

By: Representative Gunn

To: Judiciary B

HOUSE BILL NO. 1310

1 AN ACT TO AMEND SECTION 97-29-51, MISSISSIPPI CODE OF 1972,
2 TO REVISE THE CRIME OF PROCURING PROSTITUTION BY PROVIDING THAT
3 PAYMENT OF MONEY OR ANYTHING OF VALUE TO A PERSON TO RECRUIT OR
4 ENTICE ANOTHER PERSON TO ENGAGE IN SEXUAL CONDUCT SHALL BE THE
5 CRIME OF PROCURING PROSTITUTION; TO INCREASE THE PENALTY FOR SUCH
6 PROCUREMENT; TO PROVIDE A PENALTY FOR A SECOND OR SUBSEQUENT
7 OFFENSE FOR PROCURING PROSTITUTION OF A MINOR; TO INCREASE
8 PENALTIES FOR PROMOTION OF PROSTITUTION; TO INCREASE PENALTIES
9 AGAINST ASSOCIATIONS PROMOTING PROSTITUTION; TO AMEND SECTION
10 97-29-49, MISSISSIPPI CODE OF 1972, TO REQUIRE LAW ENFORCEMENT TO
11 IMMEDIATELY REMOVE ANY MINOR FROM THE CUSTODY OF THE MINOR'S
12 PARENT OR GUARDIAN AND PLACE THE CHILD WITH CHILD PROTECTION
13 SERVICES, IF THE MINOR COMMITS PROSTITUTION; TO AMEND SECTION
14 97-5-5, MISSISSIPPI CODE OF 1972, TO INCREASE THE PENALTIES FOR
15 ANY PERSON WHO ENTICES A CHILD UNDER 14 YEARS OF AGE INTO
16 PROSTITUTION OR HUMAN TRAFFICKING; TO AMEND SECTION 97-5-39,
17 MISSISSIPPI CODE OF 1972, TO PROVIDE INCREASED PENALTIES AND
18 IMPRISONMENT FOR A PERSON WHO KNOWINGLY OR RECKLESSLY PROCURES,
19 ENTICES, PERSUADES OR PERMITS THE PROSTITUTION OR HUMAN
20 TRAFFICKING OF A CHILD; TO REQUIRE A PENALTY OF LIFE IMPRISONMENT
21 FOR ANY PARENT OR GUARDIAN WHO PROCURES OR PROMOTES THE
22 PROSTITUTION OR COMMITS HUMAN TRAFFICKING OF HIS OR HER MINOR
23 CHILD; TO DEFINE SUCH ACTIONS AS "FELONIOUS CHILD ABUSE"; TO
24 PROVIDE PENALTIES FOR; TO AMEND SECTION 43-21-105, MISSISSIPPI
25 CODE OF 1972, TO ADD PROSTITUTION TO THE DEFINITION OF "ABUSED
26 CHILD"; TO ADD HUMAN TRAFFICKING TO THE DEFINITION OF "SEXUAL
27 ABUSE"; TO AMEND SECTION 97-29-45, MISSISSIPPI CODE OF 1972, TO
28 PROHIBIT THE USE OF ELECTRONIC COMMUNICATION TO PROCURE
29 PROSTITUTION OR HUMAN TRAFFICKING; TO AMEND SECTION 97-3-54.1,
30 MISSISSIPPI CODE OF 1972, TO ADD THE TERM "SEXUAL ACTIVITIES" TO
31 THE PROHIBITIONS AGAINST HUMAN TRAFFICKING; TO INCREASE PENALTIES
32 FOR HUMAN TRAFFICKING; TO REQUIRE ANY MINOR WHO IS TRAFFICKED TO
33 BE IMMEDIATELY REMOVED FROM THE CUSTODY OF THEIR PARENT OR
34 GUARDIAN; TO AMEND SECTION 97-3-54.2, MISSISSIPPI CODE OF 1972, TO



35 ADD DRIVER'S LICENSES AND GOVERNMENT IDENTIFICATION TO THE LIST OF
36 ITEMS THAT CAN NOT BE TAKEN FOR PURPOSES OF HUMAN TRAFFICKING; TO
37 AMEND SECTION 97-3-54.7, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT
38 ANY PROPERTY OBTAINED AS A RESULT OF HUMAN TRAFFICKING MAY BE
39 FORFEITED TO LAW ENFORCEMENT; TO AMEND SECTION 93-15-121,
40 MISSISSIPPI CODE OF 1972, TO ADD PROSTITUTION OF A MINOR TO THE
41 GROUNDS FOR TERMINATION OF PARENTAL RIGHTS; TO BRING FORWARD
42 SECTIONS 97-5-33, 97-5-35, 97-3-54.6, MISSISSIPPI CODE OF 1972,
43 WHICH REGULATE PENALTIES FOR HUMAN TRAFFICKING; AND FOR RELATED
44 PURPOSES.

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

46 **SECTION 1.** Section 97-29-51, Mississippi Code of 1972, is
47 amended as follows:

48 97-29-51. (1) (a) Except as otherwise provided in this
49 subsection, a person commits the * * * crime of procuring the
50 services of a prostitute if the person * * * intentionally pays,
51 or offers or agrees to pay * * * money * * *, other property or
52 anything of value to another person for having engaged in, to
53 engage in, or on the understanding that the other person will
54 engage in, sexual intercourse or sexual conduct with the person or
55 with any other person; or intentionally pays, or offers or agrees
56 to pay money, other property or anything of value to a person to
57 recruit, entice, harbor, transport another person who has engaged
58 in, to engage in, or on the understanding that the other person
59 will engage in sexual intercourse or sexual conduct with the
60 person or with any other person. "Sexual conduct" includes
61 cunnilingus, fellatio, masturbation of another, anal intercourse
62 or the causing of penetration to any extent and with any object or
63 body part of the genital or anal opening of another.



64 (b) Upon conviction for a first violation under this
65 subsection, a person shall be punished by a fine not exceeding
66 * * * Five Hundred Dollars (\$500.00) or by confinement in the
67 county jail for not more than six (6) months, or both. A second
68 or subsequent violation of this section shall be a felony,
69 punishable by a fine not exceeding * * * Five Thousand Dollars
70 (\$5,000.00), or by imprisonment in the custody of the Department
71 of Corrections for not more than * * * five (5) years, or both.

72 (c) (i) However, in all cases, if the person whose
73 services are procured in violation of this subsection (1) is a
74 minor under eighteen (18) years of age, for the first violation,
75 the person convicted shall be guilty of a felony and shall, upon
76 conviction, be punished by imprisonment for not less than five
77 (5) years, nor more than thirty (30) years, or by a fine of not
78 less than Fifty Thousand Dollars (\$50,000.00) nor more than Five
79 Hundred Thousand Dollars (\$500,000.00), or both. Upon a second or
80 subsequent conviction under this paragraph, the person shall be
81 guilty of a felony, and upon conviction, be punished by
82 imprisonment for not less than twenty (20) years up to life
83 imprisonment, or by a fine of not less than Five Hundred Thousand
84 Dollars (\$500,000.00) nor more than One Million Dollars
85 (\$1,000,000.00) or both.

86 (ii) However, in all cases, if the person whose
87 services are procured in violation of this subsection (1) is a
88 minor under eighteen (18) years of age, and the person convicted



89 is a parent or guardian of the minor, such person shall be guilty
90 of a felony and punished to life imprisonment.

91 (d) Consent of a minor is not a defense to prosecution
92 under this subsection (1).

93 (2) (a) A person commits the felony of promoting
94 prostitution if the person:

95 (i) Knowingly or intentionally entices, compels,
96 causes, induces, persuades, or encourages by promise, threat,
97 violence, or by scheme or device, another person to become a
98 prostitute;

99 (ii) Knowingly or intentionally solicits or offers
100 or agrees to solicit, or receives or gives, or agrees to receive
101 or give any money or thing of value for soliciting, or attempting
102 to solicit, another person for the purpose of prostitution;

103 (iii) Knowingly induces, persuades, or encourages
104 a person to come into or leave this state for the purpose of
105 prostitution;

106 (iv) Having control over the use of a place or
107 vehicle, knowingly or intentionally permits another person to use
108 the place or vehicle for prostitution;

109 (v) Accepts, receives, levies or appropriates
110 money or other property of value from a prostitute, without lawful
111 consideration, with knowledge or reasonable cause to know it was
112 earned, in whole or in part, from prostitution; or



113 (vi) Conducts, directs, takes, or transports, or
114 offers or agrees to take or transport, or aids or assists in
115 transporting, any person to any vehicle, conveyance, place,
116 structure, or building, or to any other person with knowledge or
117 reasonable cause to know that the purpose of such directing,
118 taking or transporting is prostitution.

