SENATE BILL NO. 2756
(As Sent to Governor)

AN ACT TO AMEND SECTION 97-5-31, MISSISSIPPI CODE OF 1972, TO DEFINE AND CLARIFY CERTAIN TERMS; TO AMEND SECTION 97-5-33, MISSISSIPPI CODE OF 1972, TO INCLUDE THE USE OF COMPUTERS IN THE PROHIBITION OF EXPLOITATION OF CHILDREN; TO AMEND SECTION 97-5-35, MISSISSIPPI CODE OF 1972, TO REVISE PENALTIES; TO AMEND SECTION 97-45-1, MISSISSIPPI CODE OF 1972, TO DEFINE CERTAIN TERMS RELATED TO COMPUTER CRIMES; TO AMEND SECTION 97-45-3, MISSISSIPPI CODE OF 1972, TO REVISE COMPUTER FRAUD AND PENALTIES; TO CODIFY SECTION 97-45-15, MISSISSIPPI CODE OF 1972, TO CREATE THE OFFENSE OF CYBERSTALKING AND PRESCRIBE PENALTIES FOR VIOLATIONS; TO CODIFY SECTION 97-45-17, MISSISSIPPI CODE OF 1972, TO PROHIBIT POSTING CERTAIN MESSAGES THROUGH ELECTRONIC MEDIA AND PRESCRIBE PENALTIES FOR VIOLATIONS; TO CODIFY SECTION 97-45-19, MISSISSIPPI CODE OF 1972, TO PROHIBIT OBTAINING PERSONAL IDENTITY INFORMATION AND PRESCRIBE PENALTIES FOR VIOLATIONS; TO CODIFY SECTION 97-45-21, MISSISSIPPI CODE OF 1972, TO CLARIFY WHERE CRIMINAL ACTION MAY BE BROUGHT; TO CODIFY SECTION 97-45-23, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR INVESTIGATIONS AND PROSECUTIONS; TO CODIFY SECTION 97-45-25, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR ADDITIONAL PENALTIES; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 97-5-31, Mississippi Code of 1972, is amended as follows:

97-5-31. As used in Sections 97-5-33 through 97-5-37, the following words and phrases shall have the meanings given to them in this section:

(a) "Child" means any individual who has not attained the age of eighteen (18) years.

(b) "Sexually explicit conduct" means actual or simulated:

(i) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;

(ii) Bestiality;

(iii) Masturbation;

(iv) Sadistic or masochistic abuse;
(v) Lascivious exhibition of the genitals or pubic area of any person; or

(vi) Fondling or other erotic touching of the genitals, pubic area, buttocks, anus or breast.

(c) "Producing" means producing, directing, manufacturing, issuing, publishing or advertising.

(d) "Visual depiction" includes without limitation developed or undeveloped film and video tape or other visual unaltered reproductions by computer.

(e) "Computer" has the meaning given in Title 18, United States Code, Section 1030.

(f) "Simulated" means any depicting of the genitals or rectal areas that gives the appearance of sexual conduct or incipient sexual conduct.

SECTION 2. Section 97-5-33, Mississippi Code of 1972, is amended as follows:

97-5-33. (1) No person shall, by any means including computer, cause, solicit or knowingly permit any child to engage in sexually explicit conduct or in the simulation of sexually explicit conduct for the purpose of producing any visual depiction of such conduct.

(2) No person shall, by any means including computer, photograph, film, video tape or otherwise depict or record a child engaging in sexually explicit conduct or in the simulation of sexually explicit conduct.

(3) No person shall, by any means including computer, knowingly send, transport, transmit, ship, mail or receive any photograph, drawing, sketch, film, video tape or other visual depiction of an actual child engaging in sexually explicit conduct.

(4) No person shall, by any means including computer, receive with intent to distribute, distribute for sale, sell or attempt to sell in any manner any photograph, drawing, sketch,
(5) No person shall, by any means including computer, possess any photograph, drawing, sketch, film, video tape or other visual depiction of an actual child engaging in sexually explicit conduct.

