

By: Senator(s) Fillingane

To: Judiciary, Division B

SENATE BILL NO. 2184

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 child's deprivation of necessary clothing,
60 shelter, health care or supervision appropriate to the child's age
61 results in substantial harm to the child's physical, mental or
62 emotional health, the person may be sentenced to imprisonment in
63 custody of the Department of Corrections for not more than five
64 (5) years or to payment of a fine of not more than Five Thousand
65 Dollars (\$5,000.00), or both.

66 (e) A parent, legal guardian or other person who
67 knowingly permits the continuing physical or sexual abuse of a
68 child is guilty of neglect of a child and may be sentenced to
69 imprisonment in the custody of the Department of Corrections for
70 not more than ten (10) years or to payment of a fine of not more
71 than Ten Thousand Dollars (\$10,000.00), or both.

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



74 (a) Whether bodily harm results or not, if the person
75 shall intentionally, knowingly or recklessly:
76 (i) Burn any child;
77 (ii) Physically torture any child;
78 (iii) Strangle, choke, smother or in any way
79 interfere with any child's breathing;
80 (iv) Poison a child;
81 (v) Starve a child of nourishments needed to
82 sustain life or growth;
83 (vi) Use any type of deadly weapon upon any child;
84 (b) If some bodily harm to any child actually occurs,
85 and if the person shall intentionally, knowingly or recklessly:
86 (i) Throw, kick, bite, or cut any child;
87 (ii) Strike a child under the age of fourteen (14)
88 about the face or head with a closed fist;
89 (iii) Strike a child under the age of five (5) in
90 the face or head;
91 (iv) Kick, bite, cut or strike a child's genitals;
92 circumcision of a male child is not a violation under this
93 subparagraph (iv);
94 (c) If serious bodily harm to any child actually
95 occurs, and if the person shall intentionally, knowingly or
96 recklessly:
97 (i) Strike any child on the face or head;
98 (ii) Disfigure or scar any child;



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

100 (d) Any person, upon conviction under paragraph (a) or
101 (c) of this subsection, shall be sentenced by the court to
102 imprisonment in the custody of the Department of Corrections for a
103 term of not less than five (5) years and up to life, as determined
104 by the court. Any person, upon conviction under paragraph (b) of
105 this subsection shall be sentenced by the court to imprisonment in
106 the custody of the Department of Corrections for a term of not
107 less than two (2) years nor more than ten (10) years, as
108 determined by the court. For any second or subsequent conviction
109 under this subsection (2), the person shall be sentenced to
110 imprisonment for life.

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

115 (f) For the purposes of this subsection (2), "serious
116 bodily harm" means any serious bodily injury to a child and
117 includes, but is not limited to, the fracture of a bone, permanent
118 disfigurement, permanent scarring, or any internal bleeding or
119 internal trauma to any organ, any brain damage, any injury to the
120 eye or ear of a child or other vital organ, and impairment of any
121 bodily function.

122 (g) Nothing contained in paragraph (c) of this
123 subsection shall preclude a parent or guardian from disciplining a



124 child of that parent or guardian, or shall preclude a person in
125 loco parentis to a child from disciplining that child, if done in
126 a reasonable manner, and reasonable corporal punishment or
127 reasonable discipline as to that parent or guardian's child or
128 child to whom a person stands in loco parentis shall be a defense
129 to any violation charged under paragraph (c) of this subsection.

130 (h) Reasonable discipline and reasonable corporal
131 punishment shall not be a defense to acts described in paragraphs
132 (a) and (b) of this subsection or if a child suffers serious
133 bodily harm as a result of any act prohibited under paragraph (c)
134 of this subsection.

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

142 (4) (a) A parent, legal guardian or caretaker who endangers
143 a child's person or health by knowingly causing or permitting the
144 child to be present where any person is selling, manufacturing or
145 possessing immediate precursors or chemical substances with intent
146 to manufacture, sell or possess a controlled substance * * * is
147 guilty of child endangerment and may be sentenced to imprisonment



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

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

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

161 (5) (a) A parent, legal guardian or caretaker who endangers
162 a child's person or health by knowingly, recklessly, or
163 intentionally causing or permitting a child to be exposed to, to
164 ingest or inhale, or to have contact with a controlled substance,
165 chemical substance, or paraphernalia is guilty of chemical
166 endangerment of exposing a child and may be sentenced to
167 imprisonment for not more than ten (10) years or to payment of a
168 fine of not more than Ten Thousand Dollars (\$10,000.00), or both.

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



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

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

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

182 (i) A prescription medication if the person was
183 the mother of the unborn child, and she was, or there is a good
184 faith belief that she was, taking that medication pursuant to a
185 lawful prescription to benefit her health or the health of the
186 unborn child.

187 (ii) A nonprescription FDA approved medication or
188 substance if the person was the mother of the unborn child, and
189 she was, or there is a good faith belief that she was, taking that
190 medication or substance as directed or recommended by a physician
191 or a health care provider acting within the authorized scope of
192 his or her license to benefit her health or the health of the
193 unborn child.

194 (b) No person shall be criminally liable under any
195 Mississippi law for the assistance or conduct of exposing an
196 unborn child to a medication or substance if his or her assistance



197 or conduct is allowed or accepted under paragraph (a) of this
198 subsection.

199 (* * *7) Nothing contained in this section shall prevent
200 proceedings against the parent, guardian or other person under any
201 statute of this state or any municipal ordinance defining any act
202 as a crime or misdemeanor. Nothing in the provisions of this
203 section shall preclude any person from having a right to trial by
204 jury when charged with having violated the provisions of this
205 section.

206 (* * *8) After consultation with the Department of Child
207 Protection Services, a regional mental health center or an
208 appropriate professional person, a judge may suspend imposition or
209 execution of a sentence provided in subsections (1) and (2) of
210 this section and in lieu thereof require treatment over a
211 specified period of time at any approved public or private
212 treatment facility. A person may be eligible for treatment in
213 lieu of criminal penalties no more than one (1) time.

214 (* * *9) In any proceeding resulting from a report made
215 pursuant to Section 43-21-353 of the Youth Court Law, the
216 testimony of the physician making the report regarding the child's
217 injuries or condition or cause thereof shall not be excluded on
218 the ground that the physician's testimony violates the
219 physician-patient privilege or similar privilege or rule against
220 disclosure. The physician's report shall not be considered as
221 evidence unless introduced as an exhibit to his testimony.



222 (* * *10) Any criminal prosecution arising from a violation
223 of this section shall be tried in the circuit, county, justice or
224 municipal court having jurisdiction; provided, however, that
225 nothing herein shall abridge or dilute the contempt powers of the
226 youth court.

227 **SECTION 2.** This act shall take effect and be in force from
228 and after July 1, 2024.