119 (b) Upon conviction, a person shall be punished by a
120 fine not exceeding * * * Ten Thousand Dollars (\$10,000.00) or by
121 imprisonment in the custody of the Department of Corrections for
122 not more than * * * fifteen (15) years, or both. A second or
123 subsequent violation shall be punished by a fine not
124 exceeding * * * Fifty Thousand Dollars (\$50,000.00) or by
125 imprisonment in the custody of the Department of Corrections for
126 up to * * * thirty (30) years, or both.

127 (c) However, in all cases, if the person whose services
128 are promoted in violation of this subsection (2) is a minor under
129 eighteen (18) years of age, the person convicted for a first
130 violation shall be guilty of a felony and shall, upon conviction,
131 be punished by imprisonment for not less than * * * ten (10)
132 years, nor more than thirty (30) years, or by a fine of not less
133 than * * * One Hundred Thousand Dollars (\$100,000.00) nor more
134 than Five Hundred Thousand Dollars (\$500,000.00), or both. For a
135 second or subsequent conviction, imprisonment no less than twenty
136 (20) years up to life imprisonment, no less than Five Hundred
137 Thousand Dollars (\$500,000.00), or both. There is no requirement



138 that the defendant have actual knowledge of the age of the person
139 and consent of a minor is not a defense to prosecution under this
140 section.

141 (3) If it is determined that a person suspected of or
142 charged with promoting prostitution is a trafficked person, as
143 defined by Section 97-3-54.4, that fact shall be considered a
144 mitigating factor in any prosecution of that person for
145 prostitution, and the person shall be referred to appropriate
146 resources for assistance. If it is determined that a person
147 suspected of or charged with promoting prostitution is a minor
148 under eighteen (18) years of age who meets the definition of a
149 trafficked person as defined in Section 97-3-54.4, the minor is
150 immune from prosecution for promoting prostitution as a juvenile
151 or adult and provisions of Section 97-3-54.1(4) shall be
152 applicable, and the minor shall be immediately removed from the
153 custody of their parent or legal guardian and placed in the
154 custody of Child Protection Services or with next of kin. If a
155 minor is removed from the custody of a parent or legal guardian
156 under this paragraph, the Department of Human Services shall
157 commence an initial investigation into suspected child abuse or
158 neglect.

159 (4) Any partnership, association, corporation or other
160 entity violating any provision of subsection (2) against the
161 promotion of prostitution shall, upon conviction, for a first
162 violation be punished by a fine not exceeding * * * Five Hundred



163 Thousand Dollars (\$500,000.00). Upon conviction for a second or
164 subsequent violation, any such entity shall be punished by a fine
165 not less than Five Hundred Thousand Dollars (\$500,000.00) nor more
166 than One Million Dollars (\$1,000,000.00). If the person whose
167 services are promoted is under eighteen (18) years of age, the
168 partnership, association, corporation or other legal entity
169 convicted shall be punished by a fine not exceeding * * * Ten
170 Million Dollars (\$10,000,000.00). Upon conviction for a second or
171 subsequent violation for such promotion of a child under eighteen
172 (18) years of age, any such entity shall be punished for not less
173 than Ten Million Dollars (\$10,000,000.00) and an injunction to
174 stop all operations owned by the partnership, association,
175 corporation or other entity. There is no requirement that the
176 defendant have knowledge of the age of the person. Consent of a
177 minor is not a defense to prosecution under this section.

178 (5) Investigation and prosecution of a person, partnership,
179 association, corporation or other entity under this section shall
180 not preclude investigation or prosecution against that person,
181 partnership, association, corporation or other entity for a
182 violation of other applicable criminal laws, including, but not
183 limited to, the Mississippi Human Trafficking Act, Section 97-3-54
184 et seq.

185 **SECTION 2.** Section 97-29-49, Mississippi Code of 1972, is
186 amended as follows:



187 97-29-49. (1) A person commits the * * * crime of
188 prostitution if the person knowingly or intentionally performs, or
189 offers or agrees to perform, sexual intercourse or sexual conduct
190 for money or other property. "Sexual conduct" includes
191 cunnilingus, fellatio, masturbation of another, anal intercourse
192 or the causing of penetration to any extent and with any object or
193 body part of the genital or anal opening of another.

194 (2) (a) Except as provided in paragraph (b) of this
195 subsection for minors, any person violating the provisions of this
196 section shall, upon conviction, be punished by a fine not
197 exceeding Two Hundred Dollars (\$200.00) or by confinement in the
198 county jail for not more than six (6) months, or both.

199 (b) Any person under eighteen (18) years of age
200 violating the provisions of this act shall not be fined, but shall
201 immediately be placed in the custody of Child Protection Services
202 as described in subsection (3) of this section.

203 (3) In addition to the mandatory reporting provisions
204 contained in Section 97-5-51, any law enforcement officer who
205 takes a minor under eighteen (18) years of age into custody for
206 suspected prostitution shall immediately place the child in the
207 custody of Child Protection Services, make a report to the
208 Department of Human Services as required in Section 43-21-353 for
209 suspected child sexual abuse or neglect, and the department shall
210 immediately commence an initial investigation into suspected child



211 sexual abuse * * * neglect or human trafficking as required in
212 Section 43-21-353.

213 (4) If it is determined that a person suspected of or
214 charged with engaging in prostitution is engaging in those acts as
215 a direct result of being a trafficked person, as defined by
216 Section 97-3-54.4, that person shall be immune from prosecution
217 for prostitution as a juvenile or adult and, if a minor, the
218 provisions of Section 97-3-54.1(4) shall be applicable.

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

221 97-5-5. Every person who shall maliciously, willfully, or
222 fraudulently lead, take, carry away, decoy or entice away, any
223 child under the age of fourteen (14) years, with intent to detain
224 or conceal such child from its parents, guardian, or other person
225 having lawful charge of such child, or for the purpose of
226 prostitution, human trafficking, concubinage, or marriage, shall,
227 on conviction for a first violation, be imprisoned in the custody
228 of the Department of Corrections for not less than * * * five (5)
229 years nor more than * * * thirty (30) years, or fined not less
230 than Fifty Thousand Dollars (\$50,000.00), nor more than * * * Five
231 Hundred Thousand Dollars (\$500,000.00), or both. Upon conviction
232 for a second or subsequent violation, the person shall be punished
233 for not less than thirty (30) years up to life imprisonment, or
234 fined not less than Five Hundred Thousand Dollars (\$500,000.00)
235 nor more than One Million Dollars (\$1,000,000.00). Investigation



236 and prosecution of a defendant under this section does not
237 preclude prosecution of the defendant for a violation of other
238 applicable criminal laws, including, but not limited to, the
239 Mississippi Human Trafficking Act, Section 97-3-54 et seq.

240 **SECTION 4.** Section 97-5-39, Mississippi Code of 1972, is
241 amended as follows:

242 97-5-39. (1) (a) Except as otherwise provided in this
243 section, any parent, guardian or other person who intentionally,
244 knowingly or recklessly commits any act or omits the performance
245 of any duty, which act or omission contributes to or tends to
246 contribute to the neglect or delinquency of any child or which act
247 or omission results in the abuse of any child, as defined in
248 Section 43-21-105(m) of the Youth Court Law, or who knowingly aids
249 any child in escaping or absenting himself from the guardianship
250 or custody of any person, agency or institution, or knowingly
251 harbors or conceals, or aids in harboring or concealing, any child
252 who has absented himself without permission from the guardianship
253 or custody of any person, agency or institution to which the child
254 shall have been committed by the youth court shall be guilty of a
255 misdemeanor, and upon conviction shall be punished by a fine not
256 to exceed One Thousand Dollars (\$1,000.00), or by imprisonment not
257 to exceed one (1) year in jail, or by both such fine and
258 imprisonment.

259 (b) For the purpose of this section, a child is a
260 person who has not reached his eighteenth birthday. A child who



261 has not reached his eighteenth birthday and is on active duty for
262 a branch of the armed services, or who is married, is not
263 considered a child for the purposes of this statute.

