

By: Representative Cockerham

To: Judiciary B

HOUSE BILL NO. 1393

1 AN ACT TO CREATE THE CRIME OF SEXUAL ASSAULT; TO REVISE THE
2 ELEMENTS FOR THE CRIME OF STATUTORY RAPE; TO REVISE THE ELEMENTS
3 FOR THE CRIME OF SEXUAL BATTERY; TO CREATE THE CRIME OF ATTEMPTED
4 SEXUAL ASSAULT; TO CREATE A PROCEDURE FOR OFFERING CERTAIN
5 EVIDENCE IN A SEXUAL ASSAULT TRIAL; TO PROVIDE PENALTIES FOR THE
6 CRIMES OF SEXUAL ASSAULT, SEXUAL BATTERY AND STATUTORY RAPE; TO
7 REPEAL SECTIONS 97-3-65, 97-3-69, 97-3-71, 97-3-95, 97-3-97 AND
8 97-3-101, WHICH PROVIDE THE CRIMINAL ELEMENTS AND PENALTIES FOR
9 SEXUAL BATTERY, RAPE AND STATUTORY RAPE; AND FOR RELATED PURPOSES.

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

11 **SECTION 1. Definitions.** For the purposes of this section,
12 the following words shall have the meanings ascribed herein unless
13 the context indicates otherwise:

14 (a) "Complaining witness" means the alleged victim of
15 the crime charged.

16 (b) "Consent" means a freely given agreement to sexual
17 activity; a person's lack of verbal or physical resistance or
18 submission resulting from the use or threat of force does not
19 constitute consent; a person's manner of dress does not constitute
20 consent; a person's consent to past sexual activity does not
21 constitute consent to future sexual activity; a person's consent



22 to engage in sexual activity with person does not constitute
23 consent to engage in sexual activity with another; a person can
24 withdraw consent at any time; and a person cannot consent to
25 sexual activity if that person is unable to understand the nature
26 of the activity or give knowing consent due to circumstances,
27 including, without limitation, the following:

28 (i) The person is incapacitated due to the use or
29 influence of alcohol or drugs;

30 (ii) The person is asleep or unconscious;

31 (iii) The person is under age; or

32 (iv) The person is incapacitated due to a mental
33 disability.

34 (c) "Permanent incapacity" means one who suffers from a
35 mental disease, defect, or conditions which renders that person
36 temporarily or permanently incapable of knowing the nature and
37 quality of his or her conduct.

38 (d) "Physically helpless person" means one who is
39 unconscious or one who for any other reason is physically
40 incapable of communicating an unwillingness to engage in an act.

41 (e) "Sexual penetration" means sexual intercourse,
42 cunnilingus, fellatio, and anal intercourse, or any other
43 intrusion, however slight, by any part of a person's body or by an
44 object into the genital opening, anal opening, and/or oral cavity
45 of another person's body, but emission of semen is not required.



(f) "Temporary incapacity" means one who is rendered of knowing or controlling his or her conduct, or incapable of resisting an act due to the influence of any drug, narcotic, anesthetic, alcohol, or other substance administered to that person without his or her consent.

SECTION 2. (1) A person is guilty of sexual assault if he or she engages in sexual penetration with:

(a) Another person without his or her consent;

(b) A temporarily incapacitated, permanently incapacitated, and/or physically helpless person;

(c) A child at least fourteen (14) years but under sixteen (16) years of age, if the person is thirty-six (36) or more months older than the child;

(d) A child under the age of fourteen (14) years, if the person is twenty-four (24) or more months older than the child; or

(e) A child under the age of eighteen (18) years if the person is in the position of trust or authority over the child, including without limitation, the child's teacher, counselor, physician, psychiatrist, psychologist, minister, priest, physical therapist, chiropractor, legal guardian, parent, stepparent, aunt, uncle, scout leader, or coach.

(2) This section shall apply whether or not the perpetrator is married to the victim or not.



70 **SECTION 3. Sexual Assault Penalties.** Upon conviction for

71 sexual assault, the defendant shall be sentenced as follows:

72 (a) Every person who shall be convicted of sexual
73 assault, under paragraphs (1)(a) and (1)(b) of Section 2, House
74 Bill No. 1393, 2018 Regular Session, shall be imprisoned in the
75 State Penitentiary for a period of not more than thirty (30)
76 years, and for a second or subsequent such offense shall be
77 imprisoned in the penitentiary for not more than forty (40) years;

78 (b) Every person who shall be convicted of sexual
79 assault under paragraph (1)(c) of Section 2, House Bill No. 1393,
80 2018 Regular Session, who is at least eighteen (18) years but
81 under twenty-one (21) years of age shall be imprisoned for not
82 more than five (5) years in the State Penitentiary or fined not
83 more than Five Thousand Dollars (\$5,000.00), or both;

