

By: Representatives Lott, Moore, Staples

To: Judiciary A

HOUSE BILL NO. 950

1 AN ACT TO AMEND SECTIONS 97-3-53, 97-3-65, 97-3-79, 97-3-101
2 AND 97-7-67, MISSISSIPPI CODE OF 1972, TO REVISE THE PENALTY OF
3 LIFE IMPRISONMENT TO LIFE WITHOUT PAROLE FOR CERTAIN OFFENSES; TO
4 AMEND SECTION 47-7-3, MISSISSIPPI CODE OF 1972, IN CONFORMITY
5 THERETO; AND FOR RELATED PURPOSES.

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

7 **SECTION 1.** Section 97-3-53, Mississippi Code of 1972, is
8 amended as follows:

9 97-3-53. Any person who, without lawful authority and with
10 or without intent to secretly confine, shall forcibly seize and
11 confine any other person, or shall inveigle or kidnap any other
12 person with intent to cause such person to be confined or
13 imprisoned against his or her will, or without lawful authority
14 shall forcibly seize, inveigle or kidnap any child under the age
15 of sixteen (16) years against the will of the parents or guardian
16 or person having the lawful custody of the child, upon conviction
17 shall be imprisoned for life without parole in the custody of the
18 Department of Corrections if the punishment is so fixed by the
19 jury in its verdict. If the jury fails to agree on fixing the
20 penalty at imprisonment for life without parole, the court shall
21 fix the penalty at not less than one (1) year nor more than thirty
22 (30) years in the custody of the Department of Corrections.

23 This section shall not be held to repeal, modify or amend any
24 other criminal statute of this state.

25 **SECTION 2.** Section 97-3-65, Mississippi Code of 1972, is
26 amended as follows:

27 97-3-65. (1) The crime of statutory rape is committed when:

28 (a) Any person seventeen (17) years of age or older has
29 sexual intercourse with a child who:

30 (i) Is at least fourteen (14) but under sixteen
31 (16) years of age;

32 (ii) Is thirty-six (36) or more months younger
33 than the person; and

34 (iii) Is not the person's spouse; or

35 (b) A person of any age has sexual intercourse with a
36 child who:

37 (i) Is under the age of fourteen (14) years;

38 (ii) Is twenty-four (24) or more months younger
39 than the person; and

40 (iii) Is not the person's spouse.

41 (2) Neither the victim's consent nor the victim's lack of
42 chastity is a defense to a charge of statutory rape.

43 (3) Upon conviction for statutory rape, the defendant shall
44 be sentenced as follows:

45 (a) If eighteen (18) years of age or older, but under
46 twenty-one (21) years of age, and convicted under subsection
47 (1)(a) of this section, to imprisonment for not more than five (5)
48 years in the State Penitentiary or a fine of not more than Five
49 Thousand Dollars (\$5,000.00), or both;

50 (b) If twenty-one (21) years of age or older and
51 convicted under subsection (1)(a) of this section, to imprisonment
52 of not more than thirty (30) years in the State Penitentiary or a
53 fine of not more than Ten Thousand Dollars (\$10,000.00), or both,
54 for the first offense, and not more than forty (40) years in the
55 State Penitentiary for each subsequent offense;

56 (c) If eighteen (18) years of age or older and
57 convicted under subsection (1)(b) of this section, to imprisonment
58 for life without parole in the State Penitentiary or such lesser
59 term of imprisonment as the court may determine, but not less than
60 twenty (20) years.

61 (d) If thirteen (13) years of age or older but under
62 eighteen (18) years of age and convicted under subsection (1)(a)
63 or (1)(b) of this section, such imprisonment, fine or other
64 sentence as the court, in its discretion, may determine.

65 (4) (a) Every person who shall have forcible sexual
66 intercourse with any person, or who shall have sexual intercourse
67 not constituting forcible sexual intercourse or statutory rape
68 with any person without that person's consent by administering to
69 such person any substance or liquid which shall produce such
70 stupor or such imbecility of mind or weakness of body as to
71 prevent effectual resistance, upon conviction, shall be imprisoned
72 for life without parole in the State Penitentiary if the jury by
73 its verdict so prescribes; and in cases where the jury fails to
74 fix the penalty at life imprisonment, the court shall fix the
75 penalty at imprisonment in the State Penitentiary for any term as
76 the court, in its discretion, may determine.

77 (b) This subsection (4) shall apply whether the
78 perpetrator is married to the victim or not.

79 (5) In all cases where a victim is under the age of sixteen
80 (16) years, it shall not be necessary to prove penetration where
81 it is shown the genitals, anus or perineum of the child have been
82 lacerated or torn in the attempt to have sexual intercourse with
83 the child.