264 (c) If a child commits one (1) of the proscribed acts
265 in subsection (2) (a), (b) or (c) of this section upon another
266 child, then original jurisdiction of all such offenses shall be in
267 youth court.

268 (d) If the child's deprivation of necessary clothing,
269 shelter, health care or supervision appropriate to the child's age
270 results in substantial harm to the child's physical, mental or
271 emotional health, the person may be sentenced to imprisonment in
272 custody of the Department of Corrections for not more than five
273 (5) years or to payment of a fine of not more than Five Thousand
274 Dollars (\$5,000.00), or both.

275 (e) A parent, legal guardian or other person who
276 knowingly permits the continuing physical * * * abuse of a child
277 is guilty of neglect of a child and may be sentenced to
278 imprisonment in the custody of the Department of Corrections for
279 not more than ten (10) years or to payment of a fine of not more
280 than Ten Thousand Dollars (\$10,000.00), or both.

281 (f) A parent, legal guardian or other person who
282 knowingly or recklessly promotes, procures, entices, persuades or
283 permits the prostitution or human trafficking of a child is guilty
284 of felonious abuse of a child and shall be sentenced to life



285 imprisonment without parole in the custody of the Department of
286 Corrections.

287 (2) Any person shall be guilty of felonious child abuse in
288 the following circumstances:

289 (a) Whether bodily harm results or not, if the person
290 shall intentionally, knowingly or recklessly:

291 (i) Burn any child;

292 (ii) Physically torture any child;

293 (iii) Strangle, choke, smother or in any way
294 interfere with any child's breathing;

295 (iv) Poison a child;

296 (v) Starve a child of nourishments needed to
297 sustain life or growth;

298 (vi) Use any type of deadly weapon upon any child;

299 (b) If some bodily harm to any child actually occurs,
300 and if the person shall intentionally, knowingly or recklessly:

301 (i) Throw, kick, bite, or cut any child;

302 (ii) Strike a child under the age of fourteen (14)
303 about the face or head with a closed fist;

304 (iii) Strike a child under the age of five (5) in
305 the face or head;

306 (iv) Kick, bite, cut or strike a child's genitals;
307 circumcision of a male child is not a violation under this
308 subparagraph (iv);



309 (c) If serious bodily harm to any child actually
310 occurs, and if the person shall intentionally, knowingly or
311 recklessly:

312 (i) Strike any child on the face or head;

313 (ii) Disfigure or scar any child;

314 (iii) Whip, strike or otherwise abuse any
315 child * * *.

316 (d) Any person, upon conviction under paragraph (a) or
317 (c) of this subsection, shall be sentenced by the court to
318 imprisonment in the custody of the Department of Corrections for a
319 term of not less than five (5) years and up to life, as determined
320 by the court. Any person, upon conviction under paragraph (b) of
321 this subsection shall be sentenced by the court to imprisonment in
322 the custody of the Department of Corrections for a term of not
323 less than two (2) years nor more than ten (10) years, as
324 determined by the court. For any second or subsequent conviction
325 under this subsection (2), the person shall be sentenced to
326 imprisonment for life.

327 (e) For the purposes of this subsection (2), "bodily
328 harm" means any bodily injury to a child and includes, but is not
329 limited to, bruising, bleeding, lacerations, soft tissue swelling,
330 and external or internal swelling of any body organ.

331 (f) For the purposes of this subsection (2), "serious
332 bodily harm" means any serious bodily injury to a child and
333 includes, but is not limited to, the fracture of a bone, permanent



334 disfigurement, permanent scarring, or any internal bleeding or
335 internal trauma to any organ, any brain damage, any injury to the
336 eye or ear of a child or other vital organ, and impairment of any
337 bodily function.

338 (g) Nothing contained in paragraph (c) of this
339 subsection shall preclude a parent or guardian from disciplining a
340 child of that parent or guardian, or shall preclude a person in
341 loco parentis to a child from disciplining that child, if done in
342 a reasonable manner, and reasonable corporal punishment or
343 reasonable discipline as to that parent or guardian's child or
344 child to whom a person stands in loco parentis shall be a defense
345 to any violation charged under paragraph (c) of this subsection.

346 (h) Reasonable discipline and reasonable corporal
347 punishment shall not be a defense to acts described in paragraphs
348 (a) and (b) of this subsection or if a child suffers serious
349 bodily harm as a result of any act prohibited under paragraph (c)
350 of this subsection.

351 (3) Nothing contained in this section shall prevent
352 proceedings against the parent, guardian or other person under any
353 statute of this state or any municipal ordinance defining any act
354 as a crime or misdemeanor. Nothing in the provisions of this
355 section shall preclude any person from having a right to trial by
356 jury when charged with having violated the provisions of this
357 section.



358 (4) (a) A parent, legal guardian or caretaker who endangers
359 a child's person or health by knowingly causing or permitting the
360 child to be present where any person is selling, manufacturing or
361 possessing immediate precursors or chemical substances with intent
362 to manufacture, sell or possess a controlled substance as
363 prohibited under Section 41-29-139 or 41-29-313, is guilty of
364 child endangerment and may be sentenced to imprisonment for not
365 more than ten (10) years or to payment of a fine of not more than
366 Ten Thousand Dollars (\$10,000.00), or both.

367 (b) If the endangerment results in substantial harm to
368 the child's physical, mental or emotional health, the person may
369 be sentenced to imprisonment for not more than twenty (20) years
370 or to payment of a fine of not more than Twenty Thousand Dollars
371 (\$20,000.00), or both.

372 (5) Nothing contained in this section shall prevent
373 proceedings against the parent, guardian or other person under any
374 statute of this state or any municipal ordinance defining any act
375 as a crime or misdemeanor. Nothing in the provisions of this
376 section shall preclude any person from having a right to trial by
377 jury when charged with having violated the provisions of this
378 section.

379 (6) After consultation with the Department of Human
380 Services, a regional mental health center or an appropriate
381 professional person, a judge may suspend imposition or execution
382 of a sentence provided in subsections (1) and (2) of this section



383 and in lieu thereof require treatment over a specified period of
384 time at any approved public or private treatment facility. A
385 person may be eligible for treatment in lieu of criminal penalties
386 no more than one (1) time.

387 (7) In any proceeding resulting from a report made pursuant
388 to Section 43-21-353 of the Youth Court Law, the testimony of the
389 physician making the report regarding the child's injuries or
390 condition or cause thereof shall not be excluded on the ground
391 that the physician's testimony violates the physician-patient
392 privilege or similar privilege or rule against disclosure. The
393 physician's report shall not be considered as evidence unless
394 introduced as an exhibit to his testimony.

395 (8) Any criminal prosecution arising from a violation of
396 this section shall be tried in the circuit, county, justice or
397 municipal court having jurisdiction; provided, however, that
398 nothing herein shall abridge or dilute the contempt powers of the
399 youth court.

400 **SECTION 5.** Section 43-21-105, Mississippi Code of 1972, is
401 amended as follows:

402 43-21-105. The following words and phrases, for purposes of
403 this chapter, shall have the meanings ascribed herein unless the
404 context clearly otherwise requires:

- 405 (a) "Youth court" means the Youth Court Division.
406 (b) "Judge" means the judge of the Youth Court
407 Division.



408 (c) "Designee" means any person that the judge appoints
409 to perform a duty which this chapter requires to be done by the
410 judge or his designee. The judge may not appoint a person who is
411 involved in law enforcement or who is an employee of the
412 Mississippi Department of Human Services to be his designee.

413 (d) "Child" and "youth" are synonymous, and each means
414 a person who has not reached his eighteenth birthday. A child who
415 has not reached his eighteenth birthday and is on active duty for
416 a branch of the armed services or is married is not considered a
417 "child" or "youth" for the purposes of this chapter.

418 (e) "Parent" means the father or mother to whom the
419 child has been born, or the father or mother by whom the child has
420 been legally adopted.

421 (f) "Guardian" means a court-appointed guardian of the
422 person of a child.

423 (g) "Custodian" means any person having the present
424 care or custody of a child whether such person be a parent or
425 otherwise.

426 (h) "Legal custodian" means a court-appointed custodian
427 of the child.

428 (i) "Delinquent child" means a child who has reached
429 his tenth birthday and who has committed a delinquent act.

430 (j) "Delinquent act" is any act, which if committed by
431 an adult, is designated as a crime under state or federal law, or
432 municipal or county ordinance other than offenses punishable by



433 life imprisonment or death. A delinquent act includes escape from
434 lawful detention and violations of the Uniform Controlled
435 Substances Law and violent behavior.

