

**Adopted
COMMITTEE AMENDMENT NO 1 PROPOSED TO**

Senate Bill No. 2864

BY: Committee

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

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

13 97-5-33. (1) No person shall, by any means including
14 computer, cause, solicit or knowingly permit any child to engage
15 in sexually explicit conduct or in the simulation of sexually
16 explicit conduct for the purpose of producing any visual depiction
17 of such conduct.

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

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

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

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

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

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

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

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

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

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

55 97-5-35. Any person who violates any provision of * * *
56 Section 97-5-33 shall be guilty of a felony and upon conviction
57 shall be fined not less than Fifty Thousand Dollars (\$50,000.00)
58 nor more than Five Hundred Thousand Dollars (\$500,000.00) and
59 shall be imprisoned for not less than five (5) years nor more than
60 forty (40) years * * *. Any person convicted of a second or
61 subsequent violation of * * * Section 97-5-33 shall be fined not

62 less than One Hundred Thousand Dollars (\$100,000.00) nor more than
63 One Million Dollars (\$1,000,000.00) and shall be confined in the
64 custody of the Department of Corrections for life or such lesser
65 term as the court may determine, but not less than twenty (20)
66 years * * *.

67 **SECTION 3.** Section 97-5-39, Mississippi Code of 1972, is
68 amended as follows:

69 97-5-39. (1) (a) Except as otherwise provided in this
70 section, any parent, guardian or other person who willfully
71 commits any act or omits the performance of any duty, which act or
72 omission contributes to or tends to contribute to the neglect or
73 delinquency of any child or which act or omission results in the
74 abuse * * * of any child, as defined in Section 43-21-105(m) of
75 the Youth Court Law, or who knowingly aids any child in escaping
76 or absenting himself from the guardianship or custody of any
77 person, agency or institution, or knowingly harbors or conceals,
78 or aids in harboring or concealing, any child who has absented
79 himself without permission from the guardianship or custody of any
80 person, agency or institution to which the child shall have been
81 committed by the youth court shall be guilty of a misdemeanor, and
82 upon conviction shall be punished by a fine not to exceed One
83 Thousand Dollars (\$1,000.00), or by imprisonment not to exceed one
84 (1) year in jail, or by both such fine and imprisonment.

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

91 (c) A parent, legal guardian or other person who
92 knowingly permits the continuing physical or sexual abuse of a
93 child is guilty of neglect of a child and may be sentenced to

94 imprisonment for not more than five (5) years or to payment of a
95 fine of not more than Five Thousand Dollars (\$5,000.00), or both.

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

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

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

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

126 jury when charged with having violated the provisions of this
127 section.

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

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

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

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

150 (a) "Obscene" means:

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

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

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

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

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

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

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

177 **SECTION 5.** This act shall take effect and be in force from
178 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; AND FOR RELATED PURPOSES.