

By: Representative Lott

To: Judiciary B

HOUSE BILL NO. 404

1 AN ACT TO AMEND SECTIONS 97-5-23 AND 97-5-41, MISSISSIPPI
2 CODE OF 1972, TO ENHANCE THE PENALTY FOR CHILD MOLESTATION
3 OFFENDERS; TO REQUIRE MANDATORY SENTENCE WITHOUT SENTENCING
4 LENIENCY, PROBATION, PAROLE OR POSSIBILITY THEREOF; TO REMOVE
5 VARIOUS PENALTIES BASED UPON THE AGE OF THE VICTIM OR OFFENDER OR
6 RELATIONSHIP WITH THE VICTIM; TO AMEND SECTIONS 97-3-95 AND
7 97-3-101, MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO; TO
8 AMEND SECTION 47-7-3, MISSISSIPPI CODE OF 1972, TO PROHIBIT PAROLE
9 OR POSSIBILITY THEREOF TO ANY OFFENDER CONVICTED OF A SEX CRIME
10 AGAINST A CHILD VICTIM.

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

12 **SECTION 1.** Section 97-5-23, Mississippi Code of 1972, is
13 amended as follows:

14 97-5-23. (1) Any person above the age of eighteen (18)
15 years, who, for the purpose of gratifying his or her lust, or
16 indulging his or her depraved licentious sexual desires, shall
17 handle, touch or rub with hands or any part of his or her body or
18 any member thereof, any child under the age of eighteen (18)
19 years, with or without the child's consent, or a mentally
20 defective, mentally incapacitated or physically helpless person as
21 defined in Section 97-3-97, shall be guilty of a felony and, upon
22 conviction thereof, shall be punished by imprisonment in the State
23 Penitentiary for a period of twenty-five (25) years without
24 reduction or suspension of sentence and without the possibility of
25 probation or parole.

26 (2) Any person above the age of eighteen (18) years, who,
27 for the purpose of gratifying his or her lust, or indulging his or
28 her depraved licentious sexual desires, shall handle, touch or rub
29 with hands or any part of his or her body or any member thereof,
30 any child younger than himself or herself and under the age of
31 eighteen (18) years who is not such person's spouse, with or

32 without the child's consent, when the person occupies a position
33 of trust or authority over the child shall be guilty of a felony
34 and, upon conviction thereof, shall be punished by imprisonment in
35 the State Penitentiary for a period of twenty-five (25) years
36 without reduction or suspension of sentence and without the
37 possibility of probation or parole. A person in a position of
38 trust or authority over a child includes without limitation a
39 child's teacher, counselor, physician, psychiatrist, psychologist,
40 minister, priest, physical therapist, chiropractor, legal
41 guardian, parent, stepparent, aunt, uncle, scout leader or coach.

42 (3) Upon a second conviction for an offense under this
43 section, the person so convicted shall be punished by commitment
44 to the State Penitentiary for a term of life imprisonment without
45 the possibility of parole.

46 **SECTION 2.** Section 97-5-41, Mississippi Code of 1972, is
47 amended as follows:

48 97-5-41. (1) Any person who shall have carnal knowledge of
49 his or her unmarried stepchild or adopted child younger than
50 himself or herself and * * * under eighteen (18) years of age,
51 upon conviction, shall be punished by imprisonment in the
52 Penitentiary for a term of twenty-five (25) years without
53 reduction or suspension of sentence and without the possibility of
54 probation or parole.

55 (2) Any person who shall have carnal knowledge of an
56 unmarried child younger than himself or herself and * * * under
57 eighteen (18) years of age, with whose parent he or she is
58 cohabiting or living together as husband and wife, upon
59 conviction, shall be punished by imprisonment in the Penitentiary
60 for a term of twenty-five (25) years without reduction or
61 suspension of sentence and without the possibility of probation or
62 parole.

63 **SECTION 3.** Section 97-3-95, Mississippi Code of 1972, is
64 amended as follows:

65 97-3-95. (1) A person is guilty of sexual battery if he or
66 she engages in sexual penetration with:

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

68 (b) A mentally defective, mentally incapacitated or
69 physically helpless person;

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

73 (d) A child under the age of fourteen (14) years of
74 age, if the person is twenty-four (24) or more months older than
75 the child; or

76 (e) A child whose interest is protected under Section
77 97-5-23 and 97-5-41.