436 (k) "Child in need of supervision" means a child who
437 has reached his seventh birthday and is in need of treatment or
438 rehabilitation because the child:

439 (i) Is habitually disobedient of reasonable and
440 lawful commands of his parent, guardian or custodian and is
441 ungovernable; or

442 (ii) While being required to attend school,
443 willfully and habitually violates the rules thereof or willfully
444 and habitually absents himself therefrom; or

445 (iii) Runs away from home without good cause; or

446 (iv) Has committed a delinquent act or acts.

447 (l) "Neglected child" means a child:

448 (i) Whose parent, guardian or custodian or any
449 person responsible for his care or support, neglects or refuses,
450 when able so to do, to provide for him proper and necessary care
451 or support, or education as required by law, or medical, surgical,
452 or other care necessary for his well-being; however, a parent who
453 withholds medical treatment from any child who in good faith is
454 under treatment by spiritual means alone through prayer in
455 accordance with the tenets and practices of a recognized church or
456 religious denomination by a duly accredited practitioner thereof



457 shall not, for that reason alone, be considered to be neglectful
458 under any provision of this chapter; or

459 (ii) Who is otherwise without proper care,
460 custody, supervision or support; or

461 (iii) Who, for any reason, lacks the special care
462 made necessary for him by reason of his mental condition, whether
463 the mental condition is having mental illness or having an
464 intellectual disability; or

465 (iv) Who, for any reason, lacks the care necessary
466 for his health, morals or well-being.

467 (m) "Abused child" means a child whose parent, guardian
468 or custodian or any person responsible for his care or support,
469 whether legally obligated to do so or not, has caused or allowed
470 to be caused, upon the child, sexual abuse, sexual exploitation,
471 prostitution, emotional abuse, mental injury, nonaccidental
472 physical injury or other maltreatment. However, physical
473 discipline, including spanking, performed on a child by a parent,
474 guardian or custodian in a reasonable manner shall not be deemed
475 abuse under this section. "Abused child" also means a child who
476 is or has been trafficked within the meaning of the Mississippi
477 Human Trafficking Act by any person, without regard to the
478 relationship of the person to the child.

479 (n) "Sexual abuse" means obscene or pornographic
480 photographing, filming or depiction of children for commercial
481 purposes, or the rape, molestation, incest, prostitution, human



482 trafficking or other such forms of sexual exploitation of children
483 under circumstances which indicate that the child's health or
484 welfare is harmed or threatened.

485 (o) "A child in need of special care" means a child
486 with any mental or physical illness that cannot be treated with
487 the dispositional alternatives ordinarily available to the youth
488 court.

489 (p) A "dependent child" means any child who is not a
490 child in need of supervision, a delinquent child, an abused child
491 or a neglected child, and which child has been voluntarily placed
492 in the custody of the Department of Human Services by his parent,
493 guardian or custodian.

494 (q) "Custody" means the physical possession of the
495 child by any person.

496 (r) "Legal custody" means the legal status created by a
497 court order which gives the legal custodian the responsibilities
498 of physical possession of the child and the duty to provide him
499 with food, shelter, education and reasonable medical care, all
500 subject to residual rights and responsibilities of the parent or
501 guardian of the person.

502 (s) "Detention" means the care of children in
503 physically restrictive facilities.

504 (t) "Shelter" means care of children in physically
505 nonrestrictive facilities.



506 (u) "Records involving children" means any of the
507 following from which the child can be identified:
508 (i) All youth court records as defined in Section
509 43-21-251;
510 (ii) All social records as defined in Section
511 43-21-253;
512 (iii) All law enforcement records as defined in
513 Section 43-21-255;
514 (iv) All agency records as defined in Section
515 43-21-257; and
516 (v) All other documents maintained by any
517 representative of the state, county, municipality or other public
518 agency insofar as they relate to the apprehension, custody,
519 adjudication or disposition of a child who is the subject of a
520 youth court cause.

521 (v) "Any person responsible for care or support" means
522 the person who is providing for the child at a given time. This
523 term shall include, but is not limited to, stepparents, foster
524 parents, relatives, nonlicensed babysitters or other similar
525 persons responsible for a child and staff of residential care
526 facilities and group homes that are licensed by the Department of
527 Human Services.

528 (w) The singular includes the plural, the plural the
529 singular and the masculine the feminine when consistent with the
530 intent of this chapter.



531 (x) "Out-of-home" setting means the temporary
532 supervision or care of children by the staff of licensed day care
533 centers, the staff of public, private and state schools, the staff
534 of juvenile detention facilities, the staff of unlicensed
535 residential care facilities and group homes and the staff of, or
536 individuals representing, churches, civic or social organizations.

537 (y) "Durable legal custody" means the legal status
538 created by a court order which gives the durable legal custodian
539 the responsibilities of physical possession of the child and the
540 duty to provide him with care, nurture, welfare, food, shelter,
541 education and reasonable medical care. All these duties as
542 enumerated are subject to the residual rights and responsibilities
543 of the natural parent(s) or guardian(s) of the child or children.

544 (z) "Status offense" means conduct subject to
545 adjudication by the youth court that would not be a crime if
546 committed by an adult.

547 (aa) "Financially able" means a parent or child who is
548 ineligible for a court-appointed attorney.

549 (bb) "Assessment" means an individualized examination
550 of a child to determine the child's psychosocial needs and
551 problems, including the type and extent of any mental health,
552 substance abuse or co-occurring mental health and substance abuse
553 disorders and recommendations for treatment. The term includes,
554 but is not limited to, a drug and alcohol, psychological or



555 psychiatric evaluation, records review, clinical interview or the
556 administration of a formal test and instrument.

557 (cc) "Screening" means a process, with or without the
558 administration of a formal instrument, that is designed to
559 identify a child who is at increased risk of having mental health,
560 substance abuse or co-occurring mental health and substance abuse
561 disorders that warrant immediate attention, intervention or more
562 comprehensive assessment.

563 (dd) "Durable legal relative guardianship" means the
564 legal status created by a youth court order that conveys the
565 physical and legal custody of a child or children by durable legal
566 guardianship to a relative or fictive kin who is licensed as a
567 foster or resource parent.

568 (ee) "Relative" means a person related to the child by
569 affinity or consanguinity within the third degree.

570 (ff) "Fictive kin" means a person not related to the
571 child legally or biologically but who is considered a relative due
572 to a significant, familial-like and ongoing relationship with the
573 child and family.

574 (gg) "Reasonable efforts" means the exercise of
575 reasonable care and due diligence by the Department of Human
576 Services, the Department of Child Protection Services, or any
577 other appropriate entity or person to use appropriate and
578 available services to prevent the unnecessary removal of the child



579 from the home or provide other services related to meeting the
580 needs of the child and the parents.

581 **SECTION 6.** Section 97-29-45, Mississippi Code of 1972, is
582 amended as follows:

583 97-29-45. (1) It shall be unlawful for any person or
584 persons:

585 (a) To make any comment, request, suggestion or
586 proposal by means of telecommunication or electronic communication
587 which is obscene, lewd or lascivious with intent to abuse,
588 threaten or harass any party to a telephone conversation,
589 telecommunication or electronic communication;

590 (b) To make a telecommunication or electronic
591 communication with intent to terrify, intimidate or harass, and
592 threaten to inflict injury or physical harm to any person or to
593 his property;

594 (c) To make a telephone call, whether or not
595 conversation ensues, without disclosing his identity and with
596 intent to annoy, abuse, threaten or harass any person at the
597 called number;

598 (d) To make or cause the telephone of another
599 repeatedly or continuously to ring, with intent to harass any
600 person at the called number;

601 (e) To make repeated telephone calls, during which
602 conversation ensues, solely to harass any person at the called
603 number; * * *



604 (f) Knowingly to permit a computer or a telephone of
605 any type under his control to be used for any purpose prohibited
606 by this section * * *; or

607 (g) To procure or promote prostitution as provided in
608 Section 97-29-49 or 97-29-51 or commits human trafficking in
609 Section 97-3-54.1.

