

By: Representative McLean

To: Judiciary B

HOUSE BILL NO. 1380

1 AN ACT TO AMEND SECTION 97-5-39, MISSISSIPPI CODE OF 1972, TO
 2 PROVIDE THAT FELONIOUS CHILD ABUSE IS COMMITTED WHEN A CHILD TESTS
 3 POSITIVE AT BIRTH FOR CERTAIN CONTROLLED SUBSTANCES THAT WERE NOT
 4 PRESCRIBED BY A PHYSICIAN; TO AMEND SECTIONS 43-21-105 AND
 5 43-21-603, MISSISSIPPI CODE OF 1972, TO REVISE THE REQUIRED
 6 EVIDENCE FOR PROOF OF CHILD ABUSE TO CONFORM TO THIS ACT; AND FOR
 7 RELATED PURPOSES.

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

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

11 97-5-39. (1) (a) Except as otherwise provided in this
 12 section, any parent, guardian or other person who intentionally,
 13 knowingly or recklessly commits any act or omits the performance
 14 of any duty, which act or omission contributes to or tends to
 15 contribute to the neglect or delinquency of any child or which act
 16 or omission results in the abuse of any child, as defined in
 17 Section 43-21-105(m) of the Youth Court Law, or who knowingly aids
 18 any child in escaping or absenting himself from the guardianship
 19 or custody of any person, agency or institution, or knowingly
 20 harbors or conceals, or aids in harboring or concealing, any child



21 who has absented himself without permission from the guardianship
22 or custody of any person, agency or institution to which the child
23 shall have been committed by the youth court shall be guilty of a
24 misdemeanor, and upon conviction shall be punished by a fine not
25 to exceed One Thousand Dollars (\$1,000.00), or by imprisonment not
26 to exceed one (1) year in jail, or by both such fine and
27 imprisonment.

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

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

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

44 (e) A parent, legal guardian or other person who
45 knowingly permits the continuing physical or sexual abuse of a



46 child is guilty of neglect of a child and may be sentenced to
47 imprisonment in the custody of the Department of Corrections for
48 not more than ten (10) years or to payment of a fine of not more
49 than Ten Thousand Dollars (\$10,000.00), or both.

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

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

54 (i) Burn any child;

55 (ii) Physically torture any child;

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

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) Whether bodily harm results or not, if a child
79 tests positive at birth for a controlled substance, as defined in
80 Section 41-29-105, unless the controlled substance was prescribed
81 by a physician;

82 (* * *e) Any person, upon conviction under paragraph
83 (a) or (c) of this subsection, shall be sentenced by the court to
84 imprisonment in the custody of the Department of Corrections for a
85 term of not less than five (5) years and up to life, as determined
86 by the court. Any person, upon conviction under paragraph (b) of
87 this subsection shall be sentenced by the court to imprisonment in
88 the custody of the Department of Corrections for a term of not
89 less than two (2) years nor more than ten (10) years, as
90 determined by the court. Upon conviction under paragraph (d) of
91 this subsection, the mother shall be sentenced to imprisonment in
92 the custody of the Department of Corrections for a term of not
93 more than five (5) years and sentenced to a fine not to exceed



94 Five Thousand Dollars (\$5,000.00). For any second or subsequent
95 conviction under this subsection (2), the person shall be
96 sentenced to imprisonment for life.

97 (* * *f) (i) For the purposes of this subsection (2),
98 "bodily harm" means any bodily injury to a child and includes, but
99 is not limited to, bruising, bleeding, lacerations, soft tissue
100 swelling, and external or internal swelling of any body organ.

101 (* * *ii) For the purposes of this subsection (2),
102 "serious bodily harm" means any serious bodily injury to a child
103 and includes, but is not limited to, the fracture of a bone,
104 permanent disfigurement, permanent scarring, or any internal
105 bleeding or internal trauma to any organ, any brain damage, any
106 injury to the eye or ear of a child or other vital organ, and
107 impairment of any bodily function.

108 (g) Nothing contained in paragraph (c) of this
109 subsection shall preclude a parent or guardian from disciplining a
110 child of that parent or guardian, or shall preclude a person in
111 loco parentis to a child from disciplining that child, if done in
112 a reasonable manner, and reasonable corporal punishment or
113 reasonable discipline as to that parent or guardian's child or
114 child to whom a person stands in loco parentis shall be a defense
115 to any violation charged under paragraph (c) of this subsection.

116 (h) Reasonable discipline and reasonable corporal
117 punishment shall not be a defense to acts described in paragraphs
118 (a) and (b) of this subsection or if a child suffers serious



119 bodily harm as a result of any act prohibited under paragraph (c)
120 of this subsection.

