

By: Senator(s) Fillingane

To: Judiciary, Division B

## SENATE BILL NO. 2312

1       AN ACT TO AMEND SECTION 97-5-39, MISSISSIPPI CODE OF 1972, TO  
2 PROVIDE THAT THE CRIME OF ENDANGERMENT OF A CHILD BY KNOWINGLY  
3 CAUSING OR PERMITTING THE CHILD TO BE PRESENT WHERE ANY PERSON IS  
4 SELLING, MANUFACTURING OR POSSESSING CONTROLLED SUBSTANCES SHALL  
5 BE A FELONY WHERE THE OFFENSE RESULTS IN SUBSTANTIAL HARM TO THE  
6 CHILD'S PHYSICAL, MENTAL OR EMOTIONAL HEALTH OR IN DEATH TO THE  
7 CHILD; TO PROVIDE FOR THE CRIME OF CHEMICAL ENDANGERMENT OF  
8 EXPOSING A CHILD; TO PROVIDE CRIMINAL PENALTIES; TO PROVIDE THAT  
9 THE CRIME OF CHEMICAL ENDANGERMENT OF A CHILD SHALL BE A FELONY  
10 WHERE THE OFFENSE RESULTS IN SUBSTANTIAL HARM TO THE CHILD'S  
11 PHYSICAL, MENTAL OR EMOTIONAL HEALTH OR IN DEATH TO THE CHILD; TO  
12 EXEMPT A MOTHER WHO EXPOSES HER UNBORN CHILD TO CERTAIN MEDICINES  
13 TAKEN PURSUANT TO PRESCRIPTION OR TAKEN AS DIRECTED OR RECOMMENDED  
14 BY A PHYSICIAN FROM CRIMINAL LIABILITY; TO DEFINE TERMS; AND FOR  
15 RELATED PURPOSES.

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

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

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

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

36 (b) For the purpose of this section, \* \* \* the  
37 following words shall have the meaning ascribed herein unless the  
38 context clearly requires otherwise:

39 (i) "Chemical substance" means a substance  
40 intended to be used as a precursor in the manufacture of a  
41 controlled substance, or any other chemical intended to be used in  
42 the manufacture of a controlled substance. Intent under this  
43 subitem may be demonstrated by the substance's use, quantity,  
44 manner of storage, or proximity to other precursors, or to  
45 manufacturing equipment.

46 (ii) "Child" \* \* \* means a person who has not  
47 reached his eighteenth birthday. A child who has not reached his  
48 eighteenth birthday and is on active duty for a branch of the



49       armed services, or who is married, is not considered a child for  
50       the purposes of this \* \* \* section.

51               (iii)    "Controlled substance" means that term as  
52       defined in Section 41-29-105(f).

53               (iv)    "Paraphernalia" means that terms as defined  
54       in Section 41-29-105(v).

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

59               (d)    If the parent has failed to provide the child with  
60       food, clothing, or shelter necessary to sustain the life or health  
61       of the child, excluding failure caused by financial inability  
62       unless relief services have been offered and refused and the child  
63       is in imminent risk of harm, or the parent is unwilling to provide  
64       reasonably necessary medical care, though that medical care does  
65       not include recommended or optional vaccinations against childhood  
66       or any other disease, the person may be sentenced to imprisonment  
67       in custody of the Department of Corrections for not more than five  
68       (5) years or to payment of a fine of not more than Five Thousand  
69       Dollars (\$5,000.00), or both.

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



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

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

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

80 (i) Burn any child;

81 (ii) Torture any child;

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

84 (iv) Poison a child;

85 (v) Starve a child of nourishments needed to  
86 sustain life or growth;

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

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

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

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

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

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

98 (c) If serious bodily harm to any child actually  
99 occurs, and if the person shall intentionally, knowingly or  
100 recklessly:

101 (i) Strike any child on the face or head;  
102 (ii) Disfigure or scar any child;  
103 (iii) Whip, strike or otherwise abuse any child;  
104 (d) Any person, upon conviction under paragraph (a) or  
105 (c) of this subsection, shall be sentenced by the court to  
106 imprisonment in the custody of the Department of Corrections for a  
107 term of not less than five (5) years and up to life, as determined  
108 by the court. Any person, upon conviction under paragraph (b) of  
109 this subsection shall be sentenced by the court to imprisonment in  
110 the custody of the Department of Corrections for a term of not  
111 less than two (2) years nor more than ten (10) years, as  
112 determined by the court. For any second or subsequent conviction  
113 under this subsection (2), the person shall be sentenced to  
114 imprisonment for life.

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

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



123 internal trauma to any organ, any brain damage, any injury to the  
124 eye or ear of a child or other vital organ, and impairment of any  
125 bodily function.

126 (g) For purposes of this subsection (2), "torture"  
127 means any act, omission, or intentional neglect committed by an  
128 individual upon a child within his custody or physical control,  
129 whereby unnecessary or unjustifiable physical or mental pain or  
130 suffering is caused or permitted, regardless of whether serious  
131 physical injury results. Child torture involves treatment that is  
132 intentionally cruel, inhumane, and degrading, including, but not  
133 limited to: intentionally starving a child; forcing a child to  
134 sit in urine or feces; binding or restraining a child; repeatedly  
135 physically injuring a child; exposing the child to extreme  
136 temperatures without adequate clothing or shelter; locking a child  
137 in closets or other small spaces; and forcing a child into stress  
138 positions or exercise resulting in prolonged suffering.