84 (6) For the purposes of this section, "sexual intercourse"
85 shall mean a joining of the sexual organs of a male and female
86 human being in which the penis of the male is inserted into the
87 vagina of the female.

88 **SECTION 3.** Section 97-3-79, Mississippi Code of 1972, is
89 amended as follows:

90 97-3-79. Every person who shall feloniously take or attempt
91 to take from the person or from the presence the personal property
92 of another and against his will by violence to his person or by
93 putting such person in fear of immediate injury to his person by

94 the exhibition of a deadly weapon shall be guilty of robbery and,
95 upon conviction, shall be imprisoned for life without parole in
96 the State Penitentiary if the penalty is so fixed by the jury; and
97 in cases where the jury fails to fix the penalty at imprisonment
98 for life without parole in the State Penitentiary the court shall
99 fix the penalty at imprisonment in the State penitentiary for any
100 term not less than three (3) years.

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

103 97-3-101. (1) Every person who shall be convicted of sexual
104 battery under Section 97-3-95(1)(a), (b) or (2) shall be
105 imprisoned in the State Penitentiary for a period of not more than
106 thirty (30) years, and for a second or subsequent such offense
107 shall be imprisoned in the Penitentiary for not more than forty
108 (40) years.

109 (2) (a) Every person who shall be convicted of sexual
110 battery under Section 97-3-95(1)(c) who is at least eighteen (18)
111 but under twenty-one (21) years of age shall be imprisoned for not
112 more than five (5) years in the State Penitentiary or fined not
113 more than Five Thousand Dollars (\$5,000.00), or both;

114 (b) Every person who shall be convicted of sexual
115 battery under Section 97-3-95(1)(c) who is twenty-one (21) years
116 of age or older shall be imprisoned not more than thirty (30)
117 years in the State Penitentiary or fined not more than Ten
118 Thousand Dollars (\$10,000.00), or both, for the first offense, and
119 not more than forty (40) years in the State Penitentiary for each
120 subsequent offense.

121 (3) Every person who shall be convicted of sexual battery
122 under Section 97-3-95(1)(d) who is eighteen (18) years of age or
123 older shall be imprisoned for life without parole in the State
124 Penitentiary or such lesser term of imprisonment as the court may
125 determine, but not less than twenty (20) years.

126 (4) Every person who shall be convicted of sexual battery
127 who is thirteen (13) years of age or older but under eighteen (18)
128 years of age shall be sentenced to such imprisonment, fine or
129 other sentence as the court, in its discretion, may determine.

130 **SECTION 5.** Section 97-7-67, Mississippi Code of 1972, is
131 amended as follows:

132 97-7-67. If any person shall levy war against this state, or
133 adhere to its enemies, giving them aid and comfort, he shall be
134 guilty of treason, and, shall, upon conviction, suffer death or
135 imprisonment for life without parole in the State Penitentiary.

136 **SECTION 6.** Section 47-7-3, Mississippi Code of 1972, is
137 amended as follows:

138 47-7-3. (1) Every prisoner who has been convicted of any
139 offense against the State of Mississippi, and is confined in the
140 execution of a judgment of such conviction in the Mississippi
141 Department of Corrections for a definite term or terms of one (1)
142 year or over, or for the term of his or her natural life, whose
143 record of conduct shows that such prisoner has observed the rules
144 of the department, and who has served not less than one-fourth
145 (1/4) of the total of such term or terms for which such prisoner
146 was sentenced, or, if sentenced to serve a term or terms of thirty
147 (30) years or more, or, if sentenced for the term of the natural
148 life of such prisoner, has served not less than ten (10) years of
149 such life sentence, may be released on parole as hereinafter
150 provided, except that:

151 (a) No prisoner convicted as a confirmed and habitual
152 criminal under the provisions of Sections 99-19-81 through
153 99-19-87 shall be eligible for parole;

154 (b) Any person who shall have been convicted of a sex
155 crime shall not be released on parole except for a person under
156 the age of nineteen (19) who has been convicted under Section
157 97-3-67;

158 (c) No one shall be eligible for parole until he shall
159 have served one (1) year of his sentence, unless such person has
160 accrued any meritorious earned time allowances, in which case he
161 shall be eligible for parole if he has served (i) nine (9) months
162 of his sentence or sentences, when his sentence or sentences is
163 two (2) years or less; (ii) ten (10) months of his sentence or
164 sentences when his sentence or sentences is more than two (2)
165 years but no more than five (5) years; and (iii) one (1) year of
166 his sentence or sentences when his sentence or sentences is more
167 than five (5) years;