610 (2) Upon conviction of any person for the first offense of
611 violating paragraphs (a) through (f) of subsection (1) of this
612 section, such person shall be fined not more than Five Hundred
613 Dollars (\$500.00) or imprisoned in the county jail for not more
614 than six (6) months, or both. Upon conviction for the first
615 offense of violating paragraph (g) of subsection (1) of this
616 section, such person shall be imprisoned for not less than two (2)
617 years nor more than ten (10) years, or fined not less than
618 Twenty-five Thousand Dollars (\$25,000.00) nor more than One
619 Hundred Thousand Dollars (\$100,000.00), or both. If the first
620 violation is procurement or promotion of prostitution or human
621 trafficking of a person under eighteen (18) years of age, upon
622 conviction, the person shall be fined no less than Fifty Thousand
623 Dollars (\$50,000.00) nor more than Five Hundred Thousand Dollars
624 (\$500,000.00), or imprisoned not less than five (5) years, nor
625 more than thirty (30) years, or both. Upon conviction for a
626 second or subsequent offense, such person shall be imprisoned for
627 not less than five (5) years nor more than twenty (20) years, or
628 fined not less than Fifty Thousand Dollars (\$50,000.00) nor more



629 than Five Hundred Thousand Dollars (\$500,000.00). If the second
630 or subsequent offense is procurement or promotion of prostitution
631 or human trafficking of a person under eighteen (18) years of age,
632 the person shall be fined no less than Five Hundred Thousand
633 Dollars (\$500,000.00) nor more than One Million Dollars
634 (\$1,000,000.00), or imprisoned no less than twenty (20) years up
635 to life imprisonment, or both.

636 (3) Upon conviction of any person for the second offense of
637 violating subsection (1) of this section, the offenses being
638 committed within a period of five (5) years, such person shall be
639 fined not more than One Thousand Dollars (\$1,000.00) or imprisoned
640 in the county jail for not more than one (1) year, or both.

641 (4) For any third or subsequent conviction of any person
642 violating subsection (1) of this section, except paragraph (g) of
643 subsection (1), the offenses being committed within a period of
644 five (5) years, such person shall be guilty of a felony and fined
645 not more than Two Thousand Dollars (\$2,000.00) and/or imprisoned
646 in the State Penitentiary for not more than two (2) years, or
647 both.

648 (5) The provisions of this section do not apply to a person
649 or persons who make a telephone call that would be covered by the
650 provisions of the federal Fair Debt Collection Practices Act, 15
651 USCS Section 1692 et seq.

652 (6) Any person violating this section may be prosecuted in
653 the county where the telephone call, conversation or language



654 originates in case such call, conversation or language originates
655 in the State of Mississippi. In case the call, conversation or
656 language originates outside of the State of Mississippi then such
657 person shall be prosecuted in the county to which it is
658 transmitted.

659 (7) For the purposes of this section, "telecommunication"
660 and "electronic communication" mean and include any type of
661 telephonic, electronic or radio communications, or transmission of
662 signs, signals, data, writings, images and sounds or intelligence
663 of any nature by telephone, including cellular telephones, wire,
664 cable, radio, electromagnetic, photoelectronic or photo-optical
665 system or the creation, display, management, storage, processing,
666 transmission or distribution of images, text, voice, video or data
667 by wire, cable or wireless means, including the Internet.

668 (8) No person shall be held to have violated this section
669 solely for providing access or connection to telecommunications or
670 electronic communications services where the services do not
671 include the creation of the content of the communication.
672 Companies organized to do business as commercial broadcast radio
673 stations, television stations, telecommunications service
674 providers, Internet service providers, cable service providers or
675 news organizations shall not be criminally liable under this
676 section.

677 **SECTION 7.** Section 97-3-54.1, Mississippi Code of 1972, is
678 amended as follows:



679 97-3-54.1. (1) (a) A person who coerces, recruits,
680 entices, harbors, transports, provides or obtains by any means, or
681 attempts to coerce, recruit, entice, harbor, transport, provide or
682 obtain by any means, another person, intending or knowing that the
683 person will be subjected to forced labor or services, or who
684 benefits, whether financially or by receiving anything of value
685 from participating in an enterprise that he knows or reasonably
686 should have known has engaged in such acts, shall be guilty of the
687 crime of human-trafficking.

688 (b) A person who knowingly purchases the forced labor
689 or services of a trafficked person or who otherwise knowingly
690 subjects, or attempts to subject, another person to forced labor
691 or services or who benefits, whether financially or by receiving
692 anything of value from participating in an enterprise that he
693 knows or reasonably should have known has engaged in such acts,
694 shall be guilty of the crime of procuring involuntary servitude.

695 (c) A person who knowingly subjects, or attempts to
696 subject, or who recruits, entices, harbors, transports, provides
697 or obtains by any means, or attempts to recruit, entice, harbor,
698 transport, provide or obtain by any means, a minor, knowing that
699 the minor will engage in commercial sexual activity, sexual
700 activity or sexually explicit performance, or the production of
701 sexually oriented material, or causes or attempts to cause a minor
702 to engage in commercial sexual activity, sexual activity, sexually
703 explicit performance, or the production of sexually oriented



704 material, shall be guilty of procuring sexual servitude of a minor
705 and shall be punished by commitment to the custody of the
706 Department of Corrections for not less than five (5) nor more than
707 thirty (30) years, or by a fine of not less than Fifty Thousand
708 Dollars (\$50,000.00) nor more than Five Hundred Thousand Dollars
709 (\$500,000.00), or both unless the person is the parent or guardian
710 of the minor. If the person convicted under this paragraph is the
711 parent or guardian of the minor, the person shall be punished with
712 life imprisonment without parole in the custody of the Department
713 of Corrections. It is not a defense in a prosecution under this
714 section that a minor consented to engage in the commercial sexual
715 activity, sexually explicit performance, or the production of
716 sexually oriented material, or that the defendant reasonably
717 believed that the minor was eighteen (18) years of age or older.

718 (2) If the victim is not a minor, a person who is convicted
719 of an offense set forth in subsection (1)(a) or (b) of this
720 section shall be committed to the custody of the Department of
721 Corrections for not less than * * * five (5) years nor more than
722 twenty (20) years, or by a fine of not less than * * * Twenty
723 Thousand Dollars (\$20,000.00) nor more than One Hundred Thousand
724 Dollars (\$100,000.00), or both. For a second or subsequent
725 offense, a person convicted shall be committed to the custody of
726 the Department of Corrections for not less than ten (10) years,
727 nor more than thirty (30) years, or by a fine of not less than
728 Fifty Thousand Dollars (\$50,000.00), nor more than Five Hundred



729 Thousand Dollars (\$500,000.00), or both. If the victim of the
730 offense is a minor, a person who is convicted of an offense set
731 forth in subsection (1)(a) or (b) of this section shall be
732 committed to the custody of the Department of Corrections for not
733 less than * * * ten (10) years nor more than * * * twenty-five
734 (25) years, or by a fine of not less than * * * Fifty Thousand
735 Dollars (\$50,000.00) nor more than * * * Five Hundred Thousand
736 Dollars (\$500,000.00), or both. For a second or subsequent
737 offense, if the victim is a minor, a person who is convicted of an
738 offense set forth in subsection (1)(a) or (b), shall be committed
739 to the custody of the Department of Corrections for not less than
740 twenty (20) years up to life imprisonment, or fined not less than
741 Five Hundred Thousand Dollars (\$500,000.00) nor more than One
742 Million Dollars (\$1,000,000.00), or both.

743 (3) An enterprise may be prosecuted for an offense under
744 this chapter if:

745 (a) An agent of the enterprise knowingly engages in
746 conduct that constitutes an offense under this chapter while
747 acting within the scope of employment and for the benefit of the
748 entity.

749 (b) An employee of the enterprise engages in conduct
750 that constitutes an offense under this chapter and the commission
751 of the offense was part of a pattern of illegal activity for the
752 benefit of the enterprise, which an agent of the enterprise either



753 knew was occurring or recklessly disregarded, and the agent failed
754 to take effective action to stop the illegal activity.

755 (c) It is an affirmative defense to a prosecution of an
756 enterprise that the enterprise had in place adequate procedures
757 that are actually followed by the enterprise, including an
758 effective complaint procedure, designed to prevent persons
759 associated with the enterprise from engaging in the unlawful
760 conduct and to promptly correct any violations of this chapter.

761 (d) The court may consider the severity of the
762 enterprise's offense and order penalties, including: (i) a fine
763 of not more than One Million Dollars (\$1,000,000.00); (ii)
764 disgorgement of profit; and (iii) debarment from government
765 contracts. Additionally, the court may order any of the relief
766 provided in Section 97-3-54.7.

