

By: Senator(s) Tollison, Albritton, Burton, Butler, Clarke, Cuevas, Davis, Dawkins, Dearing, Flowers, Harvey, Hyde-Smith, Jackson (15th), Jackson (11th), Jackson (32nd), Jordan, King, Lee (47th), Lee (35th), Morgan, Nunnelee, Ross, Thames, Thomas, Walley, Walls

To: Judiciary, Division B

SENATE BILL NO. 2864
(As Sent to Governor)

1 AN ACT TO AMEND SECTION 97-5-33, MISSISSIPPI CODE OF 1972, BY
2 PROHIBITING EXPLOITATION OF A CHILD BY CAUSING THAT CHILD TO TAKE
3 SEXUALLY PROVOCATIVE PICTURES; TO AMEND SECTION 97-5-35,
4 MISSISSIPPI CODE OF 1972, TO REVISE THE PENALTIES FOR EXPLOITATION
5 OF CHILDREN; TO AMEND SECTION 97-5-39, MISSISSIPPI CODE OF 1972,
6 AS AMENDED BY HOUSE BILL NO. 1058, 2005 REGULAR SESSION, TO REVISE
7 THE PENALTIES FOR FELONIOUS ABUSE OR BATTERY OF A CHILD; TO AMEND
8 SECTION 97-5-29, MISSISSIPPI CODE OF 1972, TO CLARIFY THAT
9 IN-VEHICLE DISPLAY OF OBSCENE MATERIAL IS AN OFFENSE WHEN READILY
10 VIEWABLE BY THE PUBLIC; AND FOR RELATED PURPOSES.

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

12 **SECTION 1.** Section 97-5-33, Mississippi Code of 1972, is
13 amended as follows:

14 97-5-33. (1) No person shall, by any means including
15 computer, cause, solicit or knowingly permit any child to engage
16 in sexually explicit conduct or in the simulation of sexually
17 explicit conduct for the purpose of producing any visual depiction
18 of such conduct.

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

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

28 (4) No person shall, by any means including computer,
29 receive with intent to distribute, distribute for sale, sell or
30 attempt to sell in any manner any photograph, drawing, sketch,

31 film, video tape or other visual depiction of an actual child
32 engaging in sexually explicit conduct.

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

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

41 (7) No person shall by any means, including computer,
42 knowingly entice, induce, persuade, seduce, solicit, advise,
43 coerce or order a child to produce any visual depiction of adult
44 sexual conduct or any sexually explicit conduct.

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

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

54 **SECTION 2.** Section 97-5-35, Mississippi Code of 1972, is
55 amended as follows:

56 97-5-35. Any person who violates any provision of * * *
57 Section 97-5-33 shall be guilty of a felony and upon conviction
58 shall be fined not less than Fifty Thousand Dollars (\$50,000.00)
59 nor more than Five Hundred Thousand Dollars (\$500,000.00) and
60 shall be imprisoned for not less than five (5) years nor more than
61 forty (40) years * * *. Any person convicted of a second or
62 subsequent violation of * * * Section 97-5-33 shall be fined not
63 less than One Hundred Thousand Dollars (\$100,000.00) nor more than

64 One Million Dollars (\$1,000,000.00) and shall be confined in the
65 custody of the Department of Corrections for life or such lesser
66 term as the court may determine, but not less than twenty (20)
67 years * * *.

68 **SECTION 3.** Section 97-5-39, Mississippi Code of 1972, as
69 amended by House Bill No. 1058, 2005 Regular Session, is amended
70 as follows:

71 97-5-39. (1) (a) Except as otherwise provided in this
72 section, any parent, guardian or other person who willfully
73 commits any act or omits the performance of any duty, which act or
74 omission contributes to or tends to contribute to the neglect or
75 delinquency of any child or which act or omission results in the
76 abuse * * * of any child, as defined in Section 43-21-105(m) of
77 the Youth Court Law, or who knowingly aids any child in escaping
78 or absenting himself from the guardianship or custody of any
79 person, agency or institution, or knowingly harbors or conceals,
80 or aids in harboring or concealing, any child who has absented
81 himself without permission from the guardianship or custody of any
82 person, agency or institution to which the child shall have been
83 committed by the youth court shall be guilty of a misdemeanor, and
84 upon conviction shall be punished by a fine not to exceed One
85 Thousand Dollars (\$1,000.00), or by imprisonment not to exceed one
86 (1) year in jail, or by both such fine and imprisonment.

87 (b) If the child's deprivation of necessary food,
88 clothing, shelter, health care or supervision appropriate to the
89 child's age results in substantial harm to the child's physical,
90 mental or emotional health, the person may be sentenced to
91 imprisonment for not more than five (5) years or to payment of a
92 fine of not more than Five Thousand Dollars (\$5,000.00), or both.

