

By: Representative Scott (80th)

To: Judiciary B

HOUSE BILL NO. 80

1 AN ACT TO AMEND SECTION 97-5-23, MISSISSIPPI CODE OF 1972, TO
2 PROVIDE THAT THE LAW REGARDING FONDLING SHALL APPLY TO CERTAIN
3 MINORS; TO AMEND SECTION 43-21-151, MISSISSIPPI CODE OF 1972, IN
4 CONFORMITY THERETO; AND FOR RELATED PURPOSES.

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

6 SECTION 1. Section 97-5-23, Mississippi Code of 1972, is
7 amended as follows:

8 97-5-23. (1) Any person above the age of eighteen (18)
9 years, who, for the purpose of gratifying his or her lust, or
10 indulging his or her depraved licentious sexual desires, shall
11 handle, touch or rub with hands or any part of his or her body or
12 any member thereof, any child under the age of sixteen (16) years,
13 with or without the child's consent, or a mentally defective,
14 mentally incapacitated or physically helpless person as defined in
15 Section 97-3-97, shall be guilty of a felony and, upon conviction
16 thereof, shall be fined in a sum not less than One Thousand
17 Dollars (\$1,000.00) nor more than Five Thousand Dollars
18 (\$5,000.00), or be committed to the custody of the State
19 Department of Corrections not less than two (2) years nor more
20 than fifteen (15) years, or be punished by both such fine and
21 imprisonment, at the discretion of the court.

22 (2) Any person above the age of eighteen (18) years, who,
23 for the purpose of gratifying his or her lust, or indulging his or
24 her depraved licentious sexual desires, shall handle, touch or rub
25 with hands or any part of his or her body or any member thereof,
26 any child younger than himself or herself and under the age of
27 eighteen (18) years who is not such person's spouse, with or

28 without the child's consent, when the person occupies a position
29 of trust or authority over the child shall be guilty of a felony
30 and, upon conviction thereof, shall be fined in a sum not less
31 than One Thousand Dollars (\$1,000.00) nor more than Five Thousand
32 Dollars (\$5,000.00), or be committed to the custody of the State
33 Department of Corrections not less than two (2) years nor more
34 than fifteen (15) years, or be punished by both such fine and
35 imprisonment, at the discretion of the court. A person in a
36 position of trust or authority over a child includes without
37 limitation a child's teacher, counselor, physician, psychiatrist,
38 psychologist, minister, priest, physical therapist, chiropractor,
39 legal guardian, parent, stepparent, aunt, uncle, scout leader or
40 coach.

41 (3) Upon a second conviction for an offense under this
42 section, the person so convicted shall be punished by commitment
43 to the State Department of Corrections for a term not to exceed
44 twenty (20) years, however, upon conviction and sentencing, the
45 offender shall serve at least one-half (1/2) of the sentence so
46 imposed.

47 (4) Any person aged fourteen (14) years or over but less
48 than eighteen (18) years, who, for the purpose of gratifying his
49 or her lust, or indulging his or her depraved licentious sexual
50 desires, shall handle, touch or rub with hands or any part of his
51 or her body or any member thereof, any child younger than himself
52 or herself with or without the child's consent shall be guilty of
53 a felony and, upon conviction thereof, shall be fined not less
54 than One Thousand Dollars (\$1,000.00) nor more than Five Thousand
55 Dollars (\$5,000.00) or imprisoned for not less than two (2) years
56 nor more than fifteen (15) years, or be punished by both such fine
57 and imprisonment, at the discretion of the court.

58 SECTION 2. Section 43-21-151, Mississippi Code of 1972, is
59 amended as follows:

60 43-21-151. (1) The youth court shall have exclusive
61 original jurisdiction in all proceedings concerning a delinquent
62 child, a child in need of supervision, a neglected child, an
63 abused child or a dependent child except in the following
64 circumstances:

65 (a) Any act attempted or committed by a child, which if
66 committed by an adult would be punishable under state or federal
67 law by life imprisonment or death, will be in the original
68 jurisdiction of the circuit court;

69 (b) Any act attempted or committed by a child with the
70 use of a deadly weapon, the carrying of which concealed is
71 prohibited by Section 97-37-1, or a shotgun or a rifle, which
72 would be a felony if committed by an adult, will be in the
73 original jurisdiction of the circuit court; * * *

74 (c) A violation of Section 97-5-23; and

75 (d) When a charge of abuse of a child first arises in
76 the course of a custody action between the parents of the child
77 already pending in the chancery court and no notice of such abuse
78 was provided prior to such chancery proceedings, the chancery
79 court may proceed with the investigation, hearing and
80 determination of such abuse charge as a part of its hearing and
81 determination of the custody issue as between the parents,
82 notwithstanding the other provisions of the Youth Court Law. The
83 proceedings in chancery court on the abuse charge shall be
84 confidential in the same manner as provided in youth court
85 proceedings.

86 When a child is expelled from the public schools, the youth
87 court shall be notified of the act of expulsion and the act or
88 acts constituting the basis for expulsion.

89 (2) Jurisdiction of the child in the cause shall attach at
90 the time of the offense and shall continue thereafter for that
91 offense until the child's twentieth birthday, unless sooner
92 terminated by order of the youth court. The youth court shall not
93 have jurisdiction over offenses committed by a child on or after
94 his eighteenth birthday, or over offenses committed by a child on
95 or after his seventeenth birthday where such offenses would be a
96 felony if committed by an adult.

97 (3) No child who has not reached his thirteenth birthday

98 shall be held criminally responsible or criminally prosecuted for
99 a misdemeanor or felony; however, the parent, guardian or
100 custodian of such child may be civilly liable for any criminal
101 acts of such child. No child under the jurisdiction of the youth
102 court shall be held criminally responsible or criminally
103 prosecuted by any court for any act designated as a delinquent
104 act, unless jurisdiction is transferred to another court under
105 Section 43-21-157.

106 (4) The youth court shall also have jurisdiction of offenses
107 committed by a child which have been transferred to the youth
108 court by an order of a circuit court of this state having original
109 jurisdiction of the offense, as provided by Section 43-21-159.

110 (5) The youth court shall regulate and approve the use of
111 teen court as provided in Section 43-21-753.

112 SECTION 3. This act shall take effect and be in force from
113 and after July 1, 1999.