767 (4) In addition to the mandatory reporting provisions
768 contained in Section 97-5-51, any person who has reasonable cause
769 to suspect that a minor under the age of eighteen (18) is a
770 trafficked person shall immediately make a report of the suspected
771 child abuse or neglect to the Department of Human Services and to
772 the Statewide Human Trafficking Coordinator. The Department of
773 Human Services shall then immediately notify the law enforcement
774 agency in the jurisdiction where the suspected child abuse or
775 neglect occurred as required in Section 43-21-353, and the
776 department shall also commence an initial investigation into the
777 suspected abuse or neglect as required in Section 43-21-353. A



778 minor who has been identified as a victim of trafficking shall not
779 be liable for criminal activity in violation of this section, but
780 shall be immediately removed from the custody of the parent or
781 legal guardian and placed in the custody of Child Protection
782 Services or the child's next of kin.

783 (5) It is an affirmative defense in a prosecution under this
784 act that the defendant:

785 (a) Is a victim; and

786 (b) Committed the offense under a reasonable
787 apprehension created by a person that, if the defendant did not
788 commit the act, the person would inflict serious harm on the
789 defendant, a member of the defendant's family, or a close
790 associate.

791 **SECTION 8.** Section 97-3-54.2, Mississippi Code of 1972, is
792 amended as follows:

793 97-3-54.2. Anyone who knowingly destroys, conceals, removes,
794 confiscates or possesses, or attempts to destroy, conceal, remove,
795 confiscate or possess, any actual or purported passport or other
796 immigration document, any government identification, driver's
797 license or any other actual or purported government identification
798 document of any person to prevent or restrict, or attempt to
799 prevent or restrict, without lawful authority, the person's
800 liberty to move or travel in order to maintain the labor * * *,
801 services or sexual activities of that person, when the person is
802 or has been a victim of a violation set out in Section 97-3-54.1,



803 97-29-49 or 97-29-51, shall be punished by commitment to the
804 custody of the Department of Corrections for not more than five
805 (5) years.

806 **SECTION 9.** Section 97-3-54.7, Mississippi Code of 1972, is
807 amended as follows:

808 97-3-54.7. **Forfeiture of assets and disposition of proceeds.**

809 (1) In addition to any other civil or criminal penalties provided
810 by law, any property used * * * or obtained as a result of the
811 commission of a violation of this act shall be forfeited as
812 provided herein.

813 (a) The following property shall be subject to
814 forfeiture if used or intended for use as an instrumentality in or
815 used in furtherance of a violation of this act:

816 (i) Conveyances, including aircraft, vehicles or
817 vessels;

818 (ii) Books, records, telecommunication equipment,
819 or computers;

820 (iii) Money or weapons;

821 (iv) Everything of value furnished, or intended to
822 be furnished, in exchange for an act in violation and all proceeds
823 traceable to the exchange;

824 (v) Negotiable instruments and securities;

825 (vi) Any property, real or personal, directly or
826 indirectly acquired or received in a violation or as an inducement
827 to violate;



828 (vii) Any property traceable to proceeds from a
829 violation; and

830 (viii) Any real property, including any right,
831 title and interest in the whole of or any part of any lot or tract
832 of land used in furtherance of a violation of this act.

833 (b) (i) No property used by any person as a common
834 carrier in the transaction of business as a common carrier is
835 subject to forfeiture under this section unless it appears that
836 the owner or other person in charge of the property is a
837 consenting party or privy to a violation of this act;

838 (ii) No property is subject to forfeiture under
839 this section by reason of any act or omission proved by the owner
840 thereof to have been committed or omitted without his knowledge or
841 consent; if the confiscating authority has reason to believe that
842 the property is a leased or rented property, then the confiscating
843 authority shall notify the owner of the property within five (5)
844 days of the confiscation or within five (5) days of forming reason
845 to believe that the property is a leased or rented property;

846 (iii) Forfeiture of a property encumbered by a
847 bona fide security interest is subject to the interest of the
848 secured party if he neither had knowledge of nor consented to the
849 act or omission.

850 (2) No property shall be forfeited under the provisions of
851 this section, to the extent of the interest of an owner, by reason



852 of any act or omission established by him to have been committed
853 or omitted without his knowledge or consent.

854 (3) Seizure without process may be made if the seizure is
855 incident to an arrest or a search under a search warrant or an
856 inspection under an administrative inspection warrant.

857 (4) (a) When any property is seized under this section,
858 proceedings shall be instituted within a reasonable period of time
859 from the date of seizure or the subject property shall be
860 immediately returned to the party from whom seized.

861 (b) A petition for forfeiture shall be filed by the
862 Attorney General or a district attorney in the name of the State
863 of Mississippi, the county, or the municipality, and may be filed
864 in the county in which the seizure is made, the county in which
865 the criminal prosecution is brought, or the county in which the
866 owner of the seized property is found. Forfeiture proceedings may
867 be brought in the circuit court or the county court if a county
868 court exists in the county and the value of the seized property is
869 within the jurisdictional limits of the county court as set forth
870 in Section 9-9-21. A copy of the petition shall be served upon
871 the following persons by service of process in the same manner as
872 in civil cases:

873 (i) The owner of the property, if address is
874 known;

875 (ii) Any secured party who has registered his lien
876 or filed a financing statement as provided by law, if the identity



877 of the secured party can be ascertained by the entity filing the
878 petition by making a good faith effort to ascertain the identity
879 of the secured party;

880 (iii) Any other bona fide lienholder or secured
881 party or other person holding an interest in the property in the
882 nature of a security interest of whom the seizing law enforcement
883 agency has actual knowledge; and

884 (iv) Any person in possession of property subject
885 to forfeiture at the time that it was seized.

886 (5) If the property is a motor vehicle susceptible of
887 titling under the Mississippi Motor Vehicle Title Law and if there
888 is any reasonable cause to believe that the vehicle has been
889 titled, inquiry of the Department of Revenue shall be made as to
890 what the records of the Department of Revenue show as to who is
891 the record owner of the vehicle and who, if anyone, holds any lien
892 or security interest that affects the vehicle.

893 (6) If the property is a motor vehicle and is not titled in
894 the State of Mississippi, then an attempt shall be made to
895 ascertain the name and address of the person in whose name the
896 vehicle is licensed, and if the vehicle is licensed in a state
897 which has in effect a certificate of title law, inquiry of the
898 appropriate agency of that state shall be made as to what the
899 records of the agency show as to who is the record owner of the
900 vehicle and who, if anyone, holds any lien, security interest or



901 other instrument in the nature of a security device that affects
902 the vehicle.

903 (7) If the property is of a nature that a financing
904 statement is required by the laws of this state to be filed to
905 perfect a security interest affecting the property and if there is
906 any reasonable cause to believe that a financing statement
907 covering the security interest has been filed under the laws of
908 this state, inquiry of the appropriate office designated in
909 Section 75-9-501, shall be made as to what the records show as to
910 who is the record owner of the property and who, if anyone, has
911 filed a financing statement affecting the property.

912 (8) If the property is an aircraft or part thereof and if
913 there is any reasonable cause to believe that an instrument in the
914 nature of a security device affects the property, inquiry of the
915 Mississippi Department of Transportation shall be made as to what
916 the records of the Federal Aviation Administration show as to who
917 is the record owner of the property and who, if anyone, holds an
918 instrument in the nature of a security device which affects the
919 property.

920 (9) If the answer to an inquiry states that the record owner
921 of the property is any person other than the person who was in
922 possession of it when it was seized, or states that any person
923 holds any lien, encumbrance, security interest, other interest in
924 the nature of a security interest, mortgage or deed of trust that
925 affects the property, the record owner and also any lienholder,



926 secured party, other person who holds an interest in the property
927 in the nature of a security interest, or holder of an encumbrance,
928 mortgage or deed of trust that affects the property is to be named
929 in the petition of forfeiture and is to be served with process in
930 the same manner as in civil cases.

931 (10) If the owner of the property cannot be found and served
932 with a copy of the petition of forfeiture, or if no person was in
933 possession of the property subject to forfeiture at the time that
934 it was seized and the owner of the property is unknown, there
935 shall be filed with the clerk of the court in which the proceeding
936 is pending an affidavit to such effect, whereupon the clerk of the
937 court shall publish notice of the hearing addressed to "the
938 Unknown Owner of _____," filling in the blank space with
939 a reasonably detailed description of the property subject to
940 forfeiture. Service by publication shall contain the other
941 requisites prescribed in Section 11-33-41, and shall be served as
942 provided in Section 11-33-37, for publication of notice for
943 attachments at law.

