

*****Adopted***
AMENDMENT No. 1 PROPOSED TO**

Senate Bill NO. 2756

By Representative(s) Committee

**Amend by striking all after the enacting clause and inserting
in lieu thereof the following:**

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

26 97-5-31. As used in Sections 97-5-33 through 97-5-37, the
27 following words and phrases shall have the meanings given to them
28 in this section:

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

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

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

36 (ii) Bestiality;

37 (iii) Masturbation;

38 (iv) Sadistic or masochistic abuse;

39 (v) Lascivious exhibition of the genitals or pubic
40 area of any person; or

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

43 (c) "Producing" means producing, directing,

44 manufacturing, issuing, publishing or advertising.

45 (d) "Visual depiction" includes without limitation
46 developed or other visual unaltered reproductions by computer.

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

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

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

54 97-5-33. (1) No person shall, by any means including
55 computer, cause, solicit or knowingly permit any child to engage
56 in sexually explicit conduct or in the simulation of sexually
57 explicit conduct for the purpose of producing any visual depiction
58 of such conduct.

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

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

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

73 (5) No person shall, by any means including computer,
74 possess any photograph, drawing, sketch, film, video tape or other
75 visual depiction of an actual child engaging in sexually explicit
76 conduct.

77 (6) No person shall, by any means including computer,
78 knowingly entice, induce, persuade, seduce, solicit, advise,

79 coerce, or order a child to meet with the defendant or any other
80 person for the purpose of engaging in sexually explicit conduct.

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

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

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

92 97-5-35. Any person who violates any provision of
93 subsections (1) through (6) of Section 97-5-33 shall be guilty of
94 a felony and upon conviction shall pay a fine of not * * * more
95 than Fifty Thousand Dollars (\$50,000.00) and shall be imprisoned
96 for not less than two (2) years nor more than twenty (20) years,
97 or by both such fine and imprisonment. Any person convicted of a
98 second or subsequent violation of subsections (1) through (6) of
99 Section 97-5-33 shall pay a fine of not more than One Hundred
100 Thousand Dollars (\$100,000.00) and shall be imprisoned not less
101 than ten (10) years nor more than thirty (30) years, or by both
102 such fine and imprisonment.

103 **SECTION 4.** Section 97-45-1, Mississippi Code of 1972, is
104 amended as follows:

105 97-45-1. For the purposes of this chapter, the following
106 words shall have the meanings ascribed herein unless the context
107 clearly requires otherwise:

108 (a) "Access" means to program, to execute programs on,
109 to communicate with, store data in, retrieve data from or
110 otherwise make use of any resources, including data or programs,
111 of a computer, computer system or computer network.

112 (b) "Computer" includes an electronic, magnetic,
113 optical or other high-speed data processing device or system

114 performing logical arithmetic and storage functions and includes
115 any property, data storage facility or communications facility
116 directly related to or operating in conjunction with such device
117 or system. "Computer" shall not include an automated typewriter
118 or typesetter, a machine designed solely for word processing which
119 contains no data base intelligence or a portable hand-held
120 calculator nor shall "computer" include any other device which
121 contains components similar to those in computers but in which the
122 components have the sole function of controlling the device for
123 the single purpose for which the device is intended unless the
124 thus controlled device is a processor of data or is a storage of
125 intelligence in which case it too is included.

126 (c) "Computer network" means a set of related, remotely
127 connected devices and communication facilities including at least
128 one (1) computer system with the capability to transmit data
129 through communication facilities.

130 (d) "Computer program" means an ordered set of data
131 representing coded instructions or statements that when executed
132 by a computer cause the computer to process data.

133 (e) "Computer software" means a set of computer
134 programs, procedures and associated documentation concerned with
135 operation of a computer system.

136 (f) "Computer system" means a set of functionally
137 related, connected or unconnected, computer equipment, devices or
138 computer software.

