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To: Judiciary B

HOUSE BILL NO. 968

1 AN ACT TO PROVIDE THAT FOR VARIOUS SEX ABUSE CRIMES INVOLVING
 2 A CHILD UNDER 18 YEARS OF AGE THE PENALTY FOR THE FIRST OFFENSE
 3 SHALL BE IMPRISONMENT FOR 25 YEARS IN THE STATE PENITENTIARY WITH
 4 NO PAROLE, AND THE PENALTY FOR THE SECOND OFFENSE SHALL BE LIFE
 5 IMPRISONMENT WITH NO PAROLE; TO AMEND SECTION 97-3-65, MISSISSIPPI
 6 CODE OF 1972, WHICH PERTAINS TO THE CRIME OF STATUTORY RAPE, IN
 7 CONFORMITY THERETO; TO AMEND SECTION 97-3-101, MISSISSIPPI CODE OF
 8 1972, WHICH PERTAINS TO THE CRIME OF SEXUAL BATTERY, IN CONFORMITY
 9 THERETO; TO AMEND SECTION 97-5-5, MISSISSIPPI CODE OF 1972, WHICH
 10 PERTAINS TO THE CRIME OF ENTICING A CHILD, IN CONFORMITY THERETO;
 11 TO AMEND SECTION 97-5-23, MISSISSIPPI CODE OF 1972, WHICH PERTAINS
 12 TO THE CRIME OF GRATIFICATION OF LUST, IN CONFORMITY THERETO; TO
 13 AMEND SECTION 97-5-27, MISSISSIPPI CODE OF 1972, WHICH PERTAINS TO
 14 THE CRIME OF COMPUTER LURING, IN CONFORMITY THERETO; TO AMEND
 15 SECTION 97-5-35, MISSISSIPPI CODE OF 1972, WHICH PERTAINS TO THE
 16 CRIME OF EXPLOITATION OF CHILDREN, IN CONFORMITY THERETO; TO AMEND
 17 SECTION 97-5-41, MISSISSIPPI CODE OF 1972, WHICH PERTAINS TO THE
 18 CRIME OF CARNAL KNOWLEDGE OF A CHILD, IN CONFORMITY THERETO; TO
 19 AMEND SECTION 97-29-3, MISSISSIPPI CODE OF 1972, WHICH PERTAINS TO
 20 THE CRIME OF A TEACHER HAVING SEXUAL INTERCOURSE WITH HIS OR HER
 21 PUPIL, IN CONFORMITY THERETO; AND FOR RELATED PURPOSES.

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

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

25 97-3-65. (1) The crime of statutory rape is committed when:

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

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

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

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

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

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

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

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

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

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

43 (a) If eighteen (18) years of age or older, to
44 imprisonment for twenty-five (25) years in the State Penitentiary
45 with no parole for the first offense and to life imprisonment in
46 the State Penitentiary with no parole for a subsequent offense;

47 * * *

48 (b) If thirteen (13) years of age or older but under
49 eighteen (18) years of age, to such imprisonment, fine or other
50 sentence as the court, in its discretion, may determine.

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

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

65 (5) In all cases where a victim is under the age of sixteen
66 (16) years, it shall not be necessary to prove penetration where
67 it is shown the genitals, anus or perineum of the child have been

68 lacerated or torn in the attempt to have sexual intercourse with
69 the child.

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

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

76 97-3-101. (1) Every person who shall be convicted of sexual
77 battery under Section 97-3-95(1)(a) or (b) * * * shall be
78 imprisoned in the State Penitentiary for a period of not more than
79 thirty (30) years, and for a second or subsequent such offense
80 shall be imprisoned in the Penitentiary for not more than forty
81 (40) years.

82 (2) * * * Every person who shall be convicted of sexual
83 battery under Section 97-3-95(1)(c) or (d) or (2) shall be
84 imprisoned for twenty-five (25) years in the State Penitentiary
85 with no parole for a first offense and to life imprisonment in the
86 State Penitentiary with no parole for a subsequent offense.

87 * * *

88 (3) Every person who shall be convicted of sexual battery
89 who is thirteen (13) years of age or older but under eighteen (18)
90 years of age shall be sentenced to such imprisonment, fine or
91 other sentence as the court, in its discretion, may determine.

92 **SECTION 3.** Section 97-5-5, Mississippi Code of 1972, is
93 amended as follows:

94 97-5-5. (1) Every person who shall maliciously, willfully,
95 or fraudulently lead, take, carry away, decoy or entice away, any
96 child under the age of fourteen (14) years, with intent to detain
97 or conceal such child from its parents, guardian, or other person
98 having lawful charge of such child, upon conviction, shall be
99 imprisoned in the State Penitentiary not exceeding ten (10) years,

100 or imprisoned in the county jail not more than one (1) year, or
101 fined not more than One Thousand Dollars (\$1,000.00), or both.

102 (2) Every person who shall maliciously, willfully, or
103 fraudulently lead, take, carry away, decoy or entice away, any
104 child under the age of fourteen (14) years, upon conviction, shall
105 be imprisoned in the State Penitentiary for twenty-five (25) years
106 with no parole for the first offense and shall be imprisoned for
107 life in the State Penitentiary with no parole for a subsequent
108 offense.

