

By: Representatives Lott, Gunn, Baker (8th), Staples, Mims, Formby, Fillingane, Beckett, Davis, Jennings, Aldridge, Ellington, Akins, Barnett, Moore, Bounds, Stevens, Mayhall, Turner, Martinson, Hamilton (6th)

To: Judiciary B

## HOUSE BILL NO. 424

1 AN ACT TO AMEND SECTIONS 97-3-53, 97-3-65, 97-3-79, 97-3-101  
2 AND 97-7-67, MISSISSIPPI CODE OF 1972, TO REVISE THE PENALTY OF  
3 LIFE IMPRISONMENT TO LIFE WITHOUT PAROLE FOR CERTAIN OFFENSES; TO  
4 AMEND SECTION 47-7-3, MISSISSIPPI CODE OF 1972, IN CONFORMITY  
5 THERETO; AND FOR RELATED PURPOSES.

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

7 **SECTION 1.** Section 97-3-53, Mississippi Code of 1972, is  
8 amended as follows:

9 97-3-53. Any person who, without lawful authority and with  
10 or without intent to secretly confine, shall forcibly seize and  
11 confine any other person, or shall inveigle or kidnap any other  
12 person with intent to cause such person to be confined or  
13 imprisoned against his or her will, or without lawful authority  
14 shall forcibly seize, inveigle or kidnap any child under the age  
15 of sixteen (16) years against the will of the parents or guardian  
16 or person having the lawful custody of the child, upon conviction  
17 shall be imprisoned for life without parole in the custody of the  
18 Department of Corrections if the punishment is so fixed by the  
19 jury in its verdict. If the jury fails to agree on fixing the  
20 penalty at imprisonment for life without parole, the court shall  
21 fix the penalty at not less than one (1) year nor more than thirty  
22 (30) years in the custody of the Department of Corrections.

23 This section shall not be held to repeal, modify or amend any  
24 other criminal statute of this state.

25 **SECTION 2.** Section 97-3-65, Mississippi Code of 1972, is  
26 amended as follows:

27 97-3-65. (1) The crime of statutory rape is committed when:

28           (a) Any person seventeen (17) years of age or older has  
29 sexual intercourse with a child who:

30                 (i) Is at least fourteen (14) but under sixteen  
31 (16) years of age;

32                 (ii) Is thirty-six (36) or more months younger  
33 than the person; and

34                 (iii) Is not the person's spouse; or

35           (b) A person of any age has sexual intercourse with a  
36 child who:

37                 (i) Is under the age of fourteen (14) years;

38                 (ii) Is twenty-four (24) or more months younger  
39 than the person; and

40                 (iii) Is not the person's spouse.

41           (2) Neither the victim's consent nor the victim's lack of  
42 chastity is a defense to a charge of statutory rape.

43           (3) Upon conviction for statutory rape, the defendant shall  
44 be sentenced as follows:

45                 (a) If eighteen (18) years of age or older, but under  
46 twenty-one (21) years of age, and convicted under paragraph (1)(a)  
47 of this section, to imprisonment for not more than five (5) years  
48 in the State Penitentiary or a fine of not more than Five Thousand  
49 Dollars (\$5,000.00), or both;

50                 (b) If twenty-one (21) years of age or older and  
51 convicted under paragraph (1)(a) of this section, to imprisonment  
52 of not more than thirty (30) years in the State Penitentiary or a  
53 fine of not more than Ten Thousand Dollars (\$10,000.00), or both,  
54 for the first offense, and not more than forty (40) years in the  
55 State Penitentiary for each subsequent offense;

56                 (c) If eighteen (18) years of age or older and  
57 convicted under paragraph (1)(b) of this section, to imprisonment  
58 for life without parole in the State Penitentiary or such lesser  
59 term of imprisonment as the court may determine, but not less than  
60 twenty (20) years.

61           (d) If thirteen (13) years of age or older but under  
62 eighteen (18) years of age and convicted under paragraph (1)(a) or  
63 (1)(b) of this section, such imprisonment, fine or other sentence  
64 as the court, in its discretion, may determine.

65           (4) (a) Every person who shall have forcible sexual  
66 intercourse with any person, or who shall have sexual intercourse  
67 not constituting forcible sexual intercourse or statutory rape  
68 with any person without that person's consent by administering to  
69 such person any substance or liquid which shall produce such  
70 stupor or such imbecility of mind or weakness of body as to  
71 prevent effectual resistance, upon conviction, shall be imprisoned  
72 for life without parole in the State Penitentiary if the jury by  
73 its verdict so prescribes; and in cases where the jury fails to  
74 fix the penalty at life imprisonment, the court shall fix the  
75 penalty at imprisonment in the State Penitentiary for any term as  
76 the court, in its discretion, may determine.

77           (b) This subsection (4) shall apply whether the  
78 perpetrator is married to the victim or not.

79           (5) In all cases where a victim is under the age of sixteen  
80 (16) years, it shall not be necessary to prove penetration where  
81 it is shown the genitals, anus or perineum of the child have been  
82 lacerated or torn in the attempt to have sexual intercourse with  
83 the child.

