

By: Senator(s) Wiggins, Doty, Longwitz

To: Judiciary, Division B

SENATE BILL NO. 2623

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 THE PUNISHMENT THEREFOR; AND  
4 FOR RELATED PURPOSES.

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

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

8 97-5-39. (1) (a) For the purposes of this section, a child  
9 is a person who has not reached the child's eighteenth birthday.  
10 A child who has not reached his eighteenth birthday and is on  
11 active duty for a branch of the armed services or who is married  
12 is not considered a child for the purposes of this section.

13 ( \* \* \*b) Except as otherwise provided in this section,  
14 any parent, guardian or other person who willfully commits any act  
15 or omits the performance of any duty, which act or omission  
16 contributes to or tends to contribute to the neglect or  
17 delinquency of any child or which act or omission results in the  
18 abuse of any child, as defined in Section 43-21-105(m) of the  
19 Youth Court Law, or who knowingly aids any child in escaping or



20 absenting himself from the guardianship or custody of any person,  
21 agency or institution, or knowingly harbors or conceals, or aids  
22 in harboring or concealing, any child who has absented himself  
23 without permission from the guardianship or custody of any person,  
24 agency or institution to which the child shall have been committed  
25 by the youth court shall be guilty of a misdemeanor, and upon  
26 conviction shall be punished by a fine not to exceed One Thousand  
27 Dollars (\$1,000.00), or by imprisonment not to exceed one (1) year  
28 in jail, or by both such fine and imprisonment.

29 ( \* \* \* c) If the child's deprivation of necessary food,  
30 clothing, shelter, health care or supervision appropriate to the  
31 child's age results in substantial harm to the child's physical,  
32 mental or emotional health, the person may be sentenced to  
33 imprisonment for not more than five (5) years or to payment of a  
34 fine of not more than Five Thousand Dollars (\$5,000.00), or both.

35 ( \* \* \* d) A parent, legal guardian or other person who  
36 knowingly permits the continuing physical or sexual abuse of a  
37 child is guilty of neglect of a child and may be sentenced to  
38 imprisonment for not more than ten (10) years or to payment of a  
39 fine of not more than Ten Thousand Dollars (\$10,000.00), or both.

40 (2) \* \* \* A person \* \* \* is guilty of felonious child abuse  
41 in the following circumstances:

42 (a) Whether bodily harm to the child results or not, if  
43 the person shall intentionally, knowingly or recklessly:

44 (i) Burn any child;



45                   (ii) Physically torture any child;  
46                   (iii) Strangle, choke, smother or in any way  
47 interfere with any child's breathing;  
48                   (iv) Poison a child; or  
49                   (v) Starve a child of nourishment needed to  
50 sustain life or growth.

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

53                   (i) Throw, kick, bite, or cut any child;  
54                   (ii) Strike a child under the age of fourteen  
55 about the face or head with a closed fist;  
56                   (iii) Strike a child under the age of five (5) in  
57 the face or head;  
58                   (iv) Use any type of deadly weapon upon any child;  
59                   (v) Kick, bite, cut or strike a child's genitals.

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

63                   (i) Strike any child on the face or head;  
64                   (ii) Disfigure or scar any child; or  
65                   (iii) Whip, strike or otherwise abuse any child.

66           (d) For the purposes of this subsection (2):

67                   (i) "Bodily harm" means any bodily injury to a  
68 child and includes, but is not limited to, bruising, bleeding,  
69 lacerations, soft tissue swelling, and external or internal



70 swelling of any body organ or the destruction of any bodily  
71 function.

72 (ii) "Serious bodily harm" means any serious  
73 bodily injury to a child and includes, but is not limited to, the  
74 fracture of a bone, disfigurement, scarring, or any internal  
75 bleeding or any internal trauma to any organ, any brain damage,  
76 any injury to the eye or ear or any other vital organ of a child,  
77 or destruction of any bodily function.

78 (3) A person convicted under subsection (2) of this section  
79 shall be subject to punishment as follows:

80 (a) (i) Upon conviction under subsection (2)(a) or  
81 (2)(c) of this section, by imprisonment in the custody of the  
82 Department of Corrections for a term of not less than five (5)  
83 years nor more than life in prison.

84 (ii) Upon conviction under subsection (2)(b) of  
85 this section, by imprisonment in the custody of the Department of  
86 Corrections for a term of not less than two (2) years nor more  
87 than ten (10) years.

88 (iii) For any second or subsequent conviction  
89 under subsection (2) of this section, the person shall be  
90 sentenced to imprisonment for life.

91 (b) If a child commits an act described in subsection  
92 (2) of this section against another child, jurisdiction of the  
93 offense shall be in the Youth Court.



94           (c) (i) Nothing contained in subsection (2) (c) of this  
95 section shall preclude a parent or guardian from disciplining a  
96 child of the parent or guardian in a reasonable manner, and  
97 reasonable corporal punishment or reasonable discipline as to that  
98 parent or guardian's child shall be a defense to any violation  
99 charged under subsection (2) (c) of this section.

100           (ii) Reasonable discipline and reasonable corporal  
101 punishment shall not be a defense to:

102                   1. Acts described in subsections (2) (a) and  
103 (2) (c) of this section; or

104                   2. If a child suffers serious bodily harm as  
105 a result of any act described in subsection (2) (c) of this  
106 section.

107           (4) Any person who willfully inflicts physical pain or  
108 injury upon a special needs education child or a child with a  
109 documented mental or physical disability shall be guilty of  
110 felonious abuse or battery, or both, of a special needs education  
111 child or a child with a documented mental or physical disability  
112 and, upon conviction thereof, may be punished by imprisonment in  
113 the custody of the Department of Corrections for not more than  
114 twenty (20) years.

115           (5) ( \* \* \*a) (i) A parent, legal guardian or caretaker who  
116 endangers a child's person or health by knowingly causing or  
117 permitting the child to be present where any person is selling,  
118 manufacturing or possessing immediate precursors or chemical



119 substances with intent to manufacture, sell or possess a  
120 controlled substance as prohibited under Section 41-29-139 or  
121 41-29-313, is guilty of child endangerment and may be sentenced to  
122 imprisonment for not more than ten (10) years or to payment of a  
123 fine of not more than Ten Thousand Dollars (\$10,000.00), or both.

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

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

136       **( \* \* \*7)** After consultation with the Department of Human  
137 Services, a regional mental health center or an appropriate  
138 professional person, a judge may suspend imposition or execution  
139 of a sentence provided in subsections (1) and (2) of this section  
140 and in lieu thereof require treatment over a specified period of  
141 time at any approved public or private treatment facility. A  
142 person may be eligible for treatment in lieu of criminal penalties  
143 no more than one (1) time.



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

152 ( \* \* \*9) Any criminal prosecution arising from a violation  
153 of this section shall be tried in the circuit, county, justice or  
154 municipal court having jurisdiction \* \* \*, and nothing herein  
155 shall abridge or dilute the contempt powers of the youth court.

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

