

By: Senator(s) Albritton

To: Judiciary, Division B

SENATE BILL NO. 2929

1 AN ACT TO AMEND SECTIONS 97-3-65, 97-3-101, 97-5-23 AND  
2 97-5-35, MISSISSIPPI CODE OF 1972, TO REVISE THE PUNISHMENT OF A  
3 SECOND OFFENSE OF FONDLING A CHILD, RAPE OR SEXUAL BATTERY OF A  
4 CHILD OR EXPLOITATION OF A CHILD TO REQUIRE IMPRISONMENT FOR LIFE  
5 WITHOUT POSSIBILITY OF PAROLE; AND FOR RELATED PURPOSES.

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

7 **SECTION 1.** Section 97-3-65, Mississippi Code of 1972, is  
8 amended as follows:

9 97-3-65. (1) The crime of statutory rape is committed when:

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

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

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

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

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

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

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

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

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

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

27 (a) If eighteen (18) years of age or older, but under  
28 twenty-one (21) years of age, and convicted under subsection

29 (1)(a) of this section, to commitment to the custody of the  
30 Department of Corrections for not more than five (5) years \* \* \*  
31 or a fine of not more than Five Thousand Dollars (\$5,000.00), or  
32 both;

33 (b) If twenty-one (21) years of age or older and  
34 convicted under subsection (1)(a) of this section, to commitment  
35 to the custody of the Department of Corrections for not more than  
36 thirty (30) years \* \* \* or a fine of not more than Ten Thousand  
37 Dollars (\$10,000.00), or both, for the first offense, and not more  
38 than forty (40) years in the custody of the Department of  
39 Corrections for each subsequent offense;

40 (c) If eighteen (18) years of age or older and  
41 convicted under subsection (1)(b) of this section, to commitment  
42 to the custody of the Department of Corrections for life \* \* \* or  
43 such lesser term of imprisonment as the court may determine, but  
44 not less than twenty (20) years, and for a second or subsequent  
45 such offense, or a conviction under this paragraph when the  
46 offender has previously been convicted under Section 97-3-101(3),  
47 97-5-23(3) or 97-5-35, commitment to the custody of the Department  
48 of Corrections for a term of life without possibility of parole.

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

53 (4) (a) Every person who shall have forcible sexual  
54 intercourse with any person, or who shall have sexual intercourse  
55 not constituting forcible sexual intercourse or statutory rape  
56 with any person without that person's consent by administering to  
57 such person any substance or liquid which shall produce such  
58 stupor or such imbecility of mind or weakness of body as to  
59 prevent effectual resistance, upon conviction, shall be imprisoned  
60 for life in the custody of the Department of Corrections if the  
61 jury by its verdict so prescribes; and in cases where the jury

62 fails to fix the penalty at life imprisonment, the court shall fix  
63 the penalty at imprisonment in the custody of the Department of  
64 Corrections for any term as the court, in its discretion, may  
65 determine.

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

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

73 (6) For the purposes of this section, "sexual intercourse"  
74 shall mean a joining of the sexual organs of a male and female  
75 human being in which the penis of the male is inserted into the  
76 vagina of the female.

77 **SECTION 2.** Section 97-3-101, Mississippi Code of 1972, is  
78 amended as follows:

79 97-3-101. (1) Every person who shall be convicted of sexual  
80 battery under Section 97-3-95(1)(a), (b), or (2) shall be  
81 imprisoned in the custody of the Department of Corrections for a  
82 period of not more than thirty (30) years, and for a second or  
83 subsequent such offense shall be imprisoned in the custody of the  
84 Department of Corrections for not more than forty (40) years.

85 (2) (a) Every person who shall be convicted of sexual  
86 battery under Section 97-3-95(1)(c) who is at least eighteen (18)  
87 but under twenty-one (21) years of age shall be imprisoned for not  
88 more than five (5) years in the custody of the Department of  
89 Corrections or fined not more than Five Thousand Dollars  
90 (\$5,000.00), or both;

91 (b) Every person who shall be convicted of sexual  
92 battery under Section 97-3-95(1)(c) who is twenty-one (21) years  
93 of age or older shall be imprisoned not more than thirty (30)  
94 years in the custody of the Department of Corrections or fined not

95 more than Ten Thousand Dollars (\$10,000.00), or both, for the  
96 first offense, and not more than forty (40) years in the custody  
97 of the Department of Corrections for each subsequent offense.

