



1 impairs the child's health, or which involves physical torture or causes serious emotional harm to  
2 the child, or which involves a substantial risk of death to the child, including:

- 3 (i) fracture of any bone or bones;
- 4 (ii) intracranial bleeding, swelling or contusion of the brain, whether caused by blows,  
5 shaking, or causing the child's head to impact with an object or surface;
- 6 (iii) any burn, including burns inflicted by hot water, or those caused by placing a hot  
7 object upon the skin or body of the child;
- 8 (iv) any injury caused by use of a dangerous weapon as defined in Section 76-1-601;
- 9 (v) any combination of two or more physical injuries inflicted by the same person, either  
10 at the same time or on different occasions;

- 11 (vi) any damage to internal organs of the body;
- 12 (vii) any conduct toward a child which results in severe emotional harm, severe  
13 developmental delay or retardation, or severe impairment of the child's ability to function;

14 (viii) any injury which creates a permanent disfigurement or protracted loss or impairment  
15 of the function of a bodily member, limb, or organ;

16 (ix) any conduct which causes a child to cease breathing, even if resuscitation is successful  
17 following the conduct; or

18 (x) any conduct which results in starvation or failure to thrive or malnutrition that  
19 jeopardizes the child's life.

20 (2) Any person who inflicts upon a child serious physical injury or, having the care or  
21 custody of such child, causes or permits another to inflict serious physical injury upon a child is  
22 guilty of an offense as follows:

- 23 (a) if done intentionally or knowingly, the offense is a felony of the second degree;
- 24 (b) if done recklessly, the offense is a felony of the third degree; or
- 25 (c) if done with criminal negligence, the offense is a class A misdemeanor.

26 (3) Any person who inflicts upon a child physical injury or, having the care or custody of  
27 such child, causes or permits another to inflict physical injury upon a child is guilty of an offense  
28 as follows:

- 29 (a) if done intentionally or knowingly, the offense is a class A misdemeanor;
- 30 (b) if done recklessly, the offense is a class B misdemeanor; or
- 31 (c) if done with criminal negligence, the offense is a class C misdemeanor.

1 (4) Criminal actions under this section may be prosecuted in the county or district where  
 2 the offense is alleged to have been committed, where the existence of the offense is discovered,  
 3 where the victim resides, or where the defendant resides.

4 (5) A parent or legal guardian who provides a child with treatment by spiritual means  
 5 alone through prayer, in lieu of medical treatment, in accordance with the tenets and practices of  
 6 an established church or religious denomination of which the parent or legal guardian is a member  
 7 or adherent shall not, for that reason alone, be deemed to have committed an offense under this  
 8 section.

9 Section 2. Section **76-5-109.1** is amended to read:

10 **76-5-109.1. Commission of domestic violence in the presence of a child.**

11 (1) As used in this section:

12 (a) "Domestic violence" means the same as that term is defined in Section 77-36-1.

13 (b) "In the presence of a child" means:

14 (i) in the physical presence of a child; or

15 (ii) having knowledge that a child is present and may see or hear an act of domestic  
 16 violence.

17 (2) ~~[(a)]~~ A person is guilty of ~~[a third degree felony]~~ child abuse if he:

18 ~~[(i)]~~ (a) commits or attempts to commit criminal homicide, as defined in Section 76-5-201,  
 19 against a cohabitant in the presence of a child; or

20 ~~[(ii)]~~ (b) intentionally causes serious bodily injury to a cohabitant or uses a dangerous  
 21 weapon, as defined in Section 76-1-601, or other means or force likely to produce death or serious  
 22 bodily injury against a cohabitant, in the presence of a child~~[(b) A person is guilty of a class A~~  
 23 misdemeanor if he]; or

24 (c) under circumstances not amounting to a violation of Subsection (2)(a) or (b), commits  
 25 an act of domestic violence in the presence of a child ~~[not amounting to a violation of Subsection~~  
 26 (a), on two or more] after having committed:

27 (i) a violation of Subsection (2)(a) or (b) on one or more prior occasions; or

28 (ii) an act of domestic violence in the presence of a child, not amounting to a violation of  
 29 Subsection (2)(a) or (b), on one or more prior occasions.

30 (3) (a) A person who violates Subsection (2)(a) or (b) is guilty of a third degree felony.

31 (b) A person who violates Subsection (2)(c) is guilty of a class A misdemeanor.

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**Legislative Review Note**  
**as of 1-7-98 3:42 PM**

A limited legal review of this bill raises no obvious constitutional or statutory concerns.

**Office of Legislative Research and General Counsel**