

By: Representatives Martinson, Aldridge

To: Judiciary B

HOUSE BILL NO. 490

1 AN ACT TO AMEND SECTIONS 97-3-65, 97-3-71, 97-3-101, 97-5-5,  
2 97-5-23, 97-5-35 AND 97-5-41, MISSISSIPPI CODE OF 1972, TO  
3 INCREASE PENALTIES FOR CERTAIN SEXUAL OFFENSES; AND FOR RELATED  
4 PURPOSES.

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

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

8 97-3-65. (1) The crime of statutory rape is committed when:

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

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

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

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

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

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

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

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

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

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

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

28 (1)(a) of this section, to imprisonment for not more than five (5)

29 years in the State Penitentiary or a fine of not more than Five  
30 Thousand Dollars (\$5,000.00), or both;

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

37 (c) If eighteen (18) years of age or older and  
38 convicted under subsection (1)(b) of this section, to imprisonment  
39 for life in the State Penitentiary or such lesser term of  
40 imprisonment as the court may determine, but not less than  
41 twenty-five (25) years;

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

46 (4) (a) Every person who shall have forcible sexual  
47 intercourse with any person, or who shall have sexual intercourse  
48 not constituting forcible sexual intercourse or statutory rape  
49 with any person without that person's consent by administering to  
50 such person any substance or liquid which shall produce such  
51 stupor or such imbecility of mind or weakness of body as to  
52 prevent effectual resistance, upon conviction, shall be imprisoned  
53 for life in the State Penitentiary if the jury by its verdict so  
54 prescribes; and in cases where the jury fails to fix the penalty  
55 at life imprisonment, the court shall fix the penalty at  
56 imprisonment in the State Penitentiary for any term as the court,  
57 in its discretion, may determine, but such imprisonment shall not  
58 be for less than twenty-five (25) years.

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

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

66 (6) For the purposes of this section, "sexual intercourse"  
67 shall mean a joining of the sexual organs of a male and female  
68 human being in which the penis of the male is inserted into the  
69 vagina of the female.

70 **SECTION 2.** Section 97-3-71, Mississippi Code of 1972, is  
71 amended as follows:

72 97-3-71. Every person who shall be convicted of an assault  
73 with intent to forcibly ravish any female of previous chaste  
74 character shall be punished by imprisonment in the Penitentiary  
75 for life, or for such shorter time as may be fixed by the jury, or  
76 by the court upon the entry of a plea of guilt, but such sentence  
77 shall not be for less than twenty-five (25) years.

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

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

86 (2) (a) Every person who shall be convicted of sexual  
87 battery under Section 97-3-95(1)(c) who is at least eighteen (18)  
88 but under twenty-one (21) years of age shall be imprisoned for not  
89 more than five (5) years in the State Penitentiary or fined not  
90 more than Five Thousand Dollars (\$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 State Penitentiary or fined not more than Ten  
95 Thousand Dollars (\$10,000.00), or both, for the first offense, and  
96 not more than forty (40) years in the State Penitentiary for each  
97 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 State Penitentiary or  
101 such lesser term of imprisonment as the court may determine, but  
102 not less than twenty-five (25) years.

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

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

109 97-5-5. Every person who shall maliciously, willfully, or  
110 fraudulently lead, take, carry away, decoy or entice away, any  
111 child under the age of fourteen (14) years, with intent to detain  
112 or conceal such child from its parents, guardian, or other person  
113 having lawful charge of such child, or for the purpose of  
114 prostitution, concubinage, or marriage, shall, on conviction, be  
115 imprisoned in the Penitentiary not exceeding twenty-five (25)  
116 years, or imprisoned in the county jail not more than one (1)  
117 year, or fined not more than One Thousand Dollars (\$1,000.00), or  
118 both.

