

By: Representative Crawford

To: Judiciary B

HOUSE BILL NO. 1077

1 AN ACT TO AMEND SECTION 97-5-39, MISSISSIPPI CODE OF 1972, TO  
2 BROADEN THE ELEMENTS USED TO DETERMINE FELONIOUS CHILD ABUSE BY  
3 INCLUDING THE OBSTRUCTION OF THE MOUTH OR NOSE OF A CHILD IN ANY  
4 MANNER TO INTERFERE WITH CHILD'S BREATHING AND CAUSES THAT CHILD  
5 MENTAL ANGUISH; AND FOR RELATED PURPOSES.

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

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

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



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

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

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

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

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



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

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

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

52 (i) Burn any child;

53 (ii) Physically torture any child;

54 (iii) Strangle, choke, smother or in any way  
55 interfere with any child's breathing by causing the mouth or nose  
56 of any child to be obstructed in a manner that causes mental  
57 anguish to that child;

58 (iv) Poison a child;

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

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

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

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

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

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



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

72 (c) If serious bodily harm to any child actually  
73 occurs, and if the person shall intentionally, knowingly or  
74 recklessly:

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

76 (ii) Disfigure or scar any child;

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

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

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



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

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

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

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



118 jury when charged with having violated the provisions of this  
119 section.

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

129 (b) If the endangerment results in substantial harm to  
130 the child's physical, mental or emotional health, the person may  
131 be sentenced to imprisonment for not more than twenty (20) years  
132 or to payment of a fine of not more than Twenty Thousand Dollars  
133 (\$20,000.00), or both.

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

141 (6) After consultation with the Department of Human  
142 Services, a regional mental health center or an appropriate



143 professional person, a judge may suspend imposition or execution  
144 of a sentence provided in subsections (1) and (2) of this section  
145 and in lieu thereof require treatment over a specified period of  
146 time at any approved public or private treatment facility. A  
147 person may be eligible for treatment in lieu of criminal penalties  
148 no more than one (1) time.

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

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

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