121 (3) Nothing contained in this section shall prevent
122 proceedings against the parent, guardian or other person under any
123 statute of this state or any municipal ordinance defining any act
124 as a crime or misdemeanor. Nothing in the provisions of this
125 section shall preclude any person from having a right to trial by
126 jury when charged with having violated the provisions of this
127 section.

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

137 (b) If the endangerment results in substantial harm to
138 the child's physical, mental or emotional health, the person may
139 be sentenced to imprisonment for not more than twenty (20) years
140 or to payment of a fine of not more than Twenty Thousand Dollars
141 (\$20,000.00), or both.

142 (5) Nothing contained in this section shall prevent
143 proceedings against the parent, guardian or other person under any



144 statute of this state or any municipal ordinance defining any act
145 as a crime or misdemeanor. Nothing in the provisions of this
146 section shall preclude any person from having a right to trial by
147 jury when charged with having violated the provisions of this
148 section.

149 (6) After consultation with the Department of Child
150 Protection Services, a regional mental health center or an
151 appropriate professional person, a judge may suspend imposition or
152 execution of a sentence provided in subsections (1) and (2) of
153 this section and in lieu thereof require treatment over a
154 specified period of time at any approved public or private
155 treatment facility. A person may be eligible for treatment in
156 lieu of criminal penalties no more than one (1) time.

157 (7) In any proceeding resulting from a report made pursuant
158 to Section 43-21-353 of the Youth Court Law, the testimony of the
159 physician making the report regarding the child's injuries or
160 condition or cause thereof shall not be excluded on the ground
161 that the physician's testimony violates the physician-patient
162 privilege or similar privilege or rule against disclosure. The
163 physician's report shall not be considered as evidence unless
164 introduced as an exhibit to his testimony.

165 (8) Any criminal prosecution arising from a violation of
166 this section shall be tried in the circuit, county, justice or
167 municipal court having jurisdiction; provided, however, that



168 nothing herein shall abridge or dilute the contempt powers of the
169 youth court.

170 **SECTION 2.** Section 43-21-105, Mississippi Code of 1972, is
171 amended as follows:

172 43-21-105. The following words and phrases, for purposes of
173 this chapter, shall have the meanings ascribed herein unless the
174 context clearly otherwise requires:

175 (a) "Youth court" means the Youth Court Division.

176 (b) "Judge" means the judge of the Youth Court
177 Division.

178 (c) "Designee" means any person that the judge appoints
179 to perform a duty which this chapter requires to be done by the
180 judge or his designee. The judge may not appoint a person who is
181 involved in law enforcement or who is an employee of the
182 Mississippi Department of Human Services or the Mississippi
183 Department of Child Protection Services to be his designee.

184 (d) "Child" and "youth" are synonymous, and each means
185 a person who has not reached his eighteenth birthday. A child who
186 has not reached his eighteenth birthday and is on active duty for
187 a branch of the armed services or is married is not considered a
188 "child" or "youth" for the purposes of this chapter.

189 (e) "Parent" means the father or mother to whom the
190 child has been born, or the father or mother by whom the child has
191 been legally adopted.



192 (f) "Guardian" means a court-appointed guardian of the
193 person of a child.

194 (g) "Custodian" means any person having the present
195 care or custody of a child whether such person be a parent or
196 otherwise.

197 (h) "Legal custodian" means a court-appointed custodian
198 of the child.

199 (i) "Delinquent child" means a child who has reached
200 his tenth birthday and who has committed a delinquent act.

201 (j) "Delinquent act" is any act, which if committed by
202 an adult, is designated as a crime under state or federal law, or
203 municipal or county ordinance other than offenses punishable by
204 life imprisonment or death. A delinquent act includes escape from
205 lawful detention and violations of the Uniform Controlled
206 Substances Law and violent behavior.

207 (k) "Child in need of supervision" means a child who
208 has reached his seventh birthday and is in need of treatment or
209 rehabilitation because the child:

210 (i) Is habitually disobedient of reasonable and
211 lawful commands of his parent, guardian or custodian and is
212 ungovernable; or

213 (ii) While being required to attend school,
214 willfully and habitually violates the rules thereof or willfully
215 and habitually absents himself therefrom; or

216 (iii) Runs away from home without good cause; or



217 (iv) Has committed a delinquent act or acts.