84           (6) For the purposes of this section, "sexual intercourse"  
85 shall mean a joining of the sexual organs of a male and female  
86 human being in which the penis of the male is inserted into the  
87 vagina of the female.

88           **SECTION 3.** Section 97-3-79, Mississippi Code of 1972, is  
89 amended as follows:

90           97-3-79. Every person who shall feloniously take or attempt  
91 to take from the person or from the presence the personal property  
92 of another and against his will by violence to his person or by  
93 putting such person in fear of immediate injury to his person by

94 the exhibition of a deadly weapon shall be guilty of robbery and,  
95 upon conviction, shall be imprisoned for life without parole in  
96 the State Penitentiary if the penalty is so fixed by the jury; and  
97 in cases where the jury fails to fix the penalty at imprisonment  
98 for life without parole in the State Penitentiary the court shall  
99 fix the penalty at imprisonment in the State penitentiary for any  
100 term not less than three (3) years.

101 **SECTION 4.** Section 97-3-101, Mississippi Code of 1972, is  
102 amended as follows:

103 97-3-101. (1) Every person who shall be convicted of sexual  
104 battery under Section 97-3-95(1)(a), (b), or (2) shall be  
105 imprisoned in the State Penitentiary for a period of not more than  
106 thirty (30) years, and for a second or subsequent such offense  
107 shall be imprisoned in the Penitentiary for not more than forty  
108 (40) years.

109 (2) (a) Every person who shall be convicted of sexual  
110 battery under Section 97-3-95(1)(c) who is at least eighteen (18)  
111 but under twenty-one (21) years of age shall be imprisoned for not  
112 more than five (5) years in the State Penitentiary or fined not  
113 more than Five Thousand Dollars (\$5,000.00), or both;

114 (b) Every person who shall be convicted of sexual  
115 battery under Section 97-3-95(1)(c) who is twenty-one (21) years  
116 of age or older shall be imprisoned not more than thirty (30)  
117 years in the State Penitentiary or fined not more than Ten  
118 Thousand Dollars (\$10,000.00), or both, for the first offense, and  
119 not more than forty (40) years in the State Penitentiary for each  
120 subsequent offense.

121 (3) Every person who shall be convicted of sexual battery  
122 under Section 97-3-95(1)(d) who is eighteen (18) years of age or  
123 older shall be imprisoned for life without parole in the State  
124 Penitentiary or such lesser term of imprisonment as the court may  
125 determine, but not less than twenty (20) years.

126           (4) Every person who shall be convicted of sexual battery  
127 who is thirteen (13) years of age or older but under eighteen (18)  
128 years of age shall be sentenced to such imprisonment, fine or  
129 other sentence as the court, in its discretion, may determine.

130           **SECTION 5.** Section 97-7-67, Mississippi Code of 1972, is  
131 amended as follows:

132           97-7-67. If any person shall levy war against this state, or  
133 adhere to its enemies, giving them aid and comfort, he shall be  
134 guilty of treason, and, shall, upon conviction, suffer death or  
135 imprisonment for life without parole in the State Penitentiary.

136           **SECTION 6.** Section 47-7-3, Mississippi Code of 1972, is  
137 amended as follows:

138           47-7-3. (1) Every prisoner who has been convicted of any  
139 offense against the State of Mississippi, and is confined in the  
140 execution of a judgment of such conviction in the Mississippi  
141 State Penitentiary for a definite term or terms of one (1) year or  
142 over, or for the term of his or her natural life, whose record of  
143 conduct shows that such prisoner has observed the rules of the  
144 Penitentiary, and who has served not less than one-fourth (1/4) of  
145 the total of such term or terms for which such prisoner was  
146 sentenced, or, if sentenced to serve a term or terms of thirty  
147 (30) years or more, or, if sentenced for the term of the natural  
148 life of such prisoner, has served not less than ten (10) years of  
149 such life sentence, may be released on parole as hereinafter  
150 provided, except that:

151           (a) No prisoner convicted as a confirmed and habitual  
152 criminal under the provisions of Sections 99-19-81 through  
153 99-19-87 shall be eligible for parole;

154           (b) Any person who shall have been convicted of a sex  
155 crime shall not be released on parole except for a person under  
156 the age of nineteen (19) who has been convicted under Section  
157 97-3-67;

158           (c) No one shall be eligible for parole until he shall  
159 have served one (1) year of his sentence, unless such person has  
160 accrued any meritorious earned time allowances, in which case he  
161 shall be eligible for parole if he has served (i) nine (9) months  
162 of his sentence or sentences, when his sentence or sentences is  
163 two (2) years or less; (ii) ten (10) months of his sentence or  
164 sentences when his sentence or sentences is more than two (2)  
165 years but no more than five (5) years; and (iii) one (1) year of  
166 his sentence or sentences when his sentence or sentences is more  
167 than five (5) years;