944 (11) No proceedings instituted pursuant to the provisions of
945 this section shall proceed to hearing unless the judge conducting
946 the hearing is satisfied that this section has been complied with.
947 Any answer received from an inquiry required by this section shall
948 be introduced into evidence at the hearing.

949 (12) (a) An owner of a property that has been seized shall
950 file an answer within thirty (30) days after the completion of



951 service of process. If an answer is not filed, the court shall
952 hear evidence that the property is subject to forfeiture and
953 forfeit the property to the seizing law enforcement agency. If an
954 answer is filed, a time for hearing on forfeiture shall be set
955 within thirty (30) days of filing the answer or at the succeeding
956 term of court if court would not be in session within thirty (30)
957 days after filing the answer. The court may postpone the
958 forfeiture hearing to a date past the time any criminal action is
959 pending against the owner upon request of any party.

960 (b) If the owner of the property has filed an answer
961 denying that the property is subject to forfeiture, then the
962 burden is on the petitioner to prove that the property is subject
963 to forfeiture. However, if an answer has not been filed by the
964 owner of the property, the petition for forfeiture may be
965 introduced into evidence and is prima facie evidence that the
966 property is subject to forfeiture. The burden of proof placed
967 upon the petitioner in regard to property forfeited under the
968 provisions of this chapter shall be by a preponderance of the
969 evidence.

970 (c) At the hearing any claimant of any right, title or
971 interest in the property may prove his lien, encumbrance, security
972 interest, other interest in the nature of a security interest,
973 mortgage or deed of trust to be bona fide and created without
974 knowledge or consent that the property was to be used so as to
975 cause the property to be subject to forfeiture.



976 (d) If it is found that the property is subject to
977 forfeiture, then the judge shall forfeit the property. However,
978 if proof at the hearing discloses that the interest of any bona
979 fide lienholder, secured party, other person holding an interest
980 in the property in the nature of a security interest, or any
981 holder of a bona fide encumbrance, mortgage or deed of trust is
982 greater than or equal to the present value of the property, the
983 court shall order the property released to him. If the interest
984 is less than the present value of the property and if the proof
985 shows that the property is subject to forfeiture, the court shall
986 order the property forfeited.

987 (13) Unless otherwise provided herein, all personal property
988 which is forfeited under this section shall be liquidated and,
989 after deduction of court costs and the expense of liquidation, the
990 proceeds shall be divided as follows:

991 (a) If only one (1) law enforcement agency participates
992 in the underlying criminal case out of which the forfeiture
993 arises, fifty percent (50%) of the proceeds shall be forwarded to
994 the State Treasurer and deposited in the Relief for Victims of
995 Human Trafficking Fund, and fifty percent (50%) shall be deposited
996 and credited to the budget of the participating law enforcement
997 agency.

998 (b) If more than one (1) law enforcement agency
999 participates in the underlying criminal case out of which the
1000 forfeiture arises, fifty percent (50%) of the proceeds shall be



1001 forwarded to the State Treasurer and deposited in the Relief for
1002 Victims of Human Trafficking Fund, twenty-five percent (25%) of
1003 the proceeds shall be deposited and credited to the budget of the
1004 law enforcement agency whose officers initiated the criminal case
1005 and twenty-five percent (25%) shall be divided equitably between
1006 or among the other participating law enforcement agencies, and
1007 shall be deposited and credited to the budgets of the
1008 participating law enforcement agencies. In the event that the
1009 other participating law enforcement agencies cannot agree on the
1010 division of their twenty-five percent (25%), a petition shall be
1011 filed by any one of them in the court in which the civil
1012 forfeiture case is brought and the court shall make an equitable
1013 division.

1014 (14) All money forfeited under this section shall be
1015 divided, deposited and credited in the same manner as provided in
1016 subsection (13).

1017 (15) All real estate forfeited under the provisions of this
1018 section shall be sold to the highest and best bidder at a public
1019 auction for cash, the auction to be conducted by the chief law
1020 enforcement officer of the initiating law enforcement agency, or
1021 his designee, at such place, on such notice and in accordance with
1022 the same procedure, as far as practicable, as is required in the
1023 case of sales of land under execution at law. The proceeds of the
1024 sale shall first be applied to the cost and expense in
1025 administering and conducting the sale, then to the satisfaction of



1026 all mortgages, deeds of trust, liens and encumbrances of record on
1027 the property. The remaining proceeds shall be divided, forwarded
1028 and deposited in the same manner as provided in subsection (13).

1029 (16) (a) Any county or municipal law enforcement agency may
1030 maintain, repair, use and operate for official purposes all
1031 property described in subsection (1)(a)(i) of this section that
1032 has been forfeited to the agency if it is free from any interest
1033 of a bona fide lienholder, secured party or other party who holds
1034 an interest in the property in the nature of a security interest.
1035 The county or municipal law enforcement agency may purchase the
1036 interest of a bona fide lienholder, secured party or other party
1037 who holds an interest so that the property can be released for its
1038 use. If the property is a motor vehicle susceptible of titling
1039 under the Mississippi Motor Vehicle Title Law, the law enforcement
1040 agency shall be deemed to be the purchaser, and the certificate of
1041 title shall be issued to it as required by subsection (9) of this
1042 section.

1043 (b) (i) If a vehicle is forfeited to or transferred to
1044 a sheriff's department, then the sheriff may transfer the vehicle
1045 to the county for official or governmental use as the board of
1046 supervisors may direct.

1047 (ii) If a vehicle is forfeited to or transferred
1048 to a police department, then the police chief may transfer the
1049 vehicle to the municipality for official or governmental use as
1050 the governing authority of the municipality may direct.



1051 (c) If a motor vehicle forfeited to a county or
1052 municipal law enforcement agency becomes obsolete or is no longer
1053 needed for official or governmental purposes, it may be disposed
1054 of in accordance with Section 19-7-5 or in the manner provided by
1055 law for disposing of municipal property.

1056 (17) The forfeiture procedure set forth in this section is
1057 the sole remedy of any claimant, and no court shall have
1058 jurisdiction to interfere therewith by replevin, injunction,
1059 supersedeas or in any other manner.

1060 **SECTION 10.** Section 93-15-121, Mississippi Code of 1972, is
1061 amended as follows:

1062 93-15-121. Any of the following, if established by clear and
1063 convincing evidence, may be grounds for termination of the
1064 parent's parental rights if reunification between the parent and
1065 child is not desirable toward obtaining a satisfactory permanency
1066 outcome:

1067 (a) The parent has been medically diagnosed by a
1068 qualified mental health professional with a severe mental illness
1069 or deficiency that is unlikely to change in a reasonable period of
1070 time and which, based upon expert testimony or an established
1071 pattern of behavior, makes the parent unable or unwilling to
1072 provide an adequate permanent home for the child;

1073 (b) The parent has been medically diagnosed by a
1074 qualified health professional with an extreme physical
1075 incapacitation that is unlikely to change in a reasonable period



1076 of time and which, based upon expert testimony or an established
1077 pattern of behavior, prevents the parent, despite reasonable
1078 accommodations, from providing minimally acceptable care for the
1079 child;

1080 (c) The parent is suffering from habitual alcoholism or
1081 other drug addiction and has failed to successfully complete
1082 alcohol or drug treatment;

1083 (d) The parent is unwilling to provide reasonably
1084 necessary food, clothing, shelter, or medical care for the child;
1085 reasonably necessary medical care does not include recommended or
1086 optional vaccinations against childhood or any other disease;

1087 (e) The parent has failed to exercise reasonable
1088 visitation or communication with the child;

1089 (f) The parent's abusive or neglectful conduct has
1090 caused, at least in part, an extreme and deep-seated antipathy by
1091 the child toward the parent, or some other substantial erosion of
1092 the relationship between the parent and the child;

1093 (g) The parent has committed an abusive act for which
1094 reasonable efforts to maintain the children in the home would not
1095 be required under Section 43-21-603, or a series of physically,
1096 mentally, or emotionally abusive incidents, against the child or
1097 another child, whether related by consanguinity or affinity or
1098 not, making future contacts between the parent and child
1099 undesirable; or



1100 (h) (i) The parent has been convicted of any of the
1101 following offenses against any child:
1102 1. Rape of a child under Section 97-3-65;
1103 2. Sexual battery of a child under Section
1104 97-3-95(c);
1105 3. Touching a child for lustful purposes
1106 under Section 97-5-23;
1107 4. Exploitation of a child under Sections
1108 97-5-31 through 97-5-37;
1109 5. Felonious abuse or battery of a child
1110 under Section 97-5-39(2);
1111 6. Carnal knowledge of a step or adopted
1112 child or a child of a cohabitating partner under Section 97-5-41;
1113 or
1114 7. Human trafficking of a child under Section
1115 97-3-54.1; * * *
1116 8. Prostitution of a child under Section
1117 97-29-51; or

1118 (ii) The parent has been convicted of:
1119 1. Murder or voluntary manslaughter of
1120 another child of the parent;
1121 2. Aiding, abetting, attempting, conspiring
1122 or soliciting to commit murder or voluntary manslaughter of the
1123 child or another child of the parent; or



1124 3. A felony assault that results in the
1125 serious bodily injury to the child or another child of the parent.