93 (c) A parent, legal guardian or other person who
94 knowingly permits the continuing physical or sexual abuse of a
95 child is guilty of neglect of a child and may be sentenced to
96 imprisonment for not more than ten (10) years or to payment of a

97 fine of not more than Ten Thousand Dollars (\$10,000.00), or both.

98 (2) (a) Any person who shall intentionally (i) burn any
99 child, (ii) torture any child or, (iii) except in self-defense or
100 in order to prevent bodily harm to a third party, whip, strike or
101 otherwise abuse or mutilate any child in such a manner as to cause
102 serious bodily harm, shall be guilty of felonious abuse * * * of a
103 child and, upon conviction, shall be sentenced to imprisonment in
104 the custody of the Department of Corrections for life or such
105 lesser term of imprisonment as the court may determine, but not
106 less than ten (10) years. For any second or subsequent conviction
107 under this subsection, the person shall be sentenced to
108 imprisonment for life.

109 (b) (i) A parent, legal guardian or caretaker who
110 endangers a child's person or health by knowingly causing or
111 permitting the child to be present where any person is selling,
112 manufacturing or possessing immediate precursors or chemical
113 substances with intent to manufacture, sell or possess a
114 controlled substance as prohibited under Section 41-29-139 or
115 41-29-313, is guilty of child endangerment and may be sentenced to
116 imprisonment for not more than ten (10) years or to payment of a
117 fine of not more than Ten Thousand Dollars (\$10,000.00), or both.

118 (ii) If the endangerment results in substantial
119 harm to the child's physical, mental or emotional health, the
120 person may be sentenced to imprisonment for not more than twenty
121 (20) years or to payment of a fine of not more than Twenty
122 Thousand Dollars (\$20,000.00), or both.

123 (3) Nothing contained in this section shall prevent
124 proceedings against the parent, guardian or other person under any
125 statute of this state or any municipal ordinance defining any act
126 as a crime or misdemeanor. Nothing in the provisions of this
127 section shall preclude any person from having a right to trial by
128 jury when charged with having violated the provisions of this
129 section.

130 (4) After consultation with the Department of Human
131 Services, a regional mental health center or an appropriate
132 professional person, a judge may suspend imposition or execution
133 of a sentence provided in subsections (1) and (2) of this section
134 and in lieu thereof require treatment over a specified period of
135 time at any approved public or private treatment facility. A
136 person may be eligible for treatment in lieu of criminal penalties
137 no more than one (1) time.

138 (5) In any proceeding resulting from a report made pursuant
139 to Section 43-21-353 of the Youth Court Law, the testimony of the
140 physician making the * * * report regarding the child's injuries
141 or condition or cause thereof shall not be excluded on the ground
142 that the physician's testimony violates the physician-patient
143 privilege or similar privilege or rule against disclosure. The
144 physician's report shall not be considered as evidence unless
145 introduced as an exhibit to his testimony.

146 (6) Any criminal prosecution arising from a violation of
147 this section shall be tried in the circuit, county, justice or
148 municipal court having jurisdiction; provided, however, that
149 nothing herein shall abridge or dilute the contempt powers of the
150 youth court.

151 **SECTION 4.** Section 97-5-29, Mississippi Code of 1972, is
152 amended as follows:

153 97-5-29. (1) Any person who intentionally and knowingly
154 places sexually oriented materials upon public display, or who
155 knowingly and intentionally fails to take prompt action to remove
156 such a display from property in his possession after learning of
157 its existence shall be guilty of a misdemeanor and upon conviction
158 shall be fined for each offense not less than Five Hundred Dollars
159 (\$500.00) nor more than Five Thousand Dollars (\$5,000.00) or be
160 imprisoned for not more than one (1) year in the county jail, or
161 be punished by both such fine and imprisonment.

162 (2) For purposes of this section any material is sexually
163 oriented if the material consists of representations or
164 descriptions of actual or simulated masturbation, sodomy,
165 excretory functions, lewd exhibition of the genitals or female
166 breasts, sadomasochistic abuse (for the purpose of sexual
167 stimulation or gratification), homosexuality, lesbianism,
168 bestiality, sexual intercourse or physical contact with a person's
169 clothed or unclothed genitals, pubic area, buttocks or the breast
170 or breasts of a female for the purpose of sexual stimulation,
171 gratification or perversion.

172 (3) A person places sexually oriented material upon public
173 display within the meaning of this section if he places the
174 material on or in a billboard, viewing screen, theater stage or
175 marquee, newsstand, display rack, window, showcase, display case
176 or other similar place, including a viewing screen in a vehicle,
177 so that sexually oriented material is easily visible from a public
178 street, public road or sidewalk or from areas of public businesses
179 in which minors are normally business invitees.

180 **SECTION 5.** This act shall take effect and be in force from
181 and after July 1, 2005.