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

111 97-5-23. (1) (a) Any person above the age of eighteen (18)
112 years, who, for the purpose of gratifying his or her lust, or
113 indulging his or her depraved licentious sexual desires, shall
114 handle, touch or rub with hands or any part of his or her body or
115 any member thereof, * * * a mentally defective, mentally
116 incapacitated or physically helpless person as defined in Section
117 97-3-97, shall be guilty of a felony and, upon conviction thereof,
118 shall be fined in a sum not less than One Thousand Dollars
119 (\$1,000.00) nor more than Five Thousand Dollars (\$5,000.00), or be
120 committed to the custody of the State Department of Corrections
121 not less than two (2) years nor more than fifteen (15) years, or
122 be punished by both such fine and imprisonment, at the discretion
123 of the court.

124 (b) Any person above the age of eighteen (18) years,
125 who, for the purpose of gratifying his or her lust, or indulging
126 his or her depraved licentious sexual desires, shall handle, touch
127 or rub with hands or any part of his or her body or any member
128 thereof, any child under the age of sixteen (16) years, with or
129 without the child's consent, shall be guilty of a felony, and upon
130 conviction thereof, shall be sentenced to imprisonment for
131 twenty-five (25) years in the State Penitentiary with no parole

132 for the first offense and to life imprisonment in the State
133 Penitentiary with no parole for a subsequent offense.

134 (2) (a) Any person above the age of eighteen (18) years,
135 who, for the purpose of gratifying his or her lust, or indulging
136 his or her depraved licentious sexual desires, shall handle, touch
137 or rub with hands or any part of his or her body or any member
138 thereof, any child younger than himself or herself who is over the
139 age of eighteen (18) years and under the age of twenty-one (21)
140 years who is not such person's spouse, with or without the child's
141 consent, when the person occupies a position of trust or authority
142 over the child shall be guilty of a felony and, upon conviction
143 thereof, shall be fined in a sum not less than One Thousand
144 Dollars (\$1,000.00) nor more than Five Thousand Dollars
145 (\$5,000.00), or be committed to the custody of the State
146 Department of Corrections not less than two (2) years nor more
147 than fifteen (15) 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 (b) 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 twenty (20) 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 5.** Section 97-5-27, Mississippi Code of 1972, is
161 amended as follows:

162 97-5-27. (1) Any person who intentionally and knowingly
163 disseminates sexually oriented material to any person under
164 eighteen (18) years of age shall be guilty of a misdemeanor and

165 upon conviction shall be fined for each offense not less than Five
166 Hundred Dollars (\$500.00) nor more than Five Thousand Dollars
167 (\$5,000.00) or be imprisoned for not more than one (1) year in the
168 county jail, or be punished by both such fine and imprisonment. A
169 person disseminates sexually oriented material within the meaning
170 of this section if he:

171 (a) Sells, delivers or provides, or offers or agrees to
172 sell, deliver or provide, any sexually oriented writing, picture,
173 record or other representation or embodiment that is sexually
174 oriented; or

175 (b) Presents or directs a sexually oriented play, dance
176 or other performance or participates directly in that portion
177 thereof which makes it sexually oriented; or

178 (c) Exhibits, presents, rents, sells, delivers or
179 provides, or offers or agrees to exhibit, present, rent or to
180 provide any sexually oriented still or motion picture, film,
181 filmstrip or projection slide, or sound recording, sound tape or
182 sound track or any matter or material of whatever form which is a
183 representation, embodiment, performance or publication that is
184 sexually oriented.

185 (2) For purposes of this section, any material is sexually
186 oriented if the material contains representations or descriptions,
187 actual or simulated, of masturbation, sodomy, excretory functions,
188 lewd exhibition of the genitals or female breasts, sadomasochistic
189 abuse (for the purpose of sexual stimulation or gratification),
190 homosexuality, lesbianism, bestiality, sexual intercourse, or
191 physical contact with a person's clothed or unclothed genitals,
192 pubic area, buttocks, or the breast or breasts of a female for the
193 purpose of sexual stimulation, gratification or perversion.

194 (3) (a) A person is guilty of computer luring when:

195 (i) Knowing the character and content of any
196 communication of sexually oriented material, he intentionally uses
197 any computer communication system allowing the input, output,

198 examination or transfer of computer data or computer programs from
199 one (1) computer to another, to initiate or engage in such
200 communication with a person under the age of eighteen (18); and

201 (ii) By means of such communication he importunes,
202 invites or induces a person under the age of eighteen (18) years
203 to engage in sexual intercourse, deviant sexual intercourse or
204 sexual contact with him, or to engage in a sexual performance,
205 obscene sexual performance or sexual conduct for his benefit.

206 (b) A person who engages in the conduct proscribed by
207 this subsection (3) is presumed to do so with knowledge of the
208 character and content of the material.

