

1 HB601  
2 118130-2  
3 By Representatives McLaughlin and McDaniel  
4 RFD: Judiciary  
5 First Read: 18-FEB-10

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8 SYNOPSIS: Existing law makes it a crime to knowingly,  
9 intentionally, or recklessly expose a child to a  
10 controlled substance, chemical substance, or drug  
11 paraphernalia.

12 This bill would clarify the term "child" to  
13 include an unborn child in utero at any stage of  
14 development regardless of viability. This bill  
15 would establish venue for prosecution for exposure  
16 in utero in the county where the child is born.  
17 This bill would create an evidentiary rebuttable  
18 presumption relating to exposure in utero if both  
19 the mother and the child test positive for the same  
20 controlled substance not prescribed by a physician.

21  
22 A BILL  
23 TO BE ENTITLED  
24 AN ACT

25  
26 To amend Section 26-15-3.2, Code of Alabama 1975,  
27 relating to the crime of chemical endangerment of exposing a

1 child to an environment in which controlled substances are  
2 produced or distributed, to provide that the term "child"  
3 includes an unborn child; to establish venue; and to create an  
4 evidentiary rebuttable presumption relating to exposing a  
5 child in utero to a controlled substance if both the mother  
6 and the child test positive for the same controlled substance  
7 not prescribed by a physician.

8 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

9 Section 1. Section 26-15-3.2, Code of Alabama 1975,  
10 is amended to read as follows:

11 "§26-15-3.2.

12 "(a) A responsible person commits the crime of  
13 chemical endangerment of exposing a child to an environment in  
14 which he or she does any of the following:

15 "(1) Knowingly, recklessly, or intentionally causes  
16 or permits a child to be exposed to, to ingest or inhale, or  
17 to have contact with a controlled substance, chemical  
18 substance, or drug paraphernalia as defined in Section  
19 13A-12-260. A violation under this subdivision is a Class C  
20 felony.

21 "(2) Violates subdivision (1) and a child suffers  
22 serious physical injury by exposure to, ingestion of,  
23 inhalation of, or contact with a controlled substance,  
24 chemical substance, or drug paraphernalia. A violation under  
25 this subdivision is a Class B felony.

1           "(3) Violates subdivision (1) and the exposure,  
2 ingestion, inhalation, or contact results in the death of the  
3 child. A violation under this subdivision is a Class A felony.

4           "(b) The court shall impose punishment pursuant to  
5 this section rather than imposing punishment authorized under  
6 any other provision of law, unless another provision of law  
7 provides for a greater penalty or a longer term of  
8 imprisonment.

9           "(c) It is an affirmative defense to a violation of  
10 this section that the controlled substance was provided by  
11 lawful prescription for the child, and that it was  
12 administered to the child in accordance with the prescription  
13 instructions provided with the controlled substance.

14           "(d) For purposes of this section, the term "child"  
15 includes, but is not limited to, an unborn child in utero at  
16 any stage of development regardless of viability.

17           "(e) Where exposure occurs in utero, venue shall lie  
18 in the county where the child is born.

19           "(f) A rebuttable presumption of exposure in utero  
20 in violation of this section exists if both the mother and the  
21 child test positive for the same controlled substance at the  
22 time of birth and the controlled substance was not prescribed  
23 by a licensed physician."

24           Section 2. This act shall become effective on the  
25 first day of the third month following its passage and  
26 approval by the Governor, or its otherwise becoming law.