

By: Representatives White, Crawford

To: Judiciary B

HOUSE BILL NO. 1259
(As Sent to Governor)

1 AN ACT TO BE KNOWN AS THE LONNIE SMITH ACT; TO AMEND SECTION
2 97-5-39, MISSISSIPPI CODE OF 1972, TO REVISE THE ELEMENTS OF THE
3 OFFENSE OF FELONIOUS CHILD ABUSE; AND FOR RELATED PURPOSES.

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

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

7 97-5-39. (1) (a) Except as otherwise provided in this
8 section, any parent, guardian or other person who * * *
9 intentionally, knowingly or recklessly commits any act or omits
10 the performance of any duty, which act or omission contributes to
11 or tends to contribute to the neglect or delinquency of any child
12 or which act or omission results in the abuse of any child, as
13 defined in Section 43-21-105(m) of the Youth Court Law, or who
14 knowingly aids any child in escaping or absenting himself from the
15 guardianship or custody of any person, agency or institution, or
16 knowingly harbors or conceals, or aids in harboring or concealing,
17 any child who has absented himself without permission from the
18 guardianship or custody of any person, agency or institution to



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

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

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

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

40 (* * * e) A parent, legal guardian or other person who
41 knowingly permits the continuing physical or sexual abuse of a
42 child is guilty of neglect of a child and may be sentenced to
43 imprisonment in the custody of the Department of Corrections for



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

46 (2) * * * Any person * * * shall * * * be guilty of
47 felonious child abuse in the following circumstances:

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

50 (i) Burn any child * * *;

51 (ii) Physically torture any child * * *;

52 (iii) * * * Strangle, choke, smother or in any way
53 interfere with any child's breathing;

54 (iv) Poison a child;

55 (v) Starve a child of nourishments needed to
56 sustain life or growth;

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

58 (b) * * * If some bodily harm to any child actually
59 occurs, and if the person shall intentionally, knowingly or
60 recklessly:

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

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

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

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



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

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

73 (ii) Disfigure or scar any child;

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

75 (d) Any person, upon conviction under paragraph (a) or
76 (c) of this subsection, shall be sentenced by the court to
77 imprisonment in the custody of the Department of Corrections for a
78 term of not less than five (5) years and up to life, as determined
79 by the court. Any person, upon conviction under paragraph (b) of
80 this subsection shall be sentenced by the court to imprisonment in
81 the custody of the Department of Corrections for a term of not
82 less than two (2) years nor more than ten (10) years, as
83 determined by the court. For any second or subsequent conviction
84 under this subsection (2), the person shall be sentenced to
85 imprisonment for life.

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

90 (f) For the purposes of this subsection (2), "serious
91 bodily harm" means any serious bodily injury to a child and
92 includes, but is not limited to, the fracture of a bone, permanent
93 disfigurement, permanent scarring, or any internal bleeding or



94 internal trauma to any organ, any brain damage, any injury to the
95 eye or ear of a child or other vital organ, and impairment of any
96 bodily function.

97 (g) Nothing contained in paragraph (c) of this
98 subsection shall preclude a parent or guardian from disciplining a
99 child of that parent or guardian, or shall preclude a person in
100 loco parentis to a child from disciplining that child, if done in
101 a reasonable manner, and reasonable corporal punishment or
102 reasonable discipline as to that parent or guardian's child or
103 child to whom a person stands in loco parentis shall be a defense
104 to any violation charged under paragraph (c) of this subsection.

105 (h) Reasonable discipline and reasonable corporal
106 punishment shall not be a defense to acts described in paragraphs
107 (a) and (b) of this subsection or if a child suffers serious
108 bodily harm as a result of any act prohibited under paragraph (c)
109 of this subsection.

110 * * *

111 (3) Nothing contained in this section shall prevent
112 proceedings against the parent, guardian or other person under any
113 statute of this state or any municipal ordinance defining any act
114 as a crime or misdemeanor. Nothing in the provisions of this
115 section shall preclude any person from having a right to trial by
116 jury when charged with having violated the provisions of this
117 section.



118 (* * *4) (* * *a) A parent, legal guardian or caretaker
119 who endangers a child's person or health by knowingly causing or
120 permitting the child to be present where any person is selling,
121 manufacturing or possessing immediate precursors or chemical
122 substances with intent to manufacture, sell or possess a
123 controlled substance as prohibited under Section 41-29-139 or
124 41-29-313, is guilty of child endangerment and may be sentenced to
125 imprisonment for not more than ten (10) years or to payment of a
126 fine of not more than Ten Thousand Dollars (\$10,000.00), or both.

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

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

139 (* * *6) After consultation with the Department of Human
140 Services, a regional mental health center or an appropriate
141 professional person, a judge may suspend imposition or execution
142 of a sentence provided in subsections (1) and (2) of this section



143 and in lieu thereof require treatment over a specified period of
144 time at any approved public or private treatment facility. A
145 person may be eligible for treatment in lieu of criminal penalties
146 no more than one (1) time.

147 (* * *7) In any proceeding resulting from a report made
148 pursuant to Section 43-21-353 of the Youth Court Law, the
149 testimony of the physician making the report regarding the child's
150 injuries or condition or cause thereof shall not be excluded on
151 the ground that the physician's testimony violates the
152 physician-patient privilege or similar privilege or rule against
153 disclosure. The physician's report shall not be considered as
154 evidence unless introduced as an exhibit to his testimony.

155 (* * *8) Any criminal prosecution arising from a violation
156 of this section shall be tried in the circuit, county, justice or
157 municipal court having jurisdiction; provided, however, that
158 nothing herein shall abridge or dilute the contempt powers of the
159 youth court.

160 **SECTION 2.** This act shall take effect and be in force from
161 and after July 1, 2013.