218 (1) "Neglected child" means a child:

219 (i) Whose parent, guardian or custodian or any
220 person responsible for his care or support, neglects or refuses,
221 when able so to do, to provide for him proper and necessary care
222 or support, or education as required by law, or medical, surgical,
223 or other care necessary for his well-being; however, a parent who
224 withholds medical treatment from any child who in good faith is
225 under treatment by spiritual means alone through prayer in
226 accordance with the tenets and practices of a recognized church or
227 religious denomination by a duly accredited practitioner thereof
228 shall not, for that reason alone, be considered to be neglectful
229 under any provision of this chapter; or

230 (ii) Who is otherwise without proper care,
231 custody, supervision or support; or

232 (iii) Who, for any reason, lacks the special care
233 made necessary for him by reason of his mental condition, whether
234 the mental condition is having mental illness or having an
235 intellectual disability; or

236 (iv) Who, for any reason, lacks the care necessary
237 for his health, morals or well-being.

238 (m) "Abused child" means a child whose parent, guardian
239 or custodian or any person responsible for his care or support,
240 whether legally obligated to do so or not, has caused or allowed
241 to be caused, upon the child, sexual abuse, sexual exploitation,



242 commercial sexual exploitation, emotional abuse, mental injury,
243 nonaccidental physical injury or other maltreatment, or a child
244 who test positive at birth for a controlled substance as defined
245 by Section 41-29-105, unless the controlled substance was
246 prescribed by a physician. However, physical discipline,
247 including spanking, performed on a child by a parent, guardian or
248 custodian in a reasonable manner shall not be deemed abuse under
249 this section. "Abused child" also means a child who is or has
250 been trafficked within the meaning of the Mississippi Human
251 Trafficking Act by any person, without regard to the relationship
252 of the person to the child.

253 (n) "Sexual abuse" means obscene or pornographic
254 photographing, filming or depiction of children for commercial
255 purposes, or the rape, molestation, incest, prostitution or other
256 such forms of sexual exploitation of children under circumstances
257 which indicate that the child's health or welfare is harmed or
258 threatened.

259 (o) "A child in need of special care" means a child
260 with any mental or physical illness that cannot be treated with
261 the dispositional alternatives ordinarily available to the youth
262 court.

263 (p) A "dependent child" means any child who is not a
264 child in need of supervision, a delinquent child, an abused child
265 or a neglected child, and which child has been voluntarily placed



266 in the custody of the Department of Child Protection Services by
267 his parent, guardian or custodian.

268 (q) "Custody" means the physical possession of the
269 child by any person.

270 (r) "Legal custody" means the legal status created by a
271 court order which gives the legal custodian the responsibilities
272 of physical possession of the child and the duty to provide him
273 with food, shelter, education and reasonable medical care, all
274 subject to residual rights and responsibilities of the parent or
275 guardian of the person.

276 (s) "Detention" means the care of children in
277 physically restrictive facilities.

278 (t) "Shelter" means care of children in physically
279 nonrestrictive facilities.

280 (u) "Records involving children" means any of the
281 following from which the child can be identified:

282 (i) All youth court records as defined in Section
283 43-21-251;

284 (ii) All forensic interviews conducted by a child
285 advocacy center in abuse and neglect investigations;

286 (iii) All law enforcement records as defined in
287 Section 43-21-255;

288 (iv) All agency records as defined in Section
289 43-21-257; and



290 (v) All other documents maintained by any
291 representative of the state, county, municipality or other public
292 agency insofar as they relate to the apprehension, custody,
293 adjudication or disposition of a child who is the subject of a
294 youth court cause.

295 (v) "Any person responsible for care or support" means
296 the person who is providing for the child at a given time. This
297 term shall include, but is not limited to, stepparents, foster
298 parents, relatives, nonlicensed babysitters or other similar
299 persons responsible for a child and staff of residential care
300 facilities and group homes that are licensed by the Department of
301 Human Services or the Department of Child Protection Services.

302 (w) The singular includes the plural, the plural the
303 singular and the masculine the feminine when consistent with the
304 intent of this chapter.

305 (x) "Out-of-home" setting means the temporary
306 supervision or care of children by the staff of licensed day care
307 centers, the staff of public, private and state schools, the staff
308 of juvenile detention facilities, the staff of unlicensed
309 residential care facilities and group homes and the staff of, or
310 individuals representing, churches, civic or social organizations.

311 (y) "Durable legal custody" means the legal status
312 created by a court order which gives the durable legal custodian
313 the responsibilities of physical possession of the child and the
314 duty to provide him with care, nurture, welfare, food, shelter,



315 education and reasonable medical care. All these duties as
316 enumerated are subject to the residual rights and responsibilities
317 of the natural parent(s) or guardian(s) of the child or children.

