

By: Representatives Baker, Eure

To: Judiciary B

HOUSE BILL NO. 1013

1 AN ACT TO AMEND SECTION 97-5-39, MISSISSIPPI CODE OF 1972, TO
2 INCLUDE ALLOWING A CHILD TO BE PRESENT DURING THE SELL, POSSESSION
3 OR MANUFACTURE OF A CONTROLLED SUBSTANCE, EXCEPT MARIJUANA, AS
4 CHILD ENDANGERMENT; AND FOR RELATED PURPOSES.

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

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

8 97-5-39. (1) (a) Except as otherwise provided in this
9 section, any parent, guardian or other person who intentionally,
10 knowingly or recklessly commits any act or omits the performance
11 of any duty, which act or omission contributes to or tends to
12 contribute to the neglect or delinquency of any child or which act
13 or omission results in the abuse of any child, as defined in
14 Section 43-21-105(m) of the Youth Court Law, or who knowingly aids
15 any child in escaping or absenting himself from the guardianship
16 or custody of any person, agency or institution, or knowingly
17 harbors or conceals, or aids in harboring or concealing, any child
18 who has absented himself without permission from the guardianship
19 or custody of any person, agency or institution to which the child



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

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

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

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

41 (e) A parent, legal guardian or other person who
42 knowingly permits the continuing physical or sexual abuse of a
43 child is guilty of neglect of a child and may be sentenced to
44 imprisonment in the custody of the Department of Corrections for



45 not more than ten (10) years or to payment of a fine of not more
46 than Ten Thousand Dollars (\$10,000.00), or both.

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

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

51 (i) Burn any child;

52 (ii) Physically torture any child;

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

55 (iv) Poison a child;

56 (v) Starve a child of nourishments needed to
57 sustain life or growth;

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

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

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

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

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

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



69 (c) If serious bodily harm to any child actually
70 occurs, and if the person shall intentionally, knowingly or
71 recklessly:

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

73 (ii) Disfigure or scar any child;

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

75 (d) Any person, upon conviction under paragraph (a) or
76 (c) of this subsection, shall be sentenced by the court to
77 imprisonment in the custody of the Department of Corrections for a
78 term of not less than five (5) years and up to life, as determined
79 by the court. Any person, upon conviction under paragraph (b) of
80 this subsection shall be sentenced by the court to imprisonment in
81 the custody of the Department of Corrections for a term of not
82 less than two (2) years nor more than ten (10) years, as
83 determined by the court. For any second or subsequent conviction
84 under this subsection (2), the person shall be sentenced to
85 imprisonment for life.

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

90 (f) For the purposes of this subsection (2), "serious
91 bodily harm" means any serious bodily injury to a child and
92 includes, but is not limited to, the fracture of a bone, permanent
93 disfigurement, permanent scarring, or any internal bleeding or



94 internal trauma to any organ, any brain damage, any injury to the
95 eye or ear of a child or other vital organ, and impairment of any
96 bodily function.

97 (g) Nothing contained in paragraph (c) of this
98 subsection shall preclude a parent or guardian from disciplining a
99 child of that parent or guardian, or shall preclude a person in
100 loco parentis to a child from disciplining that child, if done in
101 a reasonable manner, and reasonable corporal punishment or
102 reasonable discipline as to that parent or guardian's child or
103 child to whom a person stands in loco parentis shall be a defense
104 to any violation charged under paragraph (c) of this subsection.

105 (h) Reasonable discipline and reasonable corporal
106 punishment shall not be a defense to acts described in paragraphs
107 (a) and (b) of this subsection or if a child suffers serious
108 bodily harm as a result of any act prohibited under paragraph (c)
109 of this subsection.

110 (3) Nothing contained in this section shall prevent
111 proceedings against the parent, guardian or other person under any
112 statute of this state or any municipal ordinance defining any act
113 as a crime or misdemeanor. Nothing in the provisions of this
114 section shall preclude any person from having a right to trial by
115 jury when charged with having violated the provisions of this
116 section.

117 (4) (a) A parent, legal guardian or caretaker who endangers
118 a child's person or health by knowingly causing or permitting the



119 child to be present where any person * * * sells, possesses, or
120 manufactures a controlled substance or possesses with intent to
121 sell, transfer or manufacture a controlled substance as prohibited
122 under Section 41-29-139, except marijuana, or possesses an
123 immediate precursor or chemical substance with intent to
124 manufacture a controlled substance as prohibited under Section
125 41-29-313, is guilty of child endangerment and may be sentenced to
126 imprisonment for not more than ten (10) years or to payment of a
127 fine of not more than Ten Thousand Dollars (\$10,000.00), or both.

128 (b) If the endangerment results in substantial harm to
129 the child's physical, mental or emotional health, the person may
130 be sentenced to imprisonment for not more than twenty (20) years
131 or to payment of a fine of not more than Twenty Thousand Dollars
132 (\$20,000.00), or both.

133 (5) Nothing contained in this section shall prevent
134 proceedings against the parent, guardian or other person under any
135 statute of this state or any municipal ordinance defining any act
136 as a crime or misdemeanor. Nothing in the provisions of this
137 section shall preclude any person from having a right to trial by
138 jury when charged with having violated the provisions of this
139 section.

140 (6) After consultation with the Department of Human
141 Services, a regional mental health center or an appropriate
142 professional person, a judge may suspend imposition or execution
143 of a sentence provided in subsections (1) and (2) of this section



144 and in lieu thereof require treatment over a specified period of
145 time at any approved public or private treatment facility. A
146 person may be eligible for treatment in lieu of criminal penalties
147 no more than one (1) time.

148 (7) In any proceeding resulting from a report made pursuant
149 to Section 43-21-353 of the Youth Court Law, the testimony of the
150 physician making the report regarding the child's injuries or
151 condition or cause thereof shall not be excluded on the ground
152 that the physician's testimony violates the physician-patient
153 privilege or similar privilege or rule against disclosure. The
154 physician's report shall not be considered as evidence unless
155 introduced as an exhibit to his testimony.

156 (8) Any criminal prosecution arising from a violation of
157 this section shall be tried in the circuit, county, justice or
158 municipal court having jurisdiction; provided, however, that
159 nothing herein shall abridge or dilute the contempt powers of the
160 youth court.

161 **SECTION 2.** This act shall take effect and be in force from
162 and after July 1, 2019.