(6) No person shall, by any means including computer, knowingly entice, induce, persuade, seduce, solicit, advise, coerce, or order a child to meet with the defendant or any other person for the purpose of engaging in sexually explicit conduct.

(7) The fact that an undercover operative or law enforcement officer was involved in the detection and investigation of an offense under this section shall not constitute a defense to a prosecution under this section.

(8) For purposes of determining jurisdiction, the offense is committed in this state if all or part of the conduct described in this section occurs in the State of Mississippi or if the transmission that constitutes the offense either originates in this state or is received in this state.

SECTION 3. Section 97-5-35, Mississippi Code of 1972, is amended as follows:

97-5-35. Any person who violates any provision of subsections (1) through (6) of Section 97-5-33 shall be guilty of a felony and upon conviction shall pay a fine of not * * * more than Fifty Thousand Dollars ($50,000.00) and shall be imprisoned for not less than two (2) years nor more than twenty (20) years, or by both such fine and imprisonment. Any person convicted of a second or subsequent violation of subsections (1) through (6) of Section 97-5-33 shall pay a fine of not more than One Hundred Thousand Dollars ($100,000.00) and shall be imprisoned not less than ten (10) years nor more than thirty (30) years, or by both such fine and imprisonment.
SECTION 4. Section 97-45-1, Mississippi Code of 1972, is amended as follows:
97-45-1. For the purposes of this chapter, the following words shall have the meanings ascribed herein unless the context clearly requires otherwise:
(a) "Access" means to program, to execute programs on, to communicate with, store data in, retrieve data from or otherwise make use of any resources, including data or programs, of a computer, computer system or computer network.
(b) "Computer" includes an electronic, magnetic, optical or other high-speed data processing device or system performing logical arithmetic and storage functions and includes any property, data storage facility or communications facility directly related to or operating in conjunction with such device or system. "Computer" shall not include an automated typewriter or typesetter, a machine designed solely for word processing which contains no database intelligence or a portable hand-held calculator nor shall "computer" include any other device which contains components similar to those in computers but in which the components have the sole function of controlling the device for the single purpose for which the device is intended unless the thus controlled device is a processor of data or is a storage of intelligence in which case it too is included.
(c) "Computer network" means a set of related, remotely connected devices and communication facilities including at least one (1) computer system with the capability to transmit data through communication facilities.
(d) "Computer program" means an ordered set of data representing coded instructions or statements that when executed by a computer cause the computer to process data.
(e) "Computer software" means a set of computer programs, procedures and associated documentation concerned with operation of a computer system.
(f) "Computer system" means a set of functionally related, connected or unconnected, computer equipment, devices or computer software.

(g) "Computer services" means providing access to or service or data from a computer, a computer system or a computer network and includes the actual data processing.

(h) "Credible threat" means a threat made with the intent and the apparent ability to carry out the threat so as to cause the person who is the target of the threat to reasonably fear for his or her safety.

(i) "Loss or damage" includes any reasonable cost to any victim, including the cost of responding to an offense, conducting a damage assessment, and restoring the data, program, system, or information to its condition prior to the offense, and any revenue lost, cost incurred or other consequential damages incurred because of interruption of service.

(j) "Device" includes, but is not limited to, an electronic, magnetic, electrochemical, biochemical, hydraulic, optical, or organic object that performs input, output, or storage functions by the manipulation of electronic, magnetic or other impulses.

(k) "Electronic communication" means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature, transmitted in whole or in part by a wire, radio, computer, electromagnetic, photoelectric or photo-optical system.

(l) "Electronic mail" means the transmission of information or communication by the use of the Internet, a computer, a facsimile machine, a pager, a cellular telephone, a video recorder or other electronic means sent to a person identified by a unique address or address number and received by that person.
(m) "Emotional distress" means significant mental suffering or distress that may, but does not necessarily, require medical or other professional treatment or counseling.