98 (3) Every person who shall be convicted of sexual battery  
99 under Section 97-3-95(1)(d) who is eighteen (18) years of age or  
100 older shall be imprisoned for life in the custody of the  
101 Department of Corrections or such lesser term of imprisonment as  
102 the court may determine, but not less than twenty (20) years, and  
103 for a second or subsequent such offense, or for an offender with a  
104 prior conviction under Section 97-3-65(3)(c), 97-5-23(3) or  
105 97-5-35, commitment to the custody of the Department of  
106 Corrections for a term of life without possibility of parole.

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

111 **SECTION 3.** Section 97-5-23, Mississippi Code of 1972, is  
112 amended as follows:

113 97-5-23. (1) Any person above the age of eighteen (18)  
114 years, who, for the purpose of gratifying his or her lust, or  
115 indulging his or her depraved licentious sexual desires, shall  
116 handle, touch or rub with hands or any part of his or her body or  
117 any member thereof, any child under the age of sixteen (16) years,  
118 with or without the child's consent, or a mentally defective,  
119 mentally incapacitated or physically helpless person as defined in  
120 Section 97-3-97, shall be guilty of a felony and, upon conviction  
121 thereof, shall be fined in a sum not less than One Thousand  
122 Dollars (\$1,000.00) nor more than Five Thousand Dollars  
123 (\$5,000.00), or be committed to the custody of the State  
124 Department of Corrections not less than two (2) years nor more  
125 than fifteen (15) years, or be punished by both such fine and  
126 imprisonment, at the discretion of the court.

127           (2) Any person above the age of eighteen (18) years, who,  
128 for the purpose of gratifying his or her lust, or indulging his or  
129 her depraved licentious sexual desires, shall handle, touch or rub  
130 with hands or any part of his or her body or any member thereof,  
131 any child younger than himself or herself and under the age of  
132 eighteen (18) years who is not such person's spouse, with or  
133 without the child's consent, when the person occupies a position  
134 of trust or authority over the child shall be guilty of a felony  
135 and, upon conviction thereof, shall be fined in a sum not less  
136 than One Thousand Dollars (\$1,000.00) nor more than Five Thousand  
137 Dollars (\$5,000.00), or be committed to the custody of the State  
138 Department of Corrections not less than two (2) years nor more  
139 than fifteen (15) years, or be punished by both such fine and  
140 imprisonment, at the discretion of the court. A person in a  
141 position of trust or authority over a child includes without  
142 limitation a child's teacher, counselor, physician, psychiatrist,  
143 psychologist, minister, priest, physical therapist, chiropractor,  
144 legal guardian, parent, stepparent, aunt, uncle, scout leader or  
145 coach.

146           (3) Upon a second conviction for an offense under this  
147 section, or where the person has a previous conviction under  
148 Section 97-3-65(3)(c), 97-3-101(3) or 97-5-35, the person so  
149 convicted shall be punished by commitment to the custody of the  
150 Department of Corrections for a term of life without possibility  
151 of parole.

152           **SECTION 4.** Section 97-5-35, Mississippi Code of 1972, is  
153 amended as follows:

154           97-5-35. Any person who violates any provision of Section  
155 97-5-33 shall be guilty of a felony and upon conviction shall be  
156 fined not less than Fifty Thousand Dollars (\$50,000.00) nor more  
157 than Five Hundred Thousand Dollars (\$500,000.00) and shall be  
158 imprisoned for not less than five (5) years nor more than forty  
159 (40) years. Any person convicted of a second or subsequent

160 violation of Section 97-5-33, or who has a previous conviction  
161 under Section 97-3-65(3)(c), 97-3-101(3) or 97-5-23(3), shall be  
162 fined not less than One Hundred Thousand Dollars (\$100,000.00) nor  
163 more than One Million Dollars (\$1,000,000.00) and shall be  
164 confined in the custody of the Department of Corrections for a  
165 term of life without possibility of parole.

166         **SECTION 5.** This act shall take effect and be in force from  
167 and after July 1, 2006.