

By: Senator(s) Tollison, Albritton, Burton, Butler, Clarke, Cuevas, Davis, Dawkins, Dearing, Flowers, Harvey, Hyde-Smith, Jackson (15th), Jackson (11th), Jackson (32nd), Jordan, King, Lee (47th), Lee (35th), Morgan, Nunnelee, Ross, Thames, Thomas, Walley, Walls

To: Judiciary, Division B

SENATE BILL NO. 2864

1 AN ACT TO AMEND SECTION 97-5-35, MISSISSIPPI CODE OF 1972, TO
2 REVISE THE PENALTIES FOR EXPLOITATION OF CHILDREN; TO AMEND
3 SECTION 97-5-39, MISSISSIPPI CODE OF 1972, TO REVISE THE PENALTIES
4 FOR FELONIOUS ABUSE OR BATTERY OF A CHILD; AND FOR RELATED
5 PURPOSES.

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

7 **SECTION 1.** Section 97-5-35, Mississippi Code of 1972, is
8 amended as follows:

9 97-5-35. Any person who violates any provision of * * *
10 Section 97-5-33 shall be guilty of a felony and upon conviction
11 shall be fined not less than Fifty Thousand Dollars (\$50,000.00)
12 nor more than Five Hundred Thousand Dollars (\$500,000.00) and
13 shall be imprisoned for not less than five (5) years nor more than
14 forty (40) years * * *. Any person convicted of a second or
15 subsequent violation of * * * Section 97-5-33 shall be fined not
16 less than One Hundred Thousand Dollars (\$100,000.00) nor more than
17 One Million Dollars (\$1,000,000.00) and shall be confined in the
18 custody of the Department of Corrections for life or such lesser
19 term as the court may determine, but not less than twenty (20)
20 years * * *.

21 **SECTION 2.** Section 97-5-39, Mississippi Code of 1972, is
22 amended as follows:

23 97-5-39. (1) Any parent, guardian or other person who
24 willfully commits any act or omits the performance of any duty,
25 which act or omission contributes to or tends to contribute to the
26 neglect or delinquency of any child or which act or omission
27 results in the abuse and/or battering of any child, as defined in
28 Section 43-21-105(m) of the Youth Court Law or who knowingly aids

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

39 (2) Any person who shall intentionally (a) burn any child,
40 (b) torture any child, or (c) except in self-defense or in order
41 to prevent bodily harm to a third party, whip, strike or otherwise
42 abuse or mutilate any child in such a manner as to cause serious
43 bodily harm, shall be guilty of felonious abuse and/or battery of
44 a child and, upon conviction, shall be sentenced to imprisonment
45 in the custody of the Department of Corrections for life or such
46 lesser term of imprisonment as the court may determine, but not
47 less than ten (10) years. For any second or subsequent conviction
48 under this subsection (2), the person shall be sentenced to
49 imprisonment for life.

50 (3) Nothing contained in this section shall prevent
51 proceedings against such parent, guardian or other person under
52 any statute of this state or any municipal ordinance defining any
53 act as a crime or misdemeanor. Nothing in the provisions of this
54 section shall preclude any person from having a right to trial by
55 jury when charged with having violated the provisions of this
56 section.

57 (4) After consultation with the Department of Public
58 Welfare, a regional mental health center or an appropriate
59 professional person, a judge may suspend imposition or execution
60 of a sentence provided in subsections (1) and (2) of this section

61 and in lieu thereof require treatment over a specified period of
62 time at any approved public or private treatment facility.

63 (5) In any proceeding resulting from a report made pursuant
64 to Section 43-21-353 of the Youth Court Law, the testimony of the
65 physician making the said report regarding the child's injuries or
66 condition or cause thereof shall not be excluded on the ground
67 that such physician's testimony violates the physician-patient
68 privilege or similar privilege or rule against disclosure. The
69 physician's report shall not be considered as evidence unless
70 introduced as an exhibit to his testimony.

71 (6) Any criminal prosecution arising from a violation of
72 this section shall be tried in the circuit, county, justice or
73 municipal court having jurisdiction; provided, however, that
74 nothing herein shall abridge or dilute the contempt powers of the
75 youth court.

76 **SECTION 3.** This act shall take effect and be in force from
77 and after July 1, 2005.