(n) "Financial instrument" means any check, draft, money order, certificate of deposit, letter of credit, bill of exchange, credit card as defined in Section 97-19-9(b), Mississippi Code of 1972, or marketable security.

(o) "Financial transaction device" means any of the following:

(i) An electronic funds transfer card.

(ii) A credit card.

(iii) A debit card.

(iv) A point-of-sale card.

(v) Any instrument, device, card, plate, code, account number, personal identification number, or a record or copy of a code, account number, or personal identification number or other means of access to a credit account or deposit account, or a driver's license or state identification card used to access a proprietary account, other than access originated solely by a paper instrument, that can be used alone or in conjunction with another access device, for any of the following purposes.

1. Obtaining money, cash refund or credit account credit, goods, services or any other thing of value.

2. Certifying or guaranteeing to a person or business the availability to the device holder of funds on deposit to honor a draft or check payable to the order of that person or business.

3. Providing the device holder access to a deposit account for the purpose of making deposits, withdrawing funds, transferring funds between deposit accounts, obtaining information pertaining to a deposit account or making an electronic funds transfer.
(p) "Intellectual property" includes data, computer programs, computer software, trade secrets, copyrighted materials and confidential or proprietary information in any form or medium when such is stored in, produced by or intended for use or storage with or in a computer, a computer system or a computer network.

(g) "Internet" means that term as defined in Section 230 of Title II of the Communications Act of 1934, Chapter 652, 110 Stat. 137, 47 USCS 230.

(r) "Medical records" includes, but is not limited to, medical and mental health histories, reports, summaries, diagnoses and prognoses, treatment and medication information, notes, entries, and x-rays and other imaging records.

(s) "Personal identity information" means any of the following information of another person:

(i) A social security number.

(ii) A driver's license number or state personal identification card number.

(iii) Employment information.

(iv) Information regarding any financial account held by another person including, but not limited to, any of the following:

1. A savings or checking account number.

2. A financial transaction device account number.

3. A stock or other security certificate or account number.

4. A personal information number for an account described in items 1 through 4.

(t) "Post a message" means transferring, sending, posting, publishing, disseminating, or otherwise communicating or attempting to transfer, send, post, publish, disseminate or otherwise communicate information, whether truthful or untruthful, about the victim.
(u) "Property" means property as defined in Section 1-3-45, Mississippi Code of 1972, and shall specifically include, but not be limited to, financial instruments, electronically stored or produced data and computer programs, whether in machine readable or human readable form.

(v) "Proper means" includes:

(i) Discovery by independent invention;

(ii) Discovery by "reverse engineering"; that is, by starting with the known product and working backward to find the method by which it was developed. The acquisition of the known product must be by lawful means;

(iii) Discovery under license or authority of the owner;

(iv) Observation of the property in public use or on public display; or

(v) Discovery in published literature.

(w) "Unconsented contact" means any contact with another individual that is initiated or continued without that individual's consent or in disregard of that individual's expressed desire that the contact be avoided or discontinued. Unconsented contact includes any of the following:

(i) Following or appearing within sight of the victim.

(ii) Approaching or confronting the victim in a public place or on private property.

(iii) Appearing at the victim's workplace or residence.

(iv) Entering onto or remaining on property owned, leased or occupied by the victim.

(v) Contacting the victim by telephone.

(vi) Sending mail or electronic communications to the victim through the use of any medium, including the Internet.
or a computer, computer program, computer system or computer network.

(vii) Placing an object on, or delivering or having delivered an object to, property owned, leased or occupied by the victim.

(x) "Use" means to make use of, to convert to one's service, to avail oneself of or to employ. In the context of this act, "use" includes to instruct, communicate with, store data in or retrieve data from, or otherwise utilize the logical arithmetic or memory functions of a computer.

(y) "Victim" means the individual who is the target of the conduct elicited by the posted message or a member of that individual's immediate family.