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

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

146 (i) "Loss or damage" includes any reasonable cost to
147 any victim, including the cost of responding to an offense,
148 conducting a damage assessment, and restoring the data, program,

149 system, or information to its condition prior to the offense, and
150 any revenue lost, cost incurred or other consequential damages
151 incurred because of interruption of service.

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

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

161 (l) "Electronic mail" means the transmission of
162 information or communication by the use of the Internet, a
163 computer, a facsimile machine, a pager, a cellular telephone, a
164 video recorder or other electronic means sent to a person
165 identified by a unique address or address number and received by
166 that person.

167 (m) "Emotional distress" means significant mental
168 suffering or distress that may, but does not necessarily, require
169 medical or other professional treatment or counseling.

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

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

176 (i) An electronic funds transfer card.

177 (ii) A credit card.

178 (iii) A debit card.

179 (iv) A point-of-sale card.

180 (v) Any instrument, device, card, plate, code,
181 account number, personal identification number, or a record or
182 copy of a code, account number, or personal identification number
183 or other means of access to a credit account or deposit account,

184 or a driver's license or state identification card used to access
185 a proprietary account, other than access originated solely by a
186 paper instrument, that can be used alone or in conjunction with
187 another access device, for any of the following purposes.

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

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

194 3. Providing the device holder access to a
195 deposit account for the purpose of making deposits, withdrawing
196 funds, transferring funds between deposit accounts, obtaining
197 information pertaining to a deposit account or making an
198 electronic funds transfer.

199 (p) "Intellectual property" includes data, computer
200 programs, computer software, trade secrets, copyrighted materials
201 and confidential or proprietary information in any form or medium
202 when such is stored in, produced by or intended for use or storage
203 with or in a computer, a computer system or a computer network.

204 (q) "Internet" means that term as defined in Section
205 230 of Title II of the Communications Act of 1934, Chapter 652,
206 110 Stat. 137, 47 USCS 230.

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

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

213 (i) A social security number.

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

216 (iii) Employment information.

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

219 following:

220 1. A savings or checking account number.

221 2. A financial transaction device account
222 number.

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

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

227 (t) "Post a message" means transferring, sending,
228 posting, publishing, disseminating, or otherwise communicating or
229 attempting to transfer, send, post, publish, disseminate or
230 otherwise communicate information, whether truthful or untruthful,
231 about the victim.

232 (u) "Property" means property as defined in Section
233 1-3-45, Mississippi Code of 1972, and shall specifically include,
234 but not be limited to, financial instruments, electronically
235 stored or produced data and computer programs, whether in machine
236 readable or human readable form.

237 (v) "Proper means" includes:

238 (i) Discovery by independent invention;

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

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

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

247 (v) Discovery in published literature.

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

252 Unconsented contact includes any of the following:

253 (i) Following or appearing within sight of the

254 victim.

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

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

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

261 (v) Contacting the victim by telephone.

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

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

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

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

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

279 97-45-3. (1) Computer fraud is the accessing or causing to
280 be accessed of any computer, computer system, computer network or
281 any part thereof with the intent to:

282 (a) Defraud; * * *

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

287 (c) Insert or attach or knowingly create the
288 opportunity for an unknowing and unwanted insertion or attachment

289 of a set of instructions or a computer program into a computer
290 program, computer, computer system, or computer network, that is
291 intended to acquire, alter, damage, delete, disrupt, or destroy
292 property or otherwise use the services of a computer program,
293 computer, computer system or computer network.

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

303 **SECTION 6.** The following shall be codified as Section
304 97-45-15, Mississippi Code of 1972:

305 97-45-15. (1) It is unlawful for a person to:

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

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

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

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

323 (2) Whoever commits the offense of cyberstalking shall be

324 punished, upon conviction:

325 (a) Except as provided herein, the person is guilty of
326 a felony punishable by imprisonment for not more than two (2)
327 years or a fine of not more than Five Thousand Dollars
328 (\$5,000.00), or both.