168           (d) (i) No person shall be eligible for parole who  
169 shall, on or after January 1, 1977, be convicted of robbery or  
170 attempted robbery through the display of a firearm until he shall  
171 have served ten (10) years if sentenced to a term or terms of more  
172 than ten (10) years or if sentenced for the term of the natural  
173 life of such person. If such person is sentenced to a term or  
174 terms of ten (10) years or less, then such person shall not be  
175 eligible for parole. The provisions of this paragraph (d) shall  
176 also apply to any person who shall commit robbery or attempted  
177 robbery on or after July 1, 1982, through the display of a deadly  
178 weapon. This subparagraph (d)(i) shall not apply to persons  
179 convicted after September 30, 1994;

180           (ii) No person shall be eligible for parole who  
181 shall, on or after October 1, 1994, be convicted of robbery,  
182 attempted robbery or carjacking as provided in Section 97-3-115 et  
183 seq., through the display of a firearm or drive-by shooting as  
184 provided in Section 97-3-109. The provisions of this subparagraph  
185 (d)(ii) shall also apply to any person who shall commit robbery,  
186 attempted robbery, carjacking or a drive-by shooting on or after  
187 October 1, 1994, through the display of a deadly weapon;

188           (e) No person shall be eligible for parole who, on or  
189 after July 1, 1994, is charged, tried, convicted and sentenced to

190 life imprisonment without eligibility for parole under the  
191 provisions of Section 99-19-101;

192 (f) No person shall be eligible for parole who is  
193 charged, tried, convicted and sentenced to life imprisonment under  
194 the provisions of Section 99-19-101;

195 (g) No person shall be eligible for parole who is  
196 convicted or whose suspended sentence is revoked after June 30,  
197 1995, except that a first offender convicted of a nonviolent crime  
198 after January 1, 2000, may be eligible for parole if the offender  
199 meets the requirements in subsection (1) and this paragraph. In  
200 addition to other requirements, if a first offender is convicted  
201 of a drug or driving under the influence felony, the offender must  
202 complete a drug and alcohol rehabilitation program prior to parole  
203 or the offender may be required to complete a post-release drug  
204 and alcohol program as a condition of parole. For purposes of  
205 this paragraph, "nonviolent crime" means a felony other than  
206 homicide, robbery, manslaughter, sex crimes, arson, burglary of an  
207 occupied dwelling, aggravated assault, kidnapping, felonious abuse  
208 of vulnerable adults, felonies with enhanced penalties, the sale  
209 or manufacture of a controlled substance under the Uniform  
210 Controlled Substances Law, felony child abuse and a violation of  
211 Section 63-11-30(5) resulting in death, or serious bodily injury  
212 resulting in the loss of a limb or dismemberment, loss of  
213 eyesight, a coma, permanent dysfunction of any vital organ,  
214 paralysis or resulting in an individual's permanent bedridden  
215 state. For purposes of this paragraph, "first offender" means a  
216 person who at the time of sentencing has not been convicted of a  
217 felony on a previous occasion in any court or courts of the United  
218 States or in any state or territory thereof.

219 (h) No person shall be eligible for parole who is  
220 charged, tried and convicted under the provisions of Sections  
221 97-3-53, 97-3-65, 97-3-101 and 97-7-67.

222           (2) Notwithstanding any other provision of law, an inmate  
223 shall not be eligible to receive earned time, good time or any  
224 other administrative reduction of time which shall reduce the time  
225 necessary to be served for parole eligibility as provided in  
226 subsection (1) of this section; however, this subsection shall not  
227 apply to the advancement of parole eligibility dates pursuant to  
228 the Prison Overcrowding Emergency Powers Act. Moreover,  
229 meritorious earned time allowances may be used to reduce the time  
230 necessary to be served for parole eligibility as provided in  
231 paragraph (c) of subsection (1) of this section.

232           (3) (a) The State Parole Board shall by rules and  
233 regulations establish a method of determining a tentative parole  
234 hearing date for each eligible offender taken into the custody of  
235 the Department of Corrections. The tentative parole hearing date  
236 shall be determined within ninety (90) days after the department  
237 has assumed custody of the offender. Such tentative parole  
238 hearing date shall be calculated by a formula taking into account  
239 the offender's age upon first commitment, number of prior  
240 incarcerations, prior probation or parole failures, the severity  
241 and the violence of the offense committed, employment history and  
242 other criteria which in the opinion of the board tend to validly  
243 and reliably predict the length of incarceration necessary before  
244 the offender can be successfully paroled.

245           (b) If an application for parole from an eligible  
246 offender is rejected, the Parole Board shall reconsider the  
247 application from that offender no later than one (1) year after  
248 the initial application for parole is rejected, unless the crime  
249 for which the offender was convicted is defined as a violent crime  
250 under subsection (2)(g) of this section.

251           This paragraph shall stand repealed on July 1, 2005.

252           (4) Any inmate within twenty-four (24) months of his parole  
253 eligibility date and who meets the criteria established by the  
254 classification board shall receive priority for placement in any



255 educational development and job training programs. Any inmate  
256 refusing to participate in an educational development or job  
257 training program may be ineligible for parole.

258           **SECTION 7.** This act shall take effect and be in force from  
259 and after July 1, 2005.