section 11-46-1 * * *.

206 (c) "Streetgang member" or "gang member" means any
207 person who actually and in fact belongs to a gang, and any person
208 who knowingly acts in the capacity of an agent for or accessory
209 to, or is legally accountable for, or voluntarily associates
210 himself with * * * criminal gang activity, whether in a
211 preparatory, executory or cover-up phase of any criminal gang
212 activity, or who knowingly performs, aids or abets * * * criminal
213 gang activity.

214 (d) * * * "Criminal gang activity" or
215 "streetgang-related activity" or "gang-related activity" or
216 "criminal gang activity" means * * *:

217 (i) The commission, attempted commission or
218 conspiracy to commit, or the solicitation, coercion, encouragement
219 or intimidation of another person to commit an act or acts in this
220 or another state that would constitute a felony offense in this
221 state, another state, or the United States with intent to:



222 1. Increase * * * a gang's size,
223 membership, prestige, dominance or control in any geographical
224 area; or

225 2. * * * Exact revenge or retribution
226 for * * * a gang or any gang member * * *; or

227 3. * * * Provide * * * a gang with any
228 advantage in, or any control or dominance over, any criminal
229 market sector, including, but not limited to, the unlawful
230 manufacture, delivery, possession or sale of controlled
231 substances; arson; traffic in stolen property or stolen credit
232 cards; traffic in prostitution, obscenity or pornography; or that
233 involves * * * burglary * * *, larceny or any crime of violence as
234 defined in Section 97-3-2; or

235 4. * * * Obstruct justice, or harass,
236 intimidate or eliminate any witness reasonably expected to testify
237 in a legal proceeding against * * * a gang or any * * * gang
238 member; or

239 5. * * * Otherwise, directly or
240 indirectly, cause any benefit, aggrandizement, gain, profit or
241 other advantage whatsoever to or for the gang, its reputation,
242 influence or membership * * *; or

243 6. Obtain or earn membership or maintain
244 or increase the person's status or position in a criminal gang;

245 (ii) Acquiring or maintaining, directly or
246 indirectly, through criminal gang activity, proceeds derived



247 therefrom or any interest in or control of any real or personal
248 property of any nature, including money;

249 (iii) Communicating, directly or indirectly, with
250 another any threat of injury or damage to the person or property
251 of the other person or of any associate or relative of the other
252 person with the intent to punish or retaliate against the other
253 person for providing statements or testimony against a gang or
254 gang member or associate;

255 (iv) Communicating, directly or indirectly, with
256 another any threat of injury or damage to the person or property
257 of the other person or of any associate or relative of the other
258 person with the intent to intimidate, deter, or prevent the other
259 person from communicating to any law enforcement or corrections
260 officer, prosecuting attorney or judge information relating to a
261 gang, gang member or associate, or criminal gang activity;

262 (v) Causing, encouraging, soliciting, recruiting,
263 or coercing another to become a member or associate of a gang;

264 (vi) Communicating, directly or indirectly, with
265 another any threat of injury or damage to the person or property
266 of the other person or of any associate or relative of the other
267 person with the intent to deter the other person from assisting a
268 member or associate of a gang to withdraw from such gang;

269 (vii) Communicating, directly or indirectly, with
270 another any threat of injury or damage to the person or property
271 of the other person or of any associate or relative of the other



272 person with the intent to punish or retaliate against the other
273 person for having withdrawn from a gang; or

274 (viii) Communicating, directly or indirectly, with
275 another any threat of injury or damage to the person or property
276 of the other person or of any associate or relative of the other
277 person with the intent to punish or retaliate against the other
278 person for refusing, or encouraging another to refuse, to become a
279 member or associate, or obtain the status of a member or
280 associate, of a gang.

281 (e) "Underlying offense" means the act or acts that
282 would constitute a criminal offense forming the basis of criminal
283 gang activity.

284 **SECTION 4.** Section 97-44-19, Mississippi Code of 1972, is
285 amended as follows:

286 97-44-19. * * * (1) It is unlawful for any person to
287 conduct or participate in criminal gang activity.

288 (2) A crime committed in violation of this chapter shall be
289 considered an offense separate from any underlying offense.

290 (3) A person who conducts or participates in criminal gang
291 activity shall be punished by imprisonment for not less than five
292 (5) years nor more than fifteen (15) years or by a fine of not
293 less than Ten Thousand Dollars (\$10,000.00) nor more than Fifteen
294 Thousand Dollars (\$15,000.00), or both, in addition to and
295 consecutive to any sentence imposed for any underlying offense.