318 (z) "Status offense" means conduct subject to
319 adjudication by the youth court that would not be a crime if
320 committed by an adult.

321 (aa) "Financially able" means a parent or child who is
322 ineligible for a court-appointed attorney.

323 (bb) "Assessment" means an individualized examination
324 of a child to determine the child's psychosocial needs and
325 problems, including the type and extent of any mental health,
326 substance abuse or co-occurring mental health and substance abuse
327 disorders and recommendations for treatment. The term includes,
328 but is not limited to, a drug and alcohol, psychological or
329 psychiatric evaluation, records review, clinical interview or the
330 administration of a formal test and instrument.

331 (cc) "Screening" means a process, with or without the
332 administration of a formal instrument, that is designed to
333 identify a child who is at increased risk of having mental health,
334 substance abuse or co-occurring mental health and substance abuse
335 disorders that warrant immediate attention, intervention or more
336 comprehensive assessment.

337 (dd) "Durable legal relative guardianship" means the
338 legal status created by a youth court order that conveys the
339 physical and legal custody of a child or children by durable legal



340 guardianship to a relative or fictive kin who is licensed as a
341 foster or resource parent.

342 (ee) "Relative" means a person related to the child by
343 affinity or consanguinity within the third degree.

344 (ff) "Fictive kin" means a person not related to the
345 child legally or biologically but who is considered a relative due
346 to a significant, familial-like and ongoing relationship with the
347 child and family.

348 (gg) "Reasonable efforts" means the exercise of
349 reasonable care and due diligence by the Department of Human
350 Services, the Department of Child Protection Services, or any
351 other appropriate entity or person to use appropriate and
352 available services to prevent the unnecessary removal of the child
353 from the home or provide other services related to meeting the
354 needs of the child and the parents.

355 (hh) "Commercial sexual exploitation" means any sexual
356 act or crime of a sexual nature, which is committed against a
357 child for financial or economic gain, to obtain a thing of value
358 for quid pro quo exchange of property or for any other purpose.

359 **SECTION 3.** Section 43-21-603, Mississippi Code of 1972, is
360 amended as follows:

361 43-21-603. (1) At the beginning of each disposition
362 hearing, the judge shall inform the parties of the purpose of the
363 hearing.



364 (2) All testimony shall be under oath unless waived by all
365 parties and may be in narrative form. The court may consider any
366 evidence that is material and relevant to the disposition of the
367 cause, including hearsay and opinion evidence. At the conclusion
368 of the evidence, the youth court shall give the parties an
369 opportunity to present oral argument.

370 (3) If the child has been adjudicated a delinquent child,
371 before entering a disposition order, the youth court should
372 consider, among others, the following relevant factors:

- 373 (a) The nature of the offense;
- 374 (b) The manner in which the offense was committed;
- 375 (c) The nature and number of a child's prior
376 adjudicated offenses;
- 377 (d) The child's need for care and assistance;
- 378 (e) The child's current medical history, including
379 medication and diagnosis;
- 380 (f) The child's mental health history, which may
381 include, but not be limited to, the Massachusetts Youth Screening
382 Instrument version 2 (MAYSI-2);
- 383 (g) Copies of the child's cumulative record from the
384 last school of record, including special education records, if
385 applicable;
- 386 (h) Recommendation from the school of record based on
387 areas of remediation needed;
- 388 (i) Disciplinary records from the school of record; and



389 (j) Records of disciplinary actions outside of the
390 school setting.

391 (4) If the child has been adjudicated a child in need of
392 supervision, before entering a disposition order, the youth court
393 should consider, among others, the following relevant factors:

394 (a) The nature and history of the child's conduct;

395 (b) The family and home situation; and

396 (c) The child's need of care and assistance.

397 (5) If the child has been adjudicated a neglected child or
398 an abused child, before entering a disposition order, the youth
399 court shall consider, among others, the following relevant
400 factors:

401 (a) The child's physical and mental conditions;

402 (b) The child's or family's need of assistance;

403 (c) The manner in which the parent, guardian or
404 custodian participated in, tolerated or condoned the abuse,
405 neglect or abandonment of the child;

406 (d) The ability of a child's parent, guardian or
407 custodian to provide proper supervision and care of a child; and

408 (e) Relevant testimony and recommendations, where
409 available, from the foster parent of the child, the grandparents
410 of the child, the guardian ad litem of the child, representatives
411 of any private care agency that has cared for the child, the
412 family protection worker or family protection specialist assigned



413 to the case, and any other relevant testimony pertaining to the
414 case.