1126 **SECTION 11.** Section 97-5-33, Mississippi Code of 1972, is
1127 brought forward as follows:

1128 97-5-33. (1) No person shall, by any means including
1129 computer, cause, solicit or knowingly permit any child to engage
1130 in sexually explicit conduct or in the simulation of sexually
1131 explicit conduct for the purpose of producing any visual depiction
1132 of such conduct.

1133 (2) No person shall, by any means including computer,
1134 photograph, film, video tape or otherwise depict or record a child
1135 engaging in sexually explicit conduct or in the simulation of
1136 sexually explicit conduct.

1137 (3) No person shall, by any means including computer,
1138 knowingly send, transport, transmit, ship, mail or receive any
1139 photograph, drawing, sketch, film, video tape or other visual
1140 depiction of an actual child engaging in sexually explicit
1141 conduct.

1142 (4) No person shall, by any means including computer,
1143 receive with intent to distribute, distribute for sale, sell or
1144 attempt to sell in any manner any photograph, drawing, sketch,
1145 film, video tape or other visual depiction of an actual child
1146 engaging in sexually explicit conduct.

1147 (5) No person shall, by any means including computer,
1148 knowingly possess or knowingly access with intent to view any



1149 photograph, drawing, sketch, film, video tape or other visual
1150 depiction of an actual child engaging in sexually explicit
1151 conduct.

1152 (6) No person shall, by any means including computer,
1153 knowingly entice, induce, persuade, seduce, solicit, advise,
1154 coerce, or order a child to meet with the defendant or any other
1155 person for the purpose of engaging in sexually explicit conduct.

1156 (7) No person shall by any means, including computer,
1157 knowingly entice, induce, persuade, seduce, solicit, advise,
1158 coerce or order a child to produce any visual depiction of adult
1159 sexual conduct or any sexually explicit conduct.

1160 (8) The fact that an undercover operative or law enforcement
1161 officer posed as a child or was involved in any other manner in
1162 the detection and investigation of an offense under this section
1163 shall not constitute a defense to a prosecution under this
1164 section.

1165 (9) For purposes of determining jurisdiction, the offense is
1166 committed in this state if all or part of the conduct described in
1167 this section occurs in the State of Mississippi or if the
1168 transmission that constitutes the offense either originates in
1169 this state or is received in this state.

1170 **SECTION 12.** Section 97-5-35, Mississippi Code of 1972, is
1171 brought forward as follows:

1172 97-5-35. Any person who violates any provision of Section
1173 97-5-33 shall be guilty of a felony and upon conviction shall be



1174 fined not less than Fifty Thousand Dollars (\$50,000.00) nor more
1175 than Five Hundred Thousand Dollars (\$500,000.00) and shall be
1176 imprisoned for not less than five (5) years nor more than forty
1177 (40) years. Any person convicted of a second or subsequent
1178 violation of Section 97-5-33 shall be fined not less than One
1179 Hundred Thousand Dollars (\$100,000.00) nor more than One Million
1180 Dollars (\$1,000,000.00) and shall be confined in the custody of
1181 the Department of Corrections for life or such lesser term as the
1182 court may determine, but not less than twenty (20) years.

1183 **SECTION 13.** Section 97-3-54.6, Mississippi Code of 1972, is
1184 brought forward as follows:

1185 97-3-54.6. **Injunctive and other relief for victims of**
1186 **trafficking; confidentiality.** (1) Any circuit court may, after
1187 making due provision for the rights of trafficked persons, enjoin
1188 violations of the provisions of this act by issuing appropriate
1189 orders and judgments, including, but not limited to:

1190 (a) Ordering any defendant to divest himself of any
1191 interest in any enterprise, including real property.

1192 (b) Imposing reasonable restrictions upon the future
1193 activities or investments of any defendant, including, but not
1194 limited to, prohibiting any defendant from engaging in the same
1195 type of endeavor as the enterprise in which he was engaged in
1196 violation of the provisions of this act.

1197 (c) Ordering the dissolution or reorganization of any
1198 enterprise.



1199 (d) Ordering the suspension or revocation of a license
1200 or permit granted to any enterprise by any agency of the state.

1201 (e) Ordering the forfeiture of the charter of a
1202 corporation organized under the laws of the state, or the
1203 revocation of a certificate authorizing a foreign corporation to
1204 conduct business within the state, upon finding that the board of
1205 directors or a managerial agent acting on behalf of the
1206 corporation in conducting the affairs of the corporation, has
1207 authorized or engaged in conduct in violation of this chapter and
1208 that, for the prevention of future criminal activity, the public
1209 interest requires the charter of the corporation forfeited and the
1210 corporation dissolved or the certificate revoked.

1211 (2) Notwithstanding any provisions to the contrary in
1212 Section 99-37-1 et seq., the court shall order restitution to the
1213 victim for any offense under this chapter. The order of
1214 restitution under this section shall direct the defendant to pay
1215 the victim, through the appropriate court mechanism, the full
1216 amount of the victim's pecuniary damages. For the purposes of
1217 determining restitution, the term "victim" means the individual
1218 harmed as a result of a crime under this chapter, including, in
1219 the case of a victim who is under eighteen (18) years of age,
1220 incompetent, incapacitated, or deceased, the legal guardian of the
1221 victim or a representative of the victim's estate, or another
1222 family member, or any other person appointed as suitable by the
1223 court, but in no event shall the defendant be named as such a



1224 representative or guardian. The court may order restitution even
1225 if the victim is absent from the jurisdiction or unavailable.

1226 (3) Any person who is injured by reason of any violation of
1227 the provisions of this chapter shall have a cause of action
1228 against any person or enterprise convicted of engaging in activity
1229 in violation of this chapter for threefold the actual damages
1230 sustained and, when appropriate, punitive damages. The person
1231 shall also recover attorney's fees in the trial and appellate
1232 courts and reasonable costs of investigation and litigation.

1233 (4) The application of one (1) civil remedy under any
1234 provision of this act shall not preclude the application of any
1235 other remedy, civil or criminal, under this act or any other
1236 provision of law. Civil remedies under this act are supplemental.

1237 (5) At any time after a conviction under this act, the court
1238 in which the conviction was entered may, upon appropriate motion,
1239 vacate the conviction if the court finds the defendant's
1240 participation in the offense was the result of being a victim.

1241 Official documentation from a federal, state or local government
1242 agency as to the defendant's status as a victim at the time of the
1243 offense creates a presumption that the defendant's participation
1244 in the offense was a result of being a victim, but official
1245 documentation is not required to grant a motion under this
1246 subsection.

1247 (6) In a prosecution or civil action for damages for an
1248 offense under this act in which there is evidence that the alleged



1249 victim was subjected to sexual servitude, reputation or opinion
1250 evidence of past sexual behavior of the alleged victim is not
1251 admissible, unless admitted in accordance with the Mississippi
1252 Rules of Evidence.

1253 (7) In any investigation or prosecution for an offense under
1254 this act, the responsible law enforcement agency or prosecutor's
1255 office are required to take all reasonable efforts to keep the
1256 identity of the victim and the victim's family confidential by
1257 ensuring that the names and identifying information of those
1258 individuals are not disclosed to the public.

1259 **SECTION 14.** This act shall take effect and be in force from
1260 and after its passage.

