

By: Senator(s) Albritton

To: Judiciary, Division B

SENATE BILL NO. 2308

1 AN ACT TO AMEND SECTION 97-5-39, MISSISSIPPI CODE OF 1972, TO  
2 REVISE THE CRIME OF NEGLECT OR CONTRIBUTING TO THE DELINQUENCY OF  
3 A CHILD AND THE FELONIOUS ABUSE OR BATTERY OF A CHILD; TO CREATE  
4 THE CRIME OF CHILD ENDANGERMENT, INCLUDING ENDANGERMENT IMPOSED BY  
5 MANUFACTURE OF ILLEGAL DRUGS AND ENDANGERMENT BY FAILING TO  
6 PREVENT ACCESS TO FIREARMS; 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) Any parent, legal guardian or caretaker  
11 who willfully deprives a child of necessary food, clothing,  
12 shelter, health care or supervision appropriate to the child's  
13 age, when the parent, guardian or caretaker is reasonably able to  
14 make the necessary provisions and the deprivation harms or is  
15 likely to substantially harm the child's physical, mental or  
16 emotional health is guilty of neglect of a child and may be  
17 sentenced to imprisonment for not more than one (1) year or to  
18 payment of a fine of not more than Three Thousand Dollars  
19 (\$3,000.00), or both. If the deprivation results in substantial  
20 harm to the child's physical, mental or emotional health, the  
21 person may be sentenced to imprisonment for not more than five (5)  
22 years or to payment of a fine of not more than Ten Thousand  
23 Dollars (\$10,000.00), or both. If a parent, guardian or caretaker  
24 responsible for the child's care in good faith selects and depends  
25 upon spiritual means or prayer for treatment or care of disease or  
26 remedial care of the child, this treatment or care is "health  
27 care," for purposes of subsection (1).

28 (b) A parent, legal guardian or caretaker who knowingly  
29 permits the continuing physical or sexual abuse of a child is

30 guilty of neglect of a child and may be sentenced to imprisonment  
31 for not more than one (1) year or to payment of a fine of not more  
32 than Three Thousand Dollars (\$3,000.00), or both.

33 (2) (a) A parent, legal guardian or caretaker who endangers  
34 the child's person or health by:

35 (i) Intentionally or recklessly causing or  
36 permitting a child to be placed in a situation likely to  
37 substantially harm the child's physical, mental or emotional  
38 health or cause the child's death; or

39 (ii) Knowingly causing or permitting the child to  
40 be present where any person is selling, manufacturing, possessing  
41 immediate precursors or chemical substances with intent to  
42 manufacture, or possessing a controlled substance, as defined in  
43 Section 41-29-139 or 41-29-313, is guilty of child endangerment  
44 and may be sentenced to imprisonment for not more than one (1)  
45 year or to payment of a fine of not more than Three Thousand  
46 Dollars (\$3,000.00), or both.

47 (b) If the endangerment results in substantial harm to  
48 the child's physical, mental or emotional health, the person may  
49 be sentenced to imprisonment for not more than five (5) years or  
50 to payment of a fine of not more than Ten Thousand Dollars  
51 (\$10,000.00), or both.

52 (c) This subsection (2) does not prevent a parent,  
53 legal guardian or caretaker from causing or permitting a child to  
54 engage in activities that are appropriate to the child's age,  
55 stage of development, and experience, or from selecting health  
56 care as defined in subsection (1)(a).

57 (d) A person who intentionally or recklessly causes a  
58 child under fourteen (14) years of age to be placed in a situation  
59 likely to substantially harm the child's physical health or cause  
60 the child's death as a result of the child's access to a loaded  
61 firearm is guilty of child endangerment and may be sentenced to

62 imprisonment for not more than one (1) year or to payment of a  
63 fine of not more than Three Thousand Dollars (\$3,000.00), or both.

64 (e) If the endangerment results in substantial harm to  
65 the child's physical health, the person may be sentenced to  
66 imprisonment for not more than five (5) years or to payment of a  
67 fine of not more than Ten Thousand Dollars (\$10,000.00), or both.

68 (3) Nothing contained in this section shall prevent  
69 proceedings against such parent, guardian or other person under  
70 any statute of this state or any municipal ordinance defining any  
71 act as a crime or misdemeanor. Nothing in the provisions of this  
72 section shall preclude any person from having a right to trial by  
73 jury when charged with having violated the provisions of this  
74 section.

75 (4) After consultation with the Department of Human  
76 Services, a regional mental health center or an appropriate  
77 professional person, a judge may suspend imposition or execution  
78 of a sentence provided in subsections (1) and (2) of this section  
79 and in lieu thereof require treatment over a specified period of  
80 time at any approved public or private treatment facility.

81 (5) In any proceeding resulting from a report made pursuant  
82 to Section 43-21-353 of the Youth Court Law, the testimony of the  
83 physician making the said report regarding the child's injuries or  
84 condition or cause thereof shall not be excluded on the ground  
85 that such physician's testimony violates the physician-patient  
86 privilege or similar privilege or rule against disclosure. The  
87 physician's report shall not be considered as evidence unless  
88 introduced as an exhibit to his testimony.

89 (6) Any criminal prosecution arising from a violation of  
90 this section shall be tried in the circuit, county, justice or  
91 municipal court having jurisdiction; provided, however, that  
92 nothing herein shall abridge or dilute the contempt powers of the  
93 youth court.

94           **SECTION 2.** This act shall take effect and be in force from  
95 and after July 1, 2005.