SECTION 5. Section 97-45-3, Mississippi Code of 1972, is amended as follows:

97-45-3. (1) Computer fraud is the accessing or causing to be accessed of any computer, computer system, computer network or any part thereof with the intent to:

(a) Defraud; * * *

(b) Obtain money, property or services by means of false or fraudulent conduct, practices or representations; or through the false or fraudulent alteration, deletion or insertion of programs or data; or

(c) Insert or attach or knowingly create the opportunity for an unknowing and unwanted insertion or attachment of a set of instructions or a computer program into a computer program, computer, computer system, or computer network, that is intended to acquire, alter, damage, delete, disrupt, or destroy property or otherwise use the services of a computer program, computer, computer system or computer network.

(2) Whoever commits the offense of computer fraud shall be punished, upon conviction, by a fine of not more than One Thousand Dollars ($1,000.00), or by imprisonment for not more than six (6)
months, or by both such fine and imprisonment. However, when the
damage or loss or attempted damage or loss amounts to a value of
Five Hundred Dollars ($500.00) or more, the offender may be
punished, upon conviction, by a fine of not more than Ten Thousand
Dollars ($10,000.00) or by imprisonment for not more than five (5)
years, or by both such fine and imprisonment.

SECTION 6. The following shall be codified as Section
97-45-15, Mississippi Code of 1972:

(1) It is unlawful for a person to:

(a) Use in electronic mail or electronic communication
any words or language threatening to inflict bodily harm to any
person or to that person's child, sibling, spouse or dependent, or
physical injury to the property of any person, or for the purpose
of extorting money or other things of value from any person.

(b) Electronically mail or electronically communicate
to another repeatedly, whether or not conversation ensues, for the
purpose of threatening, terrifying or harassing any person.

(c) Electronically mail or electronically communicate
to another and to knowingly make any false statement concerning
death, injury, illness, disfigurement, indecent conduct, or
criminal conduct of the person electronically mailed or of any
member of the person's family or household with the intent to
threaten, terrify or harass.

(d) Knowingly permit an electronic communication device
under the person's control to be used for any purpose prohibited
by this section.

(2) Whoever commits the offense of cyberstalking shall be
punished, upon conviction:

(a) Except as provided herein, the person is guilty of
a felony punishable by imprisonment for not more than two (2)
years or a fine of not more than Five Thousand Dollars
($5,000.00), or both.
(b) If any of the following apply, the person is guilty of a felony punishable by imprisonment for not more than five (5) years or a fine of not more than Ten Thousand Dollars ($10,000.00), or both:

(i) The offense is in violation of a restraining order and the person has received actual notice of that restraining order or posting the message is in violation of an injunction or preliminary injunction.

(ii) The offense is in violation of a condition of probation, a condition of parole, a condition of pretrial release or a condition of release on bond pending appeal.

(iii) The offense results in a credible threat being communicated to the victim, a member of the victim's family, or another individual living in the same household as the victim.

(iv) The person has been previously convicted of violating this section or a substantially similar law of another state, a political subdivision of another state, or of the United States.

(3) This section does not apply to any peaceable, nonviolent, or nonthreatening activity intended to express political views or to provide lawful information to others. This section shall not be construed to impair any constitutionally protected activity, including speech, protest or assembly.

SECTION 7. The following shall be codified as Section 97-45-17, Mississippi Code of 1972:

97-45-17. (1) A person shall not post a message for the purpose of causing injury to any person through the use of any medium of communication, including the Internet or a computer, computer program, computer system or computer network, or other electronic medium of communication without the victim's consent, for the purpose of causing injury to any person.

(2) A person who violates this section, upon conviction, shall be guilty of a felony punishable by imprisonment for not
more than five (5) years or a fine of not more than Ten Thousand Dollars ($10,000.00), or both.

SECTION 8. The following shall be codified as Section 97-45-19, Mississippi Code of 1972:

97-45-19. (1) A person shall not obtain or attempt to obtain personal identity information of another person with the intent to unlawfully use that information for any of the following purposes without that person's authorization:

(a) To obtain financial credit.
(b) To purchase or otherwise obtain or lease any real or personal property.
(c) To obtain employment.
(d) To obtain access to medical records or information contained in medical records.
(e) To commit any illegal act.