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

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

87 97-3-101. (1) (a) Every person who shall be convicted of
88 sexual battery under Section 97-3-95(1)(a) or (b) * * * shall be
89 imprisoned in the State Penitentiary for a period of not more than
90 thirty (30) years, and for a second or subsequent such offense
91 shall be imprisoned in the penitentiary for not more than forty
92 (40) years.

93 (b) Every person who shall be convicted of sexual
94 battery under Section 97-3-95(2) and Section 97-5-23(2) shall be
95 imprisoned in the State Penitentiary for a period of twenty-five
96 (25) years without the possibility of probation or parole, and for

97 a second or subsequent such offense shall be imprisoned in the
98 Penitentiary for life without parole.

99 (2) * * * Every person who shall be convicted of sexual
100 battery under Section 97-3-95(1)(c) or (d) shall be imprisoned for
101 twenty-five (25) years in the State Penitentiary * * * for the
102 first offense, and for a term of life without parole in the State
103 Penitentiary for a second or subsequent offense.

104 (3) Every person who shall be convicted of sexual battery
105 under Section 97-3-95(1)(e), Section 97-5-23 or Section 97-5-41
106 shall be imprisoned for twenty-five (25) years in the State
107 Penitentiary for the first offense, and for a second or subsequent
108 offense shall be imprisoned for life in the State Penitentiary
109 without parole.

110 (4) Every person who shall be convicted of sexual battery
111 under Section 97-3-95(1)(a) or (b) who is thirteen (13) years of
112 age or older but under eighteen (18) years of age shall be
113 sentenced to such imprisonment, fine or other sentence as the
114 court, in its discretion, may determine.

115 (5) Every person who shall be convicted of sexual battery of
116 a child under Section 97-3-95(1)(c), (d), (e) or (2), Section
117 97-5-23 or Section 97-5-41 shall be imprisoned for twenty-five
118 (25) years without reduction or suspension of sentence and without
119 the possibility of probation or parole for the first offense
120 without regard to age of victim or offender or offender's
121 relationship with such victim, and for a period of life
122 imprisonment without parole for a second or subsequent such
123 offense.

124 **SECTION 5.** Section 47-7-3, Mississippi Code of 1972, is
125 amended as follows:

126 47-7-3. (1) Every prisoner who has been convicted of any
127 offense against the State of Mississippi, and is confined in the
128 execution of a judgment of such conviction in the Mississippi
129 Department of Corrections for a definite term or terms of one (1)

130 year or over, or for the term of his or her natural life, whose
131 record of conduct shows that such prisoner has observed the rules
132 of the department, and who has served not less than one-fourth
133 (1/4) of the total of such term or terms for which such prisoner
134 was sentenced, or, if sentenced to serve a term or terms of thirty
135 (30) years or more, or, if sentenced for the term of the natural
136 life of such prisoner, has served not less than ten (10) years of
137 such life sentence, may be released on parole as hereinafter
138 provided, except that:

139 (a) No prisoner convicted as a confirmed and habitual
140 criminal under the provisions of Sections 99-19-81 through
141 99-19-87 shall be eligible for parole;

142 (b) Any person who shall have been convicted of a sex
143 crime shall not be released on parole except for a person under
144 the age of nineteen (19) who has been convicted under Section
145 97-3-67;

146 (c) No one shall be eligible for parole until he shall
147 have served one (1) year of his sentence, unless such person has
148 accrued any meritorious earned time allowances, in which case he
149 shall be eligible for parole if he has served (i) nine (9) months
150 of his sentence or sentences, when his sentence or sentences is
151 two (2) years or less; (ii) ten (10) months of his sentence or
152 sentences when his sentence or sentences is more than two (2)
153 years but no more than five (5) years; and (iii) one (1) year of
154 his sentence or sentences when his sentence or sentences is more
155 than five (5) years;

156 (d) (i) No person shall be eligible for parole who
157 shall, on or after January 1, 1977, be convicted of robbery or
158 attempted robbery through the display of a firearm until he shall
159 have served ten (10) years if sentenced to a term or terms of more
160 than ten (10) years or if sentenced for the term of the natural
161 life of such person. If such person is sentenced to a term or
162 terms of ten (10) years or less, then such person shall not be

