

By: Senator(s) Burton

To: Judiciary, Division B

SENATE BILL NO. 2404

1 AN ACT TO AMEND SECTION 97-3-95, MISSISSIPPI CODE OF 1972, TO
 2 REVISE THE OFFENSE OF SEXUAL BATTERY TO INCLUDE CONSENSUAL SEX
 3 WITH A VULNERABLE ADULT BY HEALTH CARE EMPLOYEES WHO ARE NOT
 4 MARRIED TO THE VULNERABLE ADULT; TO AMEND SECTION 97-5-23,
 5 MISSISSIPPI CODE OF 1972, TO REVISE THE OFFENSE OF FONDLING TO
 6 INCLUDE CONSENSUAL SEXUAL ACTIVITY WITH A VULNERABLE ADULT BY
 7 HEALTH CARE EMPLOYEES WHO ARE NOT MARRIED TO THE VULNERABLE ADULT;
 8 AND FOR RELATED PURPOSES.

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

10 **SECTION 1.** Section 97-3-95, Mississippi Code of 1972, is
 11 amended as follows:

12 97-3-95. (1) A person is guilty of sexual battery if he or
 13 she engages in sexual penetration with:

14 (a) Another person without his or her consent;

15 (b) A mentally defective, mentally incapacitated or
 16 physically helpless person;

17 (c) A child at least fourteen (14) but under sixteen
 18 (16) years of age, if the person is thirty-six (36) or more months
 19 older than the child; or

20 (d) A child under the age of fourteen (14) years of
 21 age, if the person is twenty-four (24) or more months older than
 22 the child.

23 (2) A person is guilty of sexual battery if he or she
 24 engages in sexual penetration with a child under the age of
 25 eighteen (18) years if the person is in a position of trust or
 26 authority over the child including without limitation the child's
 27 teacher, counselor, physician, psychiatrist, psychologist,
 28 minister, priest, physical therapist, chiropractor, legal
 29 guardian, parent, stepparent, aunt, uncle, scout leader or coach.

30 (3) A person who engages in sexual penetration with a
31 vulnerable adult, as defined by Section 43-47-5, is guilty of
32 sexual battery if the person is not the vulnerable adult's spouse
33 and is an employee of or contracted to work for a health care
34 facility in which the vulnerable adult is a patient or resident.

35 (4) A person who engages in sexual penetration with a
36 vulnerable adult, as defined by Section 43-47-5, is guilty of
37 sexual battery if the person is not the vulnerable adult's spouse
38 and if the person is in a position of trust or authority over the
39 vulnerable adult, including, without limitation, the vulnerable
40 adult's teacher, counselor, physician, psychiatrist, psychologist,
41 nurse, certified nursing assistant, direct care worker, technical
42 assistant, minister, priest, physical therapist, chiropractor,
43 legal guardian, parent, stepparent or conservator.

44 **SECTION 2.** Section 97-5-23, Mississippi Code of 1972, is
45 amended as follows:

46 97-5-23. (1) Any person above the age of eighteen (18)
47 years, who, for the purpose of gratifying his or her lust, or
48 indulging his or her depraved licentious sexual desires, shall
49 handle, touch or rub with hands or any part of his or her body or
50 any member thereof, any child under the age of sixteen (16) years,
51 with or without the child's consent, or a mentally defective,
52 mentally incapacitated or physically helpless person as defined in
53 Section 97-3-97, shall be guilty of a felony and, upon conviction
54 thereof, shall be fined in a sum not less than One Thousand
55 Dollars (\$1,000.00) nor more than Five Thousand Dollars
56 (\$5,000.00), or be committed to the custody of the Mississippi
57 Department of Corrections not less than two (2) years nor more
58 than fifteen (15) years, or be punished by both such fine and
59 imprisonment, at the discretion of the court.

60 (2) Any person above the age of eighteen (18) years, who,
61 for the purpose of gratifying his or her lust, or indulging his or
62 her depraved licentious sexual desires, shall handle, touch or rub

63 with hands or any part of his or her body or any member thereof,
64 any child younger than himself or herself and under the age of
65 eighteen (18) years who is not such person's spouse, with or
66 without the child's consent, when the person occupies a position
67 of trust or authority over the child shall be guilty of a felony
68 and, upon conviction thereof, shall be fined in a sum not less
69 than One Thousand Dollars (\$1,000.00) nor more than Five Thousand
70 Dollars (\$5,000.00), or be committed to the custody of the
71 Mississippi Department of Corrections not less than two (2) years
72 nor more than fifteen (15) years, or be punished by both such fine
73 and imprisonment, at the discretion of the court. A person in a
74 position of trust or authority over a child includes without
75 limitation a child's teacher, counselor, physician, psychiatrist,
76 psychologist, minister, priest, physical therapist, chiropractor,
77 legal guardian, parent, stepparent, aunt, uncle, scout leader or
78 coach.

79 (3) Any person who, for the purpose of gratifying his or her
80 lust, or indulging his or her depraved licentious sexual desires,
81 shall handle, touch or rub with hands or any part of his or her
82 body or any member thereof, any vulnerable adult, as defined by
83 Section 43-47-5, who is not the vulnerable adult's spouse, with or
84 without the vulnerable adult's consent, when the person is an
85 employee of or contracted to work for a health care facility in
86 which the vulnerable adult is a patient or a resident shall be
87 guilty of a felony and, upon conviction thereof, shall be fined in
88 a sum not less than One Thousand Dollars (\$1,000.00) nor more than
89 Five Thousand Dollars (\$5,000.00), or be committed to the custody
90 of the Department of Corrections not less than two (2) nor more
91 than fifteen (15) years, or be punished by both fine and
92 imprisonment, at the discretion of the court.

93 (4) Any person who, for the purpose of gratifying his or her
94 lust, or indulging his or her depraved licentious sexual desires,
95 shall handle, touch or rub with hands or any part of his or her

96 body or any member thereof, any vulnerable adult, as defined by
97 Section 43-47-5, who is not the vulnerable adult's spouse, with or
98 without the vulnerable adult's consent, when the person occupies a
99 position of trust or authority over the vulnerable adult shall be
100 guilty of a felony and, upon conviction thereof, shall be fined in
101 a sum not less than One Thousand Dollars (\$1,000.00) nor more than
102 Five Thousand Dollars (\$5,000.00), or be committed to the custody
103 of the Department of Corrections not less than two (2) nor more
104 than fifteen (15) years, or be punished by both fine and
105 imprisonment, at the discretion of the court. A person in a
106 position of trust or authority over a vulnerable adult includes
107 without limitation the vulnerable adult's teacher, counselor,
108 physician, psychiatrist, psychologist, nurse, certified nursing
109 assistant, direct care worker, technical assistant, minister,
110 priest, physical therapist, chiropractor, legal guardian, parent,
111 stepparent or conservator.

112 (5) Upon a second conviction for an offense under this
113 section, the person so convicted shall be punished by commitment
114 to the Mississippi Department of Corrections for a term not to
115 exceed twenty (20) years, however, upon conviction and sentencing,
116 the offender shall serve at least one-half (1/2) of the sentence
117 so imposed.

118 **SECTION 3.** This act shall take effect and be in force from
119 and after July 1, 2004.