139 (h) Nothing contained in paragraph (c) of this  
140 subsection shall preclude a parent or guardian from disciplining a  
141 child of that parent or guardian, or shall preclude a person in  
142 loco parentis to a child from disciplining that child, if done in  
143 a reasonable manner, and reasonable corporal punishment or  
144 reasonable discipline as to that parent or guardian's child or  
145 child to whom a person stands in loco parentis shall be a defense  
146 to any violation charged under paragraph (c) of this subsection.



147 (i) Reasonable discipline and reasonable corporal  
148 punishment shall not be a defense to acts described in paragraphs  
149 (a) and (b) of this subsection or if a child suffers serious  
150 bodily harm as a result of any act prohibited under paragraph (c)  
151 of this subsection.

152 (3) Nothing contained in this section shall prevent  
153 proceedings against the parent, guardian or other person under any  
154 statute of this state or any municipal ordinance defining any act  
155 as a crime or misdemeanor. Nothing in the provisions of this  
156 section shall preclude any person from having a right to trial by  
157 jury when charged with having violated the provisions of this  
158 section.

159 (4) (a) A parent, legal guardian or caretaker who endangers  
160 a child's person or health by knowingly causing or permitting the  
161 child to be present where any person is selling, manufacturing or  
162 possessing immediate precursors or chemical substances with intent  
163 to manufacture, sell or possess a controlled substance \* \* \* is  
164 guilty of child endangerment and may be sentenced to imprisonment  
165 for not more than ten (10) years or to payment of a fine of not  
166 more than Ten Thousand Dollars (\$10,000.00), or both.

167 (b) If the \* \* \* offense under paragraph (a) of this  
168 subsection results in substantial harm to the child's physical,  
169 mental or emotional health, the person may be sentenced to  
170 imprisonment for not less than one (1) year nor more than twenty



171 (20) years or to payment of a fine of not more than Twenty  
172 Thousand Dollars (\$20,000.00), or both.

173 (c) If the offense under paragraph (a) of this  
174 subsection results in the death of the child, the person may be  
175 sentenced to imprisonment for not less than five (5) years nor  
176 more than thirty (30) years or to payment of a fine of not more  
177 than Thirty Thousand Dollars (\$30,000.00), or both.

178 (5) (a) A parent, legal guardian or caretaker who endangers  
179 a child's person or health by knowingly, recklessly, or  
180 intentionally causing or permitting a child to be exposed to, to  
181 ingest or inhale, or to have contact with a controlled substance,  
182 chemical substance, or paraphernalia is guilty of chemical  
183 endangerment of exposing a child and may be sentenced to  
184 imprisonment for not more than ten (10) years or to payment of a  
185 fine of not more than Ten Thousand Dollars (\$10,000.00), or both.

186 (b) If the offense under paragraph (a) of this  
187 subsection results in substantial harm to the child's physical,  
188 mental or emotional health, the person may be sentenced to  
189 imprisonment for not less than one (1) year nor more than twenty  
190 (20) years or to payment of a fine of not more than Twenty  
191 Thousand Dollars (\$20,000.00), or both.

192 (c) If the offense under paragraph (a) of this  
193 subsection results in the death of the child, the person may be  
194 sentenced to imprisonment for not less than five (5) years nor

195 more than thirty (30) years or to payment of a fine of not more  
196 than Thirty Thousand Dollars (\$30,000.00), or both.

197 (6) (a) No person shall violate subsection (5)(a) of this  
198 section by exposing an unborn child to any of the following:

199 (i) A prescription medication if the person was  
200 the mother of the unborn child, and she was, or there is a good  
201 faith belief that she was, taking that medication pursuant to a  
202 lawful prescription to benefit her health or the health of the  
203 unborn child.

204 (ii) A nonprescription FDA-approved medication or  
205 substance if the person was the mother of the unborn child, and  
206 she was, or there is a good faith belief that she was, taking that  
207 medication or substance as directed or recommended by a physician  
208 or a health care provider acting within the authorized scope of  
209 his or her license to benefit her health or the health of the  
210 unborn child.

211 (b) No person shall be criminally liable under any  
212 Mississippi law for the assistance or conduct of exposing an  
213 unborn child to a medication or substance if his or her assistance  
214 or conduct is allowed or accepted under paragraph (a) of this  
215 subsection.

216 (\* \* \*7) Nothing contained in this section shall prevent  
217 proceedings against the parent, guardian or other person under any  
218 statute of this state or any municipal ordinance defining any act  
219 as a crime or misdemeanor. Nothing in the provisions of this



220 section shall preclude any person from having a right to trial by  
221 jury when charged with having violated the provisions of this  
222 section.

223 ( \* \* \*8) After consultation with the Department of Child  
224 Protection Services, a regional mental health center or an  
225 appropriate professional person, a judge may suspend imposition or  
226 execution of a sentence provided in subsections (1) and (2) of  
227 this section and in lieu thereof require treatment over a  
228 specified period of time at any approved public or private  
229 treatment facility. A person may be eligible for treatment in  
230 lieu of criminal penalties no more than one (1) time.

231 ( \* \* \*9) In any proceeding resulting from a report made  
232 pursuant to Section 43-21-353 of the Youth Court Law, the  
233 testimony of the physician making the report regarding the child's  
234 injuries or condition or cause thereof shall not be excluded on  
235 the ground that the physician's testimony violates the  
236 physician-patient privilege or similar privilege or rule against  
237 disclosure. The physician's report shall not be considered as  
238 evidence unless introduced as an exhibit to his testimony.

239 ( \* \* \*10) Any criminal prosecution arising from a violation  
240 of this section shall be tried in the circuit, county, justice or  
241 municipal court having jurisdiction; provided, however, that  
242 nothing herein shall abridge or dilute the contempt powers of the  
243 youth court.



244           **SECTION 2.** This act shall take effect and be in force from  
245 and after July 1, 2025.