168 (d) (i) No person shall be eligible for parole who
169 shall, on or after January 1, 1977, be convicted of robbery or
170 attempted robbery through the display of a firearm until he shall
171 have served ten (10) years if sentenced to a term or terms of more
172 than ten (10) years or if sentenced for the term of the natural
173 life of such person. If such person is sentenced to a term or
174 terms of ten (10) years or less, then such person shall not be
175 eligible for parole. The provisions of this paragraph (d) shall
176 also apply to any person who shall commit robbery or attempted
177 robbery on or after July 1, 1982, through the display of a deadly
178 weapon. This subparagraph (d)(i) shall not apply to persons
179 convicted after September 30, 1994;

180 (ii) No person shall be eligible for parole who
181 shall, on or after October 1, 1994, be convicted of robbery,
182 attempted robbery or carjacking as provided in Section 97-3-115 et
183 seq., through the display of a firearm or drive-by shooting as
184 provided in Section 97-3-109. The provisions of this subparagraph
185 (d)(ii) shall also apply to any person who shall commit robbery,
186 attempted robbery, carjacking or a drive-by shooting on or after
187 October 1, 1994, through the display of a deadly weapon;

188 (e) No person shall be eligible for parole who, on or
189 after July 1, 1994, is charged, tried, convicted and sentenced to

190 life imprisonment without eligibility for parole under the
191 provisions of Section 99-19-101;

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

195 (g) No person shall be eligible for parole who is
196 convicted or whose suspended sentence is revoked after June 30,
197 1995, except that a first offender convicted of a nonviolent crime
198 after January 1, 2000, may be eligible for parole if the offender
199 meets the requirements in subsection (1) and this paragraph. In
200 addition to other requirements, if a first offender is convicted
201 of a drug or driving under the influence felony, the offender must
202 complete a drug and alcohol rehabilitation program prior to parole
203 or the offender may be required to complete a post-release drug
204 and alcohol program as a condition of parole. For purposes of
205 this paragraph, "nonviolent crime" means a felony other than
206 homicide, robbery, manslaughter, sex crimes, arson, burglary of an
207 occupied dwelling, aggravated assault, kidnapping, felonious abuse
208 of vulnerable adults, felonies with enhanced penalties, the sale
209 or manufacture of a controlled substance under the Uniform
210 Controlled Substances Law, felony child abuse, or any crime under
211 Section 97-5-33 or Section 97-5-39(2) or a violation of Section
212 63-11-30(5) resulting in death, or serious bodily injury resulting
213 in the loss of a limb or dismemberment, loss of eyesight, a coma,
214 permanent dysfunction of any vital organ, paralysis or resulting
215 in an individual's permanent bedridden state. For purposes of
216 this paragraph, "first offender" means a person who at the time of
217 sentencing has not been convicted of a felony on a previous
218 occasion in any court or courts of the United States or in any
219 state or territory thereof. In addition, a first time offender
220 incarcerated for committing the crime of possession of a
221 controlled substance under the Uniform Controlled Substances Law

222 after July 1, 1995, shall be eligible for parole as provided for
223 such offenders in this paragraph after July 1, 2000;

224 (h) No person shall be eligible for parole who is
225 charged, tried and convicted under the provisions of Sections
226 97-3-53, 97-3-65, 97-3-101 and 97-7-67.

227 (2) Notwithstanding any other provision of law, an inmate
228 shall not be eligible to receive earned time, good time or any
229 other administrative reduction of time which shall reduce the time
230 necessary to be served for parole eligibility as provided in
231 subsection (1) of this section; however, this subsection shall not
232 apply to the advancement of parole eligibility dates pursuant to
233 the Prison Overcrowding Emergency Powers Act. Moreover,
234 meritorious earned time allowances may be used to reduce the time
235 necessary to be served for parole eligibility as provided in
236 paragraph (c) of subsection (1) of this section.

237 (3) (a) The State Parole Board shall by rules and
238 regulations establish a method of determining a tentative parole
239 hearing date for each eligible offender taken into the custody of
240 the Department of Corrections. The tentative parole hearing date
241 shall be determined within ninety (90) days after the department
242 has assumed custody of the offender. Such tentative parole
243 hearing date shall be calculated by a formula taking into account
244 the offender's age upon first commitment, number of prior
245 incarcerations, prior probation or parole failures, the severity
246 and the violence of the offense committed, employment history and
247 other criteria which in the opinion of the board tend to validly
248 and reliably predict the length of incarceration necessary before
249 the offender can be successfully paroled.

250 (b) [Repealed].

251 (4) Any inmate within twenty-four (24) months of his parole
252 eligibility date and who meets the criteria established by the
253 classification board shall receive priority for placement in any
254 educational development and job training programs. Any inmate

255 refusing to participate in an educational development or job
256 training program may be ineligible for parole.

257 **SECTION 7.** This act shall take effect and be in force from
258 and after July 1, 2006.