415 (6) After consideration of all the evidence and the relevant
416 factors, the youth court shall enter a disposition order that
417 shall not recite any of the facts or circumstances upon which the
418 disposition is based, nor shall it recite that a child has been
419 found guilty; but it shall recite that a child is found to be a
420 delinquent child, a child in need of supervision, a neglected
421 child or an abused child.

422 (7) If the youth court orders that the custody or
423 supervision of a child who has been adjudicated abused or
424 neglected be placed with the Department of Child Protection
425 Services or any other person or public or private agency, other
426 than the child's parent, guardian or custodian, the youth court
427 shall find and the disposition order shall recite that:

428 (a) (i) Reasonable efforts have been made to maintain
429 the child within his own home, but that the circumstances warrant
430 his removal and there is no reasonable alternative to custody; or

431 (ii) The circumstances are of such an emergency
432 nature that no reasonable efforts have been made to maintain the
433 child within his own home, and that there is no reasonable
434 alternative to custody; and

435 (b) That the effect of the continuation of the child's
436 residence within his own home would be contrary to the welfare of



437 the child and that the placement of the child in foster care is in
438 the best interests of the child; or

439 (c) Reasonable efforts to maintain the child within his
440 home shall not be required if the court determines that:

441 (i) The parent has subjected the child to
442 aggravated circumstances, including, but not limited to,
443 abandonment, torture, chronic abuse and sexual abuse; * * *

444 (ii) A child has tested positive at birth for a
445 controlled substance, as defined in Section 41-29-105, unless the
446 controlled substance was prescribed by a physician; or

447 (* * *iii) The parent has been convicted of
448 murder of another child of that parent, voluntary manslaughter of
449 another child of that parent, aided or abetted, attempted,
450 conspired or solicited to commit that murder or voluntary
451 manslaughter, or a felony assault that results in the serious
452 bodily injury to the surviving child or another child of that
453 parent; or

454 (* * *iv) The parental rights of the parent to a
455 sibling have been terminated involuntarily; and

456 (* * *y) That the effect of the continuation of
457 the child's residence within his own home would be contrary to the
458 welfare of the child and that placement of the child in foster
459 care is in the best interests of the child.



460 Once the reasonable efforts requirement is bypassed, the
461 court shall have a permanency hearing under Section 43-21-613
462 within thirty (30) days of the finding.

463 (8) Upon a written motion by a party, the youth court shall
464 make written findings of fact and conclusions of law upon which it
465 relies for the disposition order. If the disposition ordered by
466 the youth court includes placing the child in the custody of a
467 training school, an admission packet shall be prepared for the
468 child that contains the following information:

469 (a) The child's current medical history, including
470 medications and diagnosis;

471 (b) The child's mental health history;

472 (c) Copies of the child's cumulative record from the
473 last school of record, including special education records, if
474 reasonably available;

475 (d) Recommendation from the school of record based on
476 areas of remediation needed;

477 (e) Disciplinary records from the school of record; and

478 (f) Records of disciplinary actions outside of the
479 school setting, if reasonably available.

480 Only individuals who are permitted under the Health Insurance
481 Portability and Accountability Act of 1996 (HIPAA) shall have
482 access to a child's medical records which are contained in an
483 admission packet. The youth court shall provide the admission
484 packet to the training school at or before the child's arrival at



485 the training school. The admittance of any child to a training
486 school shall take place between the hours of 8:00 a.m. and 3:00
487 p.m. on designated admission days.

488 (9) When a child in the jurisdiction of the Youth Court is
489 committed to the custody of the Mississippi Department of Human
490 Services or the Department of Child Protection Services and is
491 believed to be in need of treatment for a mental or emotional
492 disability or infirmity, the Department of Human Services or the
493 Department of Child Protection Services shall file an affidavit
494 alleging that the child is in need of mental health services with
495 the Youth Court. The Youth Court shall refer the child to the
496 appropriate community mental health center for evaluation pursuant
497 to Section 41-21-67. If the prescreening evaluation recommends
498 residential care, the Youth Court shall proceed with civil
499 commitment pursuant to Sections 41-21-61 et seq., 43-21-315 and
500 43-21-611, and the Department of Mental Health, once commitment is
501 ordered, shall provide appropriate care, treatment and services
502 for at least as many adolescents as were provided services in
503 fiscal year 2004 in its facilities.

504 (10) Any screening and assessment examinations ordered by
505 the court may aid in dispositions related to delinquency, but no
506 statements or admissions made during the course thereof may be
507 admitted into evidence against the child on the issue of whether
508 the child committed a delinquent act.



509 **SECTION 4.** This act shall take effect and be in force from
510 and after July 1, 2024.