329 (b) If any of the following apply, the person is guilty
330 of a felony punishable by imprisonment for not more than five (5)
331 years or a fine of not more than Ten Thousand Dollars
332 (\$10,000.00), or both:

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

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

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

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

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

352 **SECTION 7.** The following shall be codified as Section
353 97-45-17, Mississippi Code of 1972:

354 97-45-17. (1) A person shall not post a message through the
355 use of any medium of communication, including the Internet or a
356 computer, computer program, computer system or computer network,
357 or other electronic medium of communication, without the victim's
358 consent, for the purpose of causing injury to any person.

359 (2) Whoever commits the offense contained within this
360 section shall, upon conviction, be guilty of a felony punishable
361 by imprisonment for not more than five (5) years or a fine of not
362 more than Ten Thousand Dollars (\$10,000.00), or both.

363 **SECTION 8.** The following shall be codified as Section
364 97-45-19, Mississippi Code of 1972:

365 97-45-19. (1) A person shall not obtain or attempt to
366 obtain personal identity information of another person with the
367 intent to unlawfully use that information for any of the following
368 purposes without that person's authorization:

369 (a) To obtain financial credit.

370 (b) To purchase or otherwise obtain or lease any real
371 or personal property.

372 (c) To obtain employment.

373 (d) To obtain access to medical records or information
374 contained in medical records.

375 (e) To commit any illegal act.

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

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

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

387 **SECTION 9.** The following shall be codified as Section
388 97-45-21, Mississippi Code of 1972:

389 97-45-21. For purposes of bringing a criminal action under
390 this chapter, a person who causes, by any means, the access of a
391 computer, computer system or computer network in one jurisdiction
392 from another jurisdiction is deemed to have personally accessed
393 the computer, computer system or computer network in each

394 jurisdiction.

395 **SECTION 10.** The following shall be codified as Section
396 97-45-23, Mississippi Code of 1972:

397 97-45-23. Prosecutions for violations under Title 97,
398 Chapter 45, or Section 97-5-33, may be instituted by the Attorney
399 General, his designee or the district attorney of the district in
400 which the violation occurred, and shall be conducted in the name
401 of the State of Mississippi. In the prosecution of any criminal
402 proceeding in accordance with this subsection by the Attorney
403 General, his designee, and in any proceeding before a grand jury
404 in connection therewith, the Attorney General, or his designee,
405 shall exercise all the powers and perform all the duties which the
406 district attorney would otherwise be authorized or required to
407 exercise or perform. The Attorney General, or his designee, shall
408 have the authority to issue and serve subpoenas in the
409 investigation of any matter which may violate Title 97, Chapter
410 45, or Section 97-5-33.

411 **SECTION 11.** The following shall be codified as Section
412 97-45-25, Mississippi Code of 1972:

413 97-45-25. In a proceeding for violations under Title 97,
414 Chapter 45, or Section 97-5-33, the court, in addition to the
415 criminal penalties imposed under this chapter, shall assess
416 against the defendant convicted of such violation double those
417 reasonable costs that are expended by the Office of Attorney
418 General, the district attorney's office, the sheriff's office or
419 police department involved in the investigation of such case,
420 including, but not limited to, the cost of investigators, software
421 and equipment utilized in the investigation, together with costs
422 associated with process service, court reporters and expert
423 witnesses. The Attorney General or district attorney may
424 institute and maintain proceedings in his name for enforcement of
425 payment in the circuit court of the county of residence of the
426 defendant and, if the defendant is a nonresident, such proceedings
427 shall be in the Circuit Court of the First Judicial District of
428 Hinds County, Mississippi. The Attorney General or district

429 attorney shall distribute the property or interest assessed under
430 this section as follows:

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

439 (b) Where the prosecution was maintained by the
440 district attorney, fifty percent (50%) shall be distributed to the
441 county in which the prosecution was instituted by the district
442 attorney and appropriated to the district attorney for use in
443 training or enforcement purposes relating to detection,
444 investigation or prosecution of computer and financial crimes,
445 including computer fraud or child exploitation. Where a
446 prosecution was maintained by the Attorney General, fifty percent
447 (50%) of the proceeds shall be paid or distributed into the
448 Attorney General's Cyber Crime Unit. Where the Attorney General
449 and the district attorney have participated jointly in any part of
450 the proceedings, twenty-five percent (25%) of the property
451 forfeited shall be paid to the county in which the prosecution
452 occurred, and twenty-five percent (25%) shall be paid to the
453 Attorney General's Cyber Crime Unit to be used for the purposes as
454 stated in this paragraph.

