

By: Senator(s) McCaughn

To: Judiciary, Division B

SENATE BILL NO. 2611

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 A CERTAIN CONTROLLED SUBSTANCE THAT WERE NOT
4 PRESCRIBED BY A PHYSICIAN; TO AMEND SECTIONS 43-21-105 AND
5 43-21-603, MISSISSIPPI CODE OF 1972, TO CONFORM; AND FOR RELATED
6 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) Except as otherwise provided in this
11 section, any parent, guardian or other person who intentionally,
12 knowingly or recklessly commits any act or omits the performance
13 of any duty, which act or omission contributes to or tends to
14 contribute to the neglect or delinquency of any child or which act
15 or omission results in the abuse of any child, as defined in
16 Section 43-21-105(m) of the Youth Court Law, or who knowingly aids
17 any child in escaping or absenting himself from the guardianship
18 or custody of any person, agency or institution, or knowingly
19 harbors or conceals, or aids in harboring or concealing, any child
20 who has absented himself without permission from the guardianship



21 or custody of any person, agency or institution to which the child
22 shall have been committed by the youth court shall be guilty of a
23 misdemeanor, and upon conviction shall be punished by a fine not
24 to exceed One Thousand Dollars (\$1,000.00), or by imprisonment not
25 to exceed one (1) year in jail, or by both such fine and
26 imprisonment.

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

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

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

43 (e) A parent, legal guardian or other person who
44 knowingly permits the continuing physical or sexual abuse of a
45 child is guilty of neglect of a child and may be sentenced to



46 imprisonment in the custody of the Department of Corrections for
47 not more than ten (10) years or to payment of a fine of not more
48 than Ten Thousand Dollars (\$10,000.00), or both.

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

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

53 (i) Burn any child;

54 (ii) Physically torture any child;

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

57 (iv) Poison a child;

58 (v) Starve a child of nourishments needed to
59 sustain life or growth;

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

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

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

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

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

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



71 (c) If serious bodily harm to any child actually
72 occurs, and if the person shall intentionally, knowingly or
73 recklessly:

74 (i) Strike any child on the face or head;

75 (ii) Disfigure or scar any child;

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

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

81 (* * *e) Any person, upon conviction under paragraph
82 (a) or (c) of this subsection, shall be sentenced by the court to
83 imprisonment in the custody of the Department of Corrections for a
84 term of not less than five (5) years and up to life, as determined
85 by the court. Any person, upon conviction under paragraph (b) of
86 this subsection shall be sentenced by the court to imprisonment in
87 the custody of the Department of Corrections for a term of not
88 less than two (2) years nor more than ten (10) years, as
89 determined by the court. Upon conviction under paragraph (d) of
90 this subsection, the mother shall be sentenced to imprisonment in
91 the custody of the Department of Corrections for a term of not
92 more than five (5) years and sentenced to a fine not to exceed
93 Five Thousand Dollars (\$5,000.00). For any second or subsequent
94 conviction under this subsection (2), the person shall be
95 sentenced to imprisonment for life.



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

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

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

115 (h) Reasonable discipline and reasonable corporal
116 punishment shall not be a defense to acts described in paragraphs
117 (a) and (b) of this subsection or if a child suffers serious
118 bodily harm as a result of any act prohibited under paragraph (c)
119 of this subsection.



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

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

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

141 (5) Nothing contained in this section shall prevent
142 proceedings against the parent, guardian or other person under any
143 statute of this state or any municipal ordinance defining any act
144 as a crime or misdemeanor. Nothing in the provisions of this



145 section shall preclude any person from having a right to trial by
146 jury when charged with having violated the provisions of this
147 section.

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

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

164 (8) Any criminal prosecution arising from a violation of
165 this section shall be tried in the circuit, county, justice or
166 municipal court having jurisdiction; provided, however, that
167 nothing herein shall abridge or dilute the contempt powers of the
168 youth court.