(2) A person who violates this section is guilty of a felony punishable by imprisonment for not more than five (5) years or a fine of not more than Ten Thousand Dollars ($10,000.00), or both.

(3) This section does not prohibit the person from being charged with, convicted of, or sentenced for any other violation of law committed by that person using information obtained in violation of this section.

(4) This section does not apply to a person who obtains or attempts to obtain personal identity information of another person pursuant to the discovery process of a civil action, an administrative proceeding or an arbitration proceeding.

SECTION 9. The following shall be codified as Section 97-45-21, Mississippi Code of 1972:

97-45-21. For purposes of bringing a criminal action under this chapter, a person who causes, by any means, the access of a computer, computer system or computer network in one jurisdiction from another jurisdiction is deemed to have personally accessed
the computer, computer system or computer network in each
jurisdiction.

SECTION 10. The following shall be codified as Section
97-45-23, Mississippi Code of 1972:

97-45-23. Prosecutions for violations under Title 97,
Chapter 45, or Section 97-5-33, may be instituted by the Attorney
General, his designee or the district attorney of the district in
which the violation occurred, and shall be conducted in the name
of the State of Mississippi. In the prosecution of any criminal
proceeding in accordance with this subsection by the Attorney
General, his designee, and in any proceeding before a grand jury
in connection therewith, the Attorney General, or his designee,
shall exercise all the powers and perform all the duties which the
district attorney would otherwise be authorized or required to
exercise or perform. The Attorney General, or his designee, shall
have the authority to issue and serve subpoenas in the
investigation of any matter which may violate Title 97, Chapter
45, or Section 97-5-33.

SECTION 11. The following shall be codified as Section
97-45-25, Mississippi Code of 1972:

97-45-25. In a proceeding for violations under Title 97,
Chapter 45, or Section 97-5-33, the court, in addition to the
criminal penalties imposed under this chapter, shall assess
against the defendant convicted of such violation double those
reasonable costs that are expended by the Office of Attorney
General, the district attorney's office, the sheriff's office or
police department involved in the investigation of such case,
including, but not limited to, the cost of investigators, software
and equipment utilized in the investigation, together with costs
associated with process service, court reporters and expert
witnesses. The Attorney General or district attorney may
institute and maintain proceedings in his name for enforcement of
payment in the circuit court of the county of residence of the
defendant and, if the defendant is a nonresident, such proceedings
shall be in the Circuit Court of the First Judicial District of
Hinds County, Mississippi. The Attorney General or district
attorney shall distribute the property or interest assessed under
this section as follows:

(a) Fifty percent (50%) shall be distributed to the
unit of state or local government whose officers or employees
conducted the investigation into computer fraud or child
exploitation which resulted in the arrest or arrests and
prosecution. Amounts distributed to units of local government
shall be used for training or enforcement purposes relating to
detection, investigation or prosecution of computer and financial
crimes, including computer fraud or child exploitation.

(b) Where the prosecution was maintained by the
district attorney, fifty percent (50%) shall be distributed to the
county in which the prosecution was instituted by the district
attorney and appropriated to the district attorney for use in
training or enforcement purposes relating to detection,
investigation or prosecution of computer and financial crimes,
including computer fraud or child exploitation. Where a
prosecution was maintained by the Attorney General, fifty percent
(50%) of the proceeds shall be paid or distributed into the
Attorney General's Cyber Crime Central. Where the Attorney
General and the district attorney have participated jointly in any
part of the proceedings, twenty-five percent (25%) of the property
forfeited shall be paid to the county in which the prosecution
occurred, and twenty-five percent (25%) shall be paid to the
Attorney General's Cyber Crime Central to be used for the purposes
as stated in this paragraph.

SECTION 12. If any provision of this act is held by a court
to be invalid, such invalidity shall not affect the remaining
provisions of this act, and to this end the provisions of this act
are declared severable.
SECTION 13. This act shall take effect and be in force from and after July 1, 2003.