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

121 97-5-23. (1) Any person above the age of eighteen (18)  
122 years, who, for the purpose of gratifying his or her lust, or  
123 indulging his or her depraved licentious sexual desires, shall  
124 handle, touch or rub with hands or any part of his or her body or  
125 any member thereof, any child under the age of sixteen (16) years,  
126 with or without the child's consent, or a mentally defective,

127 mentally incapacitated or physically helpless person as defined in  
128 Section 97-3-97, shall be guilty of a felony and, upon conviction  
129 thereof, shall be fined in a sum not less than One Thousand  
130 Dollars (\$1,000.00) nor more than Ten Thousand Dollars  
131 (\$10,000.00), or be committed to the custody of the State  
132 Department of Corrections not less than two (2) years nor more  
133 than twenty-five (25) years, or be punished by both such fine and  
134 imprisonment, at the discretion of the court.

135 (2) Any person above the age of eighteen (18) years, who,  
136 for the purpose of gratifying his or her lust, or indulging his or  
137 her depraved licentious sexual desires, shall handle, touch or rub  
138 with hands or any part of his or her body or any member thereof,  
139 any child younger than himself or herself and under the age of  
140 eighteen (18) years who is not such person's spouse, with or  
141 without the child's consent, when the person occupies a position  
142 of trust or authority over the child shall be guilty of a felony  
143 and, upon conviction thereof, shall be fined in a sum not less  
144 than One Thousand Dollars (\$1,000.00) nor more than Ten Thousand  
145 Dollars (\$10,000.00), or be committed to the custody of the State  
146 Department of Corrections not less than two (2) years nor more  
147 than twenty-five (25) years, or be punished by both such fine and  
148 imprisonment, at the discretion of the court. A person in a  
149 position of trust or authority over a child includes without  
150 limitation a child's teacher, counselor, physician, psychiatrist,  
151 psychologist, minister, priest, physical therapist, chiropractor,  
152 legal guardian, parent, stepparent, aunt, uncle, scout leader or  
153 coach.

154 (3) Upon a second conviction for an offense under this  
155 section, the person so convicted shall be punished by commitment  
156 to the State Department of Corrections for a term not to exceed  
157 forty (40) years, however, upon conviction and sentencing, the  
158 offender shall serve at least one-half (1/2) of the sentence so  
159 imposed.

160           **SECTION 6.** Section 97-5-35, Mississippi Code of 1972, is  
161 amended as follows:

162           97-5-35. Any person who violates any provision of Section  
163 97-5-33 shall be guilty of a felony and upon conviction shall be  
164 fined not less than Fifty Thousand Dollars (\$50,000.00) nor more  
165 than Five Hundred Thousand Dollars (\$500,000.00) and shall be  
166 imprisoned for not less than five (5) years nor more than forty  
167 (40) years. Any person convicted of a second or subsequent  
168 violation of Section 97-5-33 shall be fined not less than One  
169 Hundred Thousand Dollars (\$100,000.00) nor more than One Million  
170 Dollars (\$1,000,000.00) and shall be confined in the custody of  
171 the Department of Corrections for life or such lesser term as the  
172 court may determine, but not less than twenty-five (25) years.

173           **SECTION 7.** Section 97-5-41, Mississippi Code of 1972, is  
174 amended as follows:

175           97-5-41. (1) Any person who shall have carnal knowledge of  
176 his or her unmarried stepchild or adopted child younger than  
177 himself or herself and over fourteen (14) and under eighteen (18)  
178 years of age, upon conviction, shall be punished by imprisonment  
179 in the Penitentiary for a term not exceeding twenty-five (25)  
180 years.

181           (2) Any person who shall have carnal knowledge of an  
182 unmarried child younger than himself or herself and over fourteen  
183 (14) and under eighteen (18) years of age, with whose parent he or  
184 she is cohabiting or living together as husband and wife, upon  
185 conviction, shall be punished by imprisonment in the Penitentiary  
186 for a term not exceeding twenty-five (25) years.

187           **SECTION 8.** This act shall take effect and be in force from  
188 and after July 1, 2007.