455 **SECTION 12.** It is unlawful to transmit any sexually explicit
456 materials through the use of any medium of communication,
457 including the Internet or a computer, computer program, computer
458 system or computer network or other electronic medium of
459 communication to any person who has not requested such materials.

460 Any person who violates the provisions of this section shall,
461 upon conviction, be guilty of a misdemeanor punishable by
462 imprisonment for not more than one (1) year in the county jail or
463 by a fine of not more than One Thousand Dollars (\$1,000.00), or

464 both.

465 **SECTION 13.** Nothing in this act shall limit, restrict or
466 affect any civil cause of action of any person.

467 **SECTION 14.** If any provision of this act is held by a court
468 to be invalid, such invalidity shall not affect the remaining
469 provisions of this act, and to this end the provisions of this act
470 are declared severable.

471 **SECTION 15.** This act shall take effect and be in force from
472 and after July 1, 2003.

**Further, amend by striking the title in its entirety and
inserting in lieu thereof the following:**

1 AN ACT TO AMEND SECTION 97-5-31, MISSISSIPPI CODE OF 1972, TO
2 DEFINE AND CLARIFY CERTAIN TERMS; TO AMEND SECTION 97-5-33,
3 MISSISSIPPI CODE OF 1972, TO INCLUDE THE USE OF COMPUTERS IN THE
4 PROHIBITION OF EXPLOITATION OF CHILDREN; TO AMEND SECTION 97-5-35,
5 MISSISSIPPI CODE OF 1972, TO REVISE PENALTIES; TO AMEND SECTION
6 97-45-1, MISSISSIPPI CODE OF 1972, TO DEFINE CERTAIN TERMS RELATED
7 TO COMPUTER CRIMES; TO AMEND SECTION 97-45-3, MISSISSIPPI CODE OF
8 1972, TO REVISE COMPUTER FRAUD AND PENALTIES; TO CODIFY SECTION
9 97-45-15, MISSISSIPPI CODE OF 1972, TO CREATE THE OFFENSE OF
10 CYBERSTALKING AND PRESCRIBE PENALTIES FOR VIOLATIONS; TO CODIFY
11 SECTION 97-45-17, MISSISSIPPI CODE OF 1972, TO PROHIBIT POSTING
12 CERTAIN MESSAGES THROUGH ELECTRONIC MEDIUM AND PRESCRIBE PENALTIES
13 FOR VIOLATIONS; TO CODIFY SECTION 97-45-19, MISSISSIPPI CODE OF
14 1972, TO PROHIBIT OBTAINING PERSONAL IDENTITY INFORMATION AND
15 PRESCRIBE PENALTIES FOR VIOLATIONS; TO CODIFY SECTION 97-45-21,
16 MISSISSIPPI CODE OF 1972, TO CLARIFY WHERE CRIMINAL ACTION MAY BE
17 BROUGHT; TO CODIFY SECTION 97-45-23, MISSISSIPPI CODE OF 1972, TO
18 PROVIDE FOR INVESTIGATIONS AND PROSECUTIONS; TO CODIFY SECTION
19 97-45-25, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR ADDITIONAL
20 PENALTIES; TO PROHIBIT THE TRANSMISSION OF UNREQUESTED SEXUALLY
21 EXPLICIT MATERIALS AND PRESCRIBE PENALTIES FOR VIOLATIONS; AND FOR
22 RELATED PURPOSES.