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

171 43-21-105. The following words and phrases, for purposes of
172 this chapter, shall have the meanings ascribed herein unless the
173 context clearly otherwise requires:

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

217 (l) "Neglected child" means a child:



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

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

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

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

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



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

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

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

262 (p) A "dependent child" means any child who is not a
263 child in need of supervision, a delinquent child, an abused child
264 or a neglected child, and which child has been voluntarily placed
265 in the custody of the Department of Child Protection Services by
266 his parent, guardian or custodian.



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

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

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

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

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

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

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

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

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

289 (v) All other documents maintained by any
290 representative of the state, county, municipality or other public
291 agency insofar as they relate to the apprehension, custody,



292 adjudication or disposition of a child who is the subject of a
293 youth court cause.

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

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

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

310 (y) "Durable legal custody" means the legal status
311 created by a court order which gives the durable legal custodian
312 the responsibilities of physical possession of the child and the
313 duty to provide him with care, nurture, welfare, food, shelter,
314 education and reasonable medical care. All these duties as
315 enumerated are subject to the residual rights and responsibilities
316 of the natural parent(s) or guardian(s) of the child or children.



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

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

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

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

336 (dd) "Durable legal relative guardianship" means the
337 legal status created by a youth court order that conveys the
338 physical and legal custody of a child or children by durable legal
339 guardianship to a relative or fictive kin who is licensed as a
340 foster or resource parent.



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

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

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

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

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

360 43-21-603. (1) At the beginning of each disposition
361 hearing, the judge shall inform the parties of the purpose of the
362 hearing.

363 (2) All testimony shall be under oath unless waived by all
364 parties and may be in narrative form. The court may consider any
365 evidence that is material and relevant to the disposition of the



366 cause, including hearsay and opinion evidence. At the conclusion
367 of the evidence, the youth court shall give the parties an
368 opportunity to present oral argument.

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

372 (a) The nature of the offense;

373 (b) The manner in which the offense was committed;

374 (c) The nature and number of a child's prior
375 adjudicated offenses;

376 (d) The child's need for care and assistance;

377 (e) The child's current medical history, including
378 medication and diagnosis;

379 (f) The child's mental health history, which may
380 include, but not be limited to, the Massachusetts Youth Screening
381 Instrument version 2 (MAYSI-2);

382 (g) Copies of the child's cumulative record from the
383 last school of record, including special education records, if
384 applicable;

385 (h) Recommendation from the school of record based on
386 areas of remediation needed;

387 (i) Disciplinary records from the school of record; and

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



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

- 393 (a) The nature and history of the child's conduct;
- 394 (b) The family and home situation; and
- 395 (c) The child's need of care and assistance.

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

- 400 (a) The child's physical and mental conditions;
- 401 (b) The child's or family's need of assistance;
- 402 (c) The manner in which the parent, guardian or
403 custodian participated in, tolerated or condoned the abuse,
404 neglect or abandonment of the child;
- 405 (d) The ability of a child's parent, guardian or
406 custodian to provide proper supervision and care of a child; and
- 407 (e) Relevant testimony and recommendations, where
408 available, from the foster parent of the child, the grandparents
409 of the child, the guardian ad litem of the child, representatives
410 of any private care agency that has cared for the child, the
411 family protection worker or family protection specialist assigned
412 to the case, and any other relevant testimony pertaining to the
413 case.



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

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

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

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

434 (b) That the effect of the continuation of the child's
435 residence within his own home would be contrary to the welfare of
436 the child and that the placement of the child in foster care is in
437 the best interests of the child; or



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

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

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

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

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

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

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



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

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

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

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

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

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

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

479 Only individuals who are permitted under the Health Insurance
480 Portability and Accountability Act of 1996 (HIPAA) shall have
481 access to a child's medical records which are contained in an
482 admission packet. The youth court shall provide the admission
483 packet to the training school at or before the child's arrival at
484 the training school. The admittance of any child to a training
485 school shall take place between the hours of 8:00 a.m. and 3:00
486 p.m. on designated admission days.



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

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

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