209 (c) In any prosecution for computer luring, it shall be
210 a defense that:

211 (i) The defendant made a reasonable effort to
212 ascertain the true age of the minor and was unable to do so as a
213 result of actions taken by the minor; or

214 (ii) The defendant has taken, in good faith,
215 reasonable, effective and appropriate actions under the
216 circumstances to restrict or prevent access by minors to the
217 materials prohibited, which may involve any appropriate measures
218 to restrict minors from access to such communications, including
219 any method which is feasible under available technology; or

220 (iii) The defendant has restricted access to such
221 materials by requiring use of a verified credit card, debit
222 account, adult access code or adult personal identification
223 number; or

224 (iv) The defendant has in good faith established a
225 mechanism such that the labeling, segregation or other mechanism
226 enables such material to be automatically blocked or screened by
227 software or other capabilities reasonably available to responsible
228 adults wishing to effect such blocking or screening and the
229 defendant has not otherwise solicited minors not subject to such

230 screening or blocking capabilities to access that material or to
231 circumvent any such screening or blocking.

232 (d) In any prosecution for computer luring:

233 (i) No person shall be held to have violated this
234 subsection (3) solely for providing access or connection to or
235 from a facility, system, or network not under that person's
236 control, including transmission, downloading, intermediate
237 storage, access software or other related capabilities that are
238 incidental to providing such access or connection that do not
239 include the creation of the content of the communication.

240 (ii) No employer shall be held liable for the
241 actions of an employee or agent unless the employee's or agent's
242 conduct is within the scope of his employment or agency or the
243 employer, having knowledge of such conduct, authorizes or ratifies
244 such conduct, or recklessly disregards such conduct.

245 (iii) The limitations provided by this paragraph
246 (d) shall not be applicable to a person who is a conspirator with
247 an entity actively involved in the creation or knowing
248 distribution of communications that violate such provisions, or
249 who knowingly advertises the availability of such communications,
250 nor to a person who provides access or connection to a facility,
251 system or network engaged in the violation of such provisions that
252 is owned or controlled by such person.

253 (e) Computer luring is a felony, punishable as provided
254 for in this paragraph. Any person convicted of a violation of
255 subsection (3)(a)(i) of this section shall be punished by
256 commitment to the custody of the Department of Corrections for a
257 term not to exceed three (3) years and by a fine not to exceed Ten
258 Thousand Dollars (\$10,000.00). Any person convicted of a
259 violation of subsection (3)(a)(ii) of this section shall be
260 punished by imprisonment for twenty-five (25) years in the State
261 Penitentiary with no parole for the first offense and to life

262 imprisonment in the State Penitentiary with no parole for a
263 subsequent offense.

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

266 97-5-35. Any person who violates any provision of Section
267 97-5-33 shall be guilty of a felony and upon conviction shall be
268 fined not less than Fifty Thousand Dollars (\$50,000.00) nor more
269 than Five Hundred Thousand Dollars (\$500,000.00) and shall be
270 imprisoned for not less than twenty-five (25) years nor more than
271 forty (40) years with no parole. Any person convicted of a second
272 or subsequent violation of Section 97-5-33 shall be fined not less
273 than One Hundred Thousand Dollars (\$100,000.00) nor more than One
274 Million Dollars (\$1,000,000.00) and shall be confined in the
275 custody of the Department of Corrections for life with no parole.

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

278 97-5-41. (1) Any person who shall have carnal knowledge of
279 his or her unmarried stepchild or adopted child younger than
280 himself or herself and over fourteen (14) and under eighteen (18)
281 years of age, upon conviction, shall be punished by imprisonment
282 for twenty-five (25) years in the State Penitentiary with no
283 parole for the first offense and to life imprisonment in the State
284 Penitentiary with no parole for a subsequent offense.

285 (2) Any person who shall have carnal knowledge of an
286 unmarried child younger than himself or herself and over fourteen
287 (14) and under eighteen (18) years of age, with whose parent he or
288 she is cohabiting or living together as husband and wife, upon
289 conviction, shall be punished by imprisonment for twenty-five (25)
290 years in the State Penitentiary with no parole for the first
291 offense and to life imprisonment in the State Penitentiary with no
292 parole for a subsequent offense.

293 **SECTION 8.** Section 97-29-3, Mississippi Code of 1972, is
294 amended as follows:

295 97-29-3. If any teacher over the age of eighteen (18) years
296 of age shall have sexual intercourse with any pupil under eighteen
297 (18) years of age, not being married to each other and without the
298 consent of the pupil, the teacher, upon conviction thereof, shall
299 be sentenced to imprisonment for twenty-five (25) years in the
300 State Penitentiary with no parole for the first offense and to
301 life imprisonment in the State Penitentiary with no parole for a
302 subsequent offense. If any teacher over the age of eighteen (18)
303 years of age and any pupil under eighteen (18) years of age of
304 such teacher, not being married to each other and with consent of
305 the pupil, shall have sexual intercourse, each with the other, the
306 pupil shall, for every such offense, be fined in any sum, not more
307 than Five Hundred Dollars (\$500.00) each * * *.

308 **SECTION 9.** This act shall take effect and be in force from
309 and after July 1, 2007.