84 (c) Every person who shall be convicted of sexual
85 assault under Section 2, House Bill No. 1393, 2018 Regular
86 Session, who is twenty-one (21) years of age or older shall be
87 imprisoned not more than thirty (30) years in the State
88 Penitentiary or fined not more than Ten Thousand Dollars
89 (\$10,000.00), or both, for the first offense, and not more than
90 forty (40) years in the State Penitentiary for each subsequent
91 offense;

92 (d) Every person who shall be convicted of sexual
93 assault under Section 2, House Bill No. 1393, 2018 Regular
94 Session, who is eighteen (18) years of age or older shall be



95 imprisoned for life in the State Penitentiary or less term of
96 imprisonment as the court may determine, but not less than twenty
97 (20) years.

98 **SECTION 4.** The crime of statutory rape is committed when:

99 (1) Any person seventeen (17) years of age or older has
100 sexual intercourse with a child who:

101 (a) Is at least fourteen (14) but under sixteen (16)
102 years of age;

103 (b) Is thirty-six (36) or more months younger than the
104 person;

105 (c) Is not the person's spouse; or

106 (2) A person of any age has sexual intercourse with a child
107 who:

108 (a) Is under the age of fourteen (14) years;

109 (b) Is twenty-four (24) or more months younger than the
110 person;

111 (3) Is not the person's spouse.

112 **SECTION 5.** Upon conviction for statutory rape, the defendant
113 shall be sentenced as follows:

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

116 (1)(a) of Section 4, House Bill No. 1393, 2018 Regular Session, to
117 imprisonment for not more than five (5) years in the State

118 Penitentiary or a fine of not more than Five Thousand Dollars
119 (\$5,000.00), or both;



(b) If twenty-one (21) years of age or older and convicted under subsection (1)(a) of Section 4, House Bill No. 1393, 2018 Regular Session, to imprisonment of not more than thirty (30) years in the State Penitentiary or a fine of not more than Ten Thousand Dollars (\$10,000.00), or both, for the first offense, and not more than forty (40) years in the State Penitentiary for subsequence offense;

(c) If eighteen (18) years of age or older and convicted under subsection (1)(b) of Section 4, House Bill No. 1393, 2018 Regular Session, to imprisonment for life in the State Penitentiary or such lesser term of imprisonment as the court may determine, but not less than twenty (20) years;

(d) If thirteen (13) years of age or older but under eighteen (18) years of age and convicted under subsection (1)(a) or (1)(b) of Section 4, House Bill No. 1393, 2018 Regular Session, such imprisonment, fine, or other sentence as the court, in its discretion, may determine.

SECTION 6. (1) A person is guilty of sexual battery if he or she engages in:

(a) Intentional touching of the anus or genitals of another person, without the person's consent, directly or through clothing; or

(b) Intentional touching of the anus or genitals of another person, without the person's consent, directly or through clothing, by use of instrumentality.



(2) This section shall apply whether or not the perpetrator is married to the victim or not.

SECTION 7. (1) A person is guilty of attempted sexual assault if he or she attempts to penetrate, no matter how slight, of the vagina or anus with any body part or object, or attempt to orally penetrate the sex organ of another person, without consent of the victim.

(2) This section shall apply whether or not the perpetrator is married to the victim or not.

SECTION 8. In any prosecution for sexual assault under Section 2, House Bill No. 1393, 2018 Regular Session, if evidence of sexual conduct of the complaining witness is offered to attack the credibility of said complaining witness, the following procedure shall be followed:

(a) A written motion shall be made by the defendant to the court and prosecutor stating that the defense has an offer of proof of the relevancy of evidence of the sexual conduct of the complaining witness proposed to be presented and its relevancy in attacking the credibility of the complaining witness.

(b) The written motion shall be accompanied by an affidavit which the offer of proof shall be stated.

(c) If the court finds that the offer of proof is sufficient, the court shall order a closed hearing in chambers, out of the presence of the jury, if any, and at such closed



169 hearing allow the questioning of the complaining witness regarding
170 the offer of proof made by the defendant.

171 (d) At the conclusion of the hearing, if the court
172 finds that evidence proposed to be offered by the defendant
173 regarding the sexual conduct of the complaining witness is
174 relevant and otherwise admissible, the court may make an order
175 stating what evidence may be introduced by the defendant, and the
176 nature of the questions to be permitted. The defendant may then
177 offer evidence pursuant to the order of the court.

178 **SECTION 9.** Sections 97-3-65, 97-3-69, 97-3-71, 97-3-95,
179 97-3-97 and 97-3-101, which provide for the crimes and penalties
180 for sexual battery, rape and statutory rape, are repealed.

181 **SECTION 10.** This act shall take effect and be in force from
182 and after July 1, 2018.