296 (* * *4) The court may elect to suspend all or a part of
297 any additional mandatory punishment or enhanced punishment
298 provided in this chapter to impose alternative punishment in the
299 form of properly supervised community service or placement in an
300 appropriate adolescent offender program, if available, only in an
301 unusual case where the interests of justice would best be served,
302 and if the court specifies on the record and enters into the
303 minutes the circumstances and reasons that the interests of
304 justice would best be served by the suspension of enhanced
305 punishment.

306 (5) In addition to any other penalty provided by this
307 section, all sentences imposed under this section shall require as
308 a special condition of the sentence that the person sentenced
309 shall not knowingly have contact of any kind or character with any
310 other member or associate of a gang, shall not participate in any
311 criminal gang activity, and, in cases involving a victim, shall
312 not knowingly have contact of any kind or character with any
313 victim or any member of a victim's family or household.

314 **SECTION 5.** The following shall be codified as Section
315 97-44-21, Mississippi Code of 1972:

316 97-44-21. For purposes of this chapter, it is not necessary
317 to show that a particular conspiracy, combination or conjoining of
318 persons possesses, acknowledges or is known by any common name,
319 insignia, flag, means of recognition, secret signal or code,
320 creed, belief, structure, leadership or command structure, method



321 of operation or criminal enterprise, concentration or specialty,
322 membership, age or other qualifications, initiation rites,
323 geographical or territorial situs or boundary or location, or
324 other unifying mark, manner, protocol or method of expressing or
325 indicating membership when the conspiracy's existence, in law or
326 in fact, can be demonstrated by a preponderance of the competent
327 evidence. However, any evidence reasonably tending to show or
328 demonstrate, in law or in fact, the existence of or membership in
329 any conspiracy, confederation or other association described in
330 this chapter, or probative of the existence of or membership in
331 any criminal gang, or evidence of a common name or common
332 identifying signs, symbols, tattoos, graffiti, or attire or other
333 distinguishing characteristics, including, but not limited to,
334 common activities, customs or behaviors, shall be admissible in
335 any action or proceeding brought under this chapter.

336 **SECTION 6.** Section 97-3-2, Mississippi Code of 1972, is
337 amended as follows:

338 97-3-2. (1) The following shall be classified as crimes of
339 violence:

340 (a) Driving under the influence as provided in Sections
341 63-11-30(5) and 63-11-30(12)(d);

342 (b) Murder and attempted murder as provided in Sections
343 97-1-7(2), 97-3-19, 97-3-23 and 97-3-25;

344 (c) Aggravated assault as provided in Sections
345 97-3-7(2)(a) and (b) and 97-3-7(4)(a);



346 (d) Manslaughter as provided in Sections 97-3-27,
347 97-3-29, 97-3-31, 97-3-33, 97-3-35, 97-3-39, 97-3-41, 97-3-43,
348 97-3-45 and 97-3-47;

349 (e) Killing of an unborn child as provided in Sections
350 97-3-37(2) (a) and 97-3-37(2) (b);

351 (f) Kidnapping as provided in Section 97-3-53;

352 (g) Human trafficking as provided in Section 97-3-54.1;

353 (h) Poisoning as provided in Section 97-3-61;

354 (i) Rape as provided in Sections 97-3-65 and 97-3-71;

355 (j) Robbery as provided in Sections 97-3-73 and
356 97-3-79;

357 (k) Sexual battery as provided in Section 97-3-95;

358 (l) Drive-by shooting or bombing as provided in Section
359 97-3-109;

360 (m) Carjacking as provided in Section 97-3-117;

361 (n) Felonious neglect, abuse or battery of a child as
362 provided in Section 97-5-39;

363 (o) Burglary of a dwelling as provided in Sections
364 97-17-23 and 97-17-37;

365 (p) Use of explosives or weapons of mass destruction as
366 provided in Section 97-37-25;

367 (q) Statutory rape as provided in Section 97-3-65(1),
368 but this classification is rebuttable on hearing by a judge;

369 (r) Exploitation of a child as provided in Section
370 97-5-33;



371 (s) Gratification of lust as provided in Section
372 97-5-23; * * *

373 (t) Shooting into a dwelling as provided in Section
374 97-37-29 * * *; and

375 (u) Criminal gang activity as defined in Section
376 97-44-3.

377 (2) In any felony offense with a maximum sentence of no less
378 than five (5) years, upon conviction, the judge may find and place
379 in the sentencing order, on the record in open court, that the
380 offense, while not listed in subsection (1) of this section, shall
381 be classified as a crime of violence if the facts show that the
382 defendant used physical force, or made a credible attempt or
383 threat of physical force against another person as part of the
384 criminal act. No person convicted of a crime of violence listed
385 in this section is eligible for parole or for early release from
386 the custody of the Department of Corrections until the person has
387 served at least fifty percent (50%) of the sentence imposed by the
388 court.

389 **SECTION 7.** This act shall take effect and be in force from
390 and after July 1, 2018.

