

House Amendments to Senate Bill No. 2864

TO THE SECRETARY OF THE SENATE:

THIS IS TO INFORM YOU THAT THE HOUSE HAS ADOPTED THE AMENDMENTS SET OUT BELOW:

AMENDMENT NO. 1

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

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, is
69 amended as follows:

70 97-5-39. (1) (a) Except as otherwise provided in this
71 section, any parent, guardian or other person who willfully

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

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

92 (c) A parent, legal guardian or other person who
93 knowingly permits the continuing physical or sexual abuse of a
94 child is guilty of neglect of a child and may be sentenced to
95 imprisonment for not more than five (5) years or to payment of a
96 fine of not more than Five Thousand Dollars (\$5,000.00), or both.

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

106 under this subsection, the person shall be sentenced to
107 imprisonment for life.

108 (b) (i) A parent, legal guardian or caretaker who
109 endangers a child's person or health by knowingly causing or
110 permitting the child to be present where any person is selling,
111 manufacturing or possessing immediate precursors or chemical
112 substances with intent to manufacture, sell or possess a
113 controlled substance as prohibited under Section 41-29-139 or
114 41-29-313, is guilty of child endangerment and may be sentenced to
115 imprisonment for not more than five (5) years or to payment of a
116 fine of not more than Five Thousand Dollars (\$5,000.00), or both.

117 (ii) If the endangerment results in substantial
118 harm to the child's physical, mental or emotional health, the
119 person may be sentenced to imprisonment for not more than ten (10)
120 years or to payment of a fine of not more than Ten Thousand
121 Dollars (\$10,000.00), or both.

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

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

137 (5) In any proceeding resulting from a report made pursuant
138 to Section 43-21-353 of the Youth Court Law, the testimony of the
139 physician making the * * * report regarding the child's injuries
140 or condition or cause thereof shall not be excluded on the ground

141 that the physician's testimony violates the physician-patient
142 privilege or similar privilege or rule against disclosure. The
143 physician's report shall not be considered as evidence unless
144 introduced as an exhibit to his testimony.

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

150 **SECTION 4.** (1) For purposes of this act:

151 (a) "Obscene" means:

152 (i) The average person applying contemporary
153 community standards would find that the work, taken as a whole,
154 appeals to the prurient interest;

155 (ii) The average person applying contemporary
156 community standards would find that the work depicts or describes,
157 in a patently offensive way, sexual conduct; and

158 (iii) The work, taken as a whole, lacks serious
159 literary, artistic, political or scientific value;

160 (b) "Patently offensive" means that which goes
161 substantially beyond customary limits of candor in describing or
162 representing such matters.

163 (2) No obscene or patently offensive motion picture, film,
164 movie, videotape, digital video disc or other pictorial
165 representation shall be exhibited on a television, monitor or
166 other viewing screen or surface located within or on a motor
167 vehicle, in any manner visible to other drivers.

168 (3) The operator of a vehicle involved in a violation of
169 subsection (2) shall, upon conviction, be fined not less than Two
170 Dollars (\$2.00) nor more than Fifty Dollars (\$50.00) per each
171 violation. A violation of this section shall not be entered on
172 the driving record of any individual so convicted, nor shall any
173 state assessment provided for by Section 99-19-73 or any other
174 state law, be imposed or collected.

175 (4) It is the purpose of this act to avoid distracting other
176 drivers and, thereby, to reduce the likelihood of accidents
177 arising from lack of attention or concentration.

178 **SECTION 5.** Section 13-3-57, Mississippi Code of 1972, is
179 amended as follows:

180 13-3-57. Any nonresident person, firm, general or limited
181 partnership, or any foreign or other corporation not qualified
182 under the Constitution and laws of this state as to doing business
183 herein, who shall make a contract with a resident of this state to
184 be performed in whole or in part by any party in this state, or
185 who shall commit a tort in whole or in part in this state against
186 a resident or nonresident of this state, or who shall do any
187 business or perform any character of work or service in this
188 state, shall by such act or acts be deemed to be doing business in
189 Mississippi and shall thereby be subjected to the jurisdiction of
190 the courts of this state. Service of summons and process upon the
191 defendant shall be had or made as is provided by the Mississippi
192 Rules of Civil Procedure.

193 Any such cause of action against any such nonresident, in the
194 event of death or inability to act for itself or himself, shall
195 survive against the executor, administrator, receiver, trustee or
196 any other selected or appointed representative of such
197 nonresident. Service of process or summons may be had or made
198 upon such nonresident executor, administrator, receiver, trustee
199 or any other selected or appointed representative of such
200 nonresident as is provided by the Mississippi Rules of Civil
201 Procedure, and when such process or summons is served, made or had
202 against the nonresident executor, administrator, receiver, trustee
203 or other selected or appointed representative of such nonresident
204 it shall be deemed sufficient service of such summons or process
205 to give any court in this state in which such action may be filed,
206 in accordance with the provisions of the statutes of the State of
207 Mississippi or the Mississippi Rules of Civil Procedure,
208 jurisdiction over the cause of action and over such nonresident
209 executor, administrator, receiver, trustee or other selected or

210 appointed representative of such nonresident insofar as such cause
211 of action is involved.

212 The provisions of this section shall likewise apply to any
213 person who is a nonresident at the time any action or proceeding
214 is commenced against him even though said person was a resident at
215 the time any action or proceeding accrued against him.

216 The provisions of this section shall apply to causes of
217 action based on violations of Senate Bill No. 2864, 2005 Regular
218 Session.

219 **SECTION 6.** This act shall take effect and be in force from
220 and after July 1, 2005.

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

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 TO REVISE THE PENALTIES FOR FELONIOUS ABUSE OR BATTERY OF A CHILD;
7 TO PROHIBIT THE DISPLAY OF ANY OBSCENE OR PATENTLY OFFENSIVE VIDEO
8 OR DISC IN A MOTOR VEHICLE IN ANY MANNER VISIBLE TO OTHER DRIVERS;
9 TO PROVIDE PENALTIES FOR VIOLATIONS; TO AMEND SECTION 13-3-57,
10 MISSISSIPPI CODE OF 1972, IN CONFORMITY; AND FOR RELATED PURPOSES.

HR40\SB2864PH.J

Don Richardson
Clerk of the House of Representatives