

By: Representatives Snowden, Mims, Gregory,  
Wells-Smith, Staples, Chism, Ellington,  
Davis, Barnett, Beckett, Bondurant,  
Rotenberry, Fillingane, Carlton, Parker

To: Judiciary B

HOUSE BILL NO. 824

1 AN ACT TO AMEND SECTION 97-5-23, MISSISSIPPI CODE OF 1972, TO  
2 REVISE THE CRIME OF FONDLING; AND FOR RELATED PURPOSES.

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

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

6 97-5-23. (1) Any person above the age of eighteen (18)  
7 years, who, for the purpose of gratifying his or her lust, or  
8 indulging his or her depraved licentious sexual desires, shall  
9 handle, touch or rub with hands or any part of his or her body or  
10 any member thereof, any child under the age of sixteen (16) years,  
11 with or without the child's consent, or a mentally defective,  
12 mentally incapacitated or physically helpless person as defined in  
13 Section 97-3-97, shall be guilty of a felony and, upon conviction  
14 thereof, shall be fined in a sum not less than One Thousand  
15 Dollars (\$1,000.00) nor more than Five Thousand Dollars  
16 (\$5,000.00), or be committed to the custody of the State  
17 Department of Corrections not less than two (2) years nor more  
18 than fifteen (15) years, or be punished by both such fine and  
19 imprisonment, at the discretion of the court.

20 (2) Any person above the age of eighteen (18) years, who,  
21 for the purpose of gratifying his or her lust, or indulging his or  
22 her depraved licentious sexual desires, shall handle, touch or rub  
23 with hands or any part of his or her body or any member thereof,  
24 any child younger than himself or herself and under the age of  
25 eighteen (18) years who is not such person's spouse, with or  
26 without the child's consent, when the person occupies a position  
27 of trust or authority over the child shall be guilty of a felony

28 and, upon conviction thereof, shall be fined in a sum not less  
29 than One Thousand Dollars (\$1,000.00) nor more than Five Thousand  
30 Dollars (\$5,000.00), or be committed to the custody of the State  
31 Department of Corrections not less than two (2) years nor more  
32 than fifteen (15) years, or be punished by both such fine and  
33 imprisonment, at the discretion of the court. A person in a  
34 position of trust or authority over a child includes without  
35 limitation a child's teacher, counselor, physician, psychiatrist,  
36 psychologist, minister, priest, physical therapist, chiropractor,  
37 legal guardian, parent, stepparent, aunt, uncle, scout leader or  
38 coach.

39 (3) Any person above the age of eighteen (18) years, who,  
40 for the purpose of gratifying his or her lust, or indulging his or  
41 her depraved licentious sexual desires in the presence of a child  
42 under the age of sixteen (16), with or without the child's  
43 consent, or in the presence of a mentally defective, mentally  
44 incapacitated or physically helpless person as defined in Section  
45 97-3-97, commits any sexual act that does not involve actual  
46 physical or sexual contact with such child or person, shall be  
47 guilty of a felony and, upon conviction, shall be fined in a sum  
48 not less than One Thousand Dollars (\$1,000.00) nor more than Five  
49 Thousand Dollars (\$5,000.00), or be committed to the custody of  
50 the State Department of Corrections not less than two (2) years  
51 nor more than fifteen (15) years, or be punished by both fine and  
52 imprisonment, at the discretion of the court. Sexual acts  
53 include, but are not limited to, masturbation, exhibition of  
54 genitals or breasts in a lewd or lascivious manner,  
55 sadomasochistic abuse, sexual bestiality, or the simulation of any  
56 act involving sexual activity. Nothing in this subsection  
57 includes verbal assault or verbal contact.

58 (4) Any person above the age of eighteen (18) years, who for  
59 the purpose of gratifying his or her lust, or indulging his or  
60 depraved licentious sexual desires, commits any sexual act that

61 does not involve actual physical or sexual contact with the child  
62 but commits the act in the presence of a child under the age of  
63 eighteen (18) years who is not such person's spouse, with or  
64 without the child's consent, when the person occupies a position  
65 of trust or authority over the child shall be guilty of a felony  
66 and, upon conviction thereof, shall be fined in a sum not less  
67 than One Thousand Dollars (\$1,000.00) nor more than Five Thousand  
68 Dollars (\$5,000.00), or be committed to the custody of the State  
69 Department of Corrections not less than two (2) years nor more  
70 than fifteen (15) years, or be punished by both such fine and  
71 imprisonment, at the discretion of the court. Sexual acts  
72 include, but are not limited to, masturbation, exhibition of  
73 genitals or breasts in a lewd or lascivious manner,  
74 sadomasochistic abuse, sexual bestiality, or the simulation of any  
75 act involving sexual activity. A person in a position of trust or  
76 authority over a child includes without limitation a child's  
77 teacher, counselor, physician, psychiatrist, psychologist,  
78 minister, priest, physical therapist, chiropractor, legal  
79 guardian, parent, stepparent, aunt, uncle, scout leader or coach.  
80 Nothing in this subsection includes verbal assault or verbal  
81 contact.

82       (5) Upon a second conviction for an offense under this  
83 section, the person so convicted shall be punished by commitment  
84 to the State Department of Corrections for a term not to exceed  
85 twenty (20) years, however, upon conviction and sentencing, the  
86 offender shall serve at least one-half (1/2) of the sentence so  
87 imposed.

88       **SECTION 2.** This act shall take effect and be in force from  
89 and after July 1, 2006.