163 eligible for parole. The provisions of this paragraph (d) shall
164 also apply to any person who shall commit robbery or attempted
165 robbery on or after July 1, 1982, through the display of a deadly
166 weapon. This subparagraph (d)(i) shall not apply to persons
167 convicted after September 30, 1994;

168 (ii) No person shall be eligible for parole who
169 shall, on or after October 1, 1994, be convicted of robbery,
170 attempted robbery or carjacking as provided in Section 97-3-115 et
171 seq., through the display of a firearm or drive-by shooting as
172 provided in Section 97-3-109. The provisions of this subparagraph
173 (d)(ii) shall also apply to any person who shall commit robbery,
174 attempted robbery, carjacking or a drive-by shooting on or after
175 October 1, 1994, through the display of a deadly weapon;

176 (e) No person shall be eligible for parole who, on or
177 after July 1, 1994, is charged, tried, convicted and sentenced to
178 life imprisonment without eligibility for parole under the
179 provisions of Section 99-19-101;

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

183 (g) No person shall be eligible for parole who is
184 convicted or whose suspended sentence is revoked after June 30,
185 1995, except that a first offender convicted of a nonviolent crime
186 after January 1, 2000, may be eligible for parole if the offender
187 meets the requirements in subsection (1) and this paragraph. In
188 addition to other requirements, if a first offender is convicted
189 of a drug or driving under the influence felony, the offender must
190 complete a drug and alcohol rehabilitation program prior to parole
191 or the offender may be required to complete a post-release drug
192 and alcohol program as a condition of parole. For purposes of
193 this paragraph, "nonviolent crime" means a felony other than
194 homicide, robbery, manslaughter, sex crimes, arson, burglary of an
195 occupied dwelling, aggravated assault, kidnapping, felonious abuse

196 of vulnerable adults, felonies with enhanced penalties, the sale
197 or manufacture of a controlled substance under the Uniform
198 Controlled Substances Law, felony child abuse, or any crime under
199 Section 97-5-33 or Section 97-5-39(2) or a violation of Section
200 63-11-30(5) resulting in death, or serious bodily injury resulting
201 in the loss of a limb or dismemberment, loss of eyesight, a coma,
202 permanent dysfunction of any vital organ, paralysis or resulting
203 in an individual's permanent bedridden state. For purposes of
204 this paragraph, "first offender" means a person who at the time of
205 sentencing has not been convicted of a felony on a previous
206 occasion in any court or courts of the United States or in any
207 state or territory thereof. In addition, a first time offender
208 incarcerated for committing the crime of possession of a
209 controlled substance under the Uniform Controlled Substances Law
210 after July 1, 1995, shall be eligible for parole as provided for
211 such offenders in this paragraph after July 1, 2000;

212 (h) No person who shall be eligible for parole who
213 shall be convicted of a sex crime against a child victim as
214 provided in Section 97-3-95, Section 97-5-23 or Section 97-5-41.

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

225 (3) (a) The State Parole Board shall by rules and
226 regulations establish a method of determining a tentative parole
227 hearing date for each eligible offender taken into the custody of
228 the Department of Corrections. The tentative parole hearing date

229 shall be determined within ninety (90) days after the department
230 has assumed custody of the offender. Such tentative parole
231 hearing date shall be calculated by a formula taking into account
232 the offender's age upon first commitment, number of prior
233 incarcerations, prior probation or parole failures, the severity
234 and the violence of the offense committed, employment history and
235 other criteria which in the opinion of the board tend to validly
236 and reliably predict the length of incarceration necessary before
237 the offender can be successfully paroled.

238 (b) If an application for parole from an eligible
239 offender is rejected, the Parole Board shall reconsider the
240 application from that offender no later than one (1) year after
241 the initial application for parole is rejected, unless the crime
242 for which the offender was convicted is defined as a violent crime
243 under subsection (2)(g) of this section.

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

245 (4) Any inmate within twenty-four (24) months of his parole
246 eligibility date and who meets the criteria established by the
247 classification board shall receive priority for placement in any
248 educational development and job training programs. Any inmate
249 refusing to participate in an educational development or job
250 training program may be ineligible for parole.

251 **SECTION 6.** This act shall take effect and be in force from
252 and after its passage.