

By: Representative Bain

To: Judiciary B

HOUSE BILL NO. 554

1 AN ACT TO PROVIDE FOR "SEXTING" AS A DELINQUENT CRIMINAL ACT
2 WITHIN THE ORIGINAL JURISDICTION OF THE YOUTH COURT; TO CREATE
3 CERTAIN EXCEPTIONS; TO CREATE DEFENSES; TO AMEND SECTION 97-5-27,
4 MISSISSIPPI CODE OF 1972, WHICH PROHIBITS DISSEMINATING SEXUAL
5 MATERIAL TO CHILDREN FOR CONFORMITY; TO AMEND SECTION 97-5-35,
6 MISSISSIPPI CODE OF 1972, TO CONFORM TO THE PRECEDING SECTIONS;
7 AND FOR RELATED PURPOSES.

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

9 **SECTION 1. Use of a computer or electronic communication**
10 **device by a minor to possess, produce, transmit, disseminate,**
11 **distribute or display an indecent visual image of a minor. (1)**

12 For the purposes of this section, the following words and phrases
13 shall have the meanings given to them in this subsection unless
14 the context clearly requires otherwise:

15 (a) "Computer" has the meaning given in Title 18,
16 United States Code, Section 1030.

17 (b) "Disseminate" means to cause or make an electronic
18 communication from one (1) person, place or electronic
19 communication device to two (2) or more other persons, places or
20 electronic communication devices.



(c) "Distribute" means to send, share, forward or deliver.

(d) "Electronic communication" means any transfer, including by computer, phone, or Internet of signs, signals, writing, images, sounds, data, or intelligence of any nature, transmitted in whole or in part by a wire, radio, computer, electromagnetic, photoelectric or photo-optical system.

(e) "Electronic communication device" means an electronic device including, but not limited to, a wireless telephone, personal digital assistant, or a portable or mobile computer, that is capable of transmitting images or pictures.

(f) "Indecent visual image" means any image depicting the sexually explicit conduct of an actual child under the age of eighteen (18) years.

(g) "Minor" means any person who is less than eighteen (18) years of age.

(h) "Produce" with respect to visual material includes any conduct that directly contributes to the creation or manufacture of the material.

(i) "Sexually explicit conduct" means actual or simulated:

(i) Oral genital contact, oral anal contact, or sexual intercourse as defined in Section 97-3-65, whether between persons of the same or opposite sex;

(ii) Bestiality;



(iii) Masturbation;

(iv) Sadistic or masochistic abuse;

(v) Lascivious exhibition of the female breast, genitals, pubic area or buttocks;

(vi) Fondling or other erotic touching of the genitals, pubic area, buttocks, anus or breast.

(j) "Simulated" means any depicting of the genitals or rectal areas that gives the appearance of sexual conduct or incipient sexual conduct.

(k) "Transmit" means to cause or make an electronic communication from one (1) person, place or electronic communication device to only one (1) other person, place or electronic communication device.

(l) "Visual image" means:

(i) Any film, photograph, videotape, negative, or slide or any photographic reproduction that contains or incorporates in any manner any film, photograph, videotape, negative, or slide; or

(ii) Any disk, diskette, or other physical medium that allows an image to be displayed on a computer or other video screen and any image transmitted to a computer or other video screen by telephone line, cable, satellite transmission, or other method.

(2) (a) No minor shall knowingly and voluntarily and without threat or coercion use a computer or electronic



71 communication device to produce, transmit, disseminate, distribute
72 or display an indecent visual image of the minor or another minor.

73 (b) No minor shall knowingly possess or receive an
74 indecent visual image of another minor that has been produced,
75 transmitted, disseminated, distributed or displayed through use of
76 a computer or electronic communication device.

77 (3) A violation of this section is in the original
78 jurisdiction of the youth court. Except as provided in subsection
79 (6) of this section, acts prohibited by this section, if
80 prosecuted in a court with criminal jurisdiction, would constitute
81 a misdemeanor.

82 (4) It is an affirmative defense to a violation charged
83 under subsection (2)(a) of this section if the indecent visual
84 image that has been produced depicts only the minor in possession
85 and was not intentionally transmitted, disseminated, distributed
86 or displayed to another person.

87 (5) It is an affirmative defense to a violation charged
88 under subsection (2)(b) of this section if the minor who was in
89 possession of the indecent visual image of another minor:

90 (a) Did not knowingly purchase, procure, solicit or
91 request the indecent visual image or take any other action to
92 cause the indecent visual image to come into his or her
93 possession; and

94 (b) Upon receiving the indecent visual image, did not
95 distribute, display or otherwise share the image with anyone other



than a legal guardian, a law enforcement officer, school official or other adult in a position of trust or authority; and

(i) Took reasonable steps to destroy each image; or

(ii) Reported the matter to a legal guardian, law enforcement officer or school official and gave the legal guardian, law enforcement officer or school official access to each image.

(6) Acts prohibited by this section constitute a prosecutable misdemeanor, and subject the minor in violation to adjudication or, where applicable, conviction under Section 97-5-33 if any one (1) of the following circumstances applies:

(a) The minor depicted in the indecent visual image is three (3) or more years younger than the minor who committed any act prohibited by this section.

(b) The minor who committed an act prohibited by this section obtained or otherwise caused the indecent visual image to be produced, transmitted, disseminated, distributed or displayed through the use of force, extortion, blackmail, coercion, threats or intimidation.

(c) The minor has previously been adjudicated twice for a violation of this section or has been previously adjudicated delinquent under Section 97-5-33, Mississippi Code of 1972.

(7) A minor adjudicated delinquent under this section or Section 97-5-33 is not required to register as a sex offender.



121 (8) Any minor who was convicted, charged or awaiting trial
122 before the effective date of this act for any actions described in
123 Sections 97-5-27, 97-5-33 or any other similar provision of law,
124 may appeal such for the purpose of reducing the classification and
125 penalty of to a misdemeanor.

126 **SECTION 2.** Section 97-5-27, Mississippi Code of 1972, is
127 amended as follows:

128 97-5-27. (1) Except as otherwise provided in Section 1 of
129 this act, any person who intentionally and knowingly disseminates
130 sexually oriented material to any person under eighteen (18) years
131 of age shall be guilty of a misdemeanor and, upon conviction,
132 shall be fined for each offense not less than Five Hundred Dollars
133 (\$500.00) nor more than Five Thousand Dollars (\$5,000.00) or be
134 imprisoned for not more than one (1) year in the county jail, or
135 be punished by both such fine and imprisonment. A person
136 disseminates sexually oriented material within the meaning of this
137 section if he:

138 (a) Sells, delivers or provides, or offers or agrees to
139 sell, deliver or provide, any sexually oriented writing, picture,
140 record or other representation or embodiment that is sexually
141 oriented; or

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



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

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

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

(i) Knowing the character and content of any communication of sexually oriented material, he intentionally uses any computer communication system allowing the input, output, examination or transfer of computer data or computer programs from one (1) computer to another, to initiate or engage in such

communication with a person under the age of eighteen (18); and

(ii) By means of such communication he importunes, invites or induces a person under the age of eighteen (18) years



to engage in sexual intercourse, deviant sexual intercourse or sexual contact with him, or to engage in a sexual performance, obscene sexual performance or sexual conduct for his benefit.

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

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

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

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

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

(iv) The defendant has in good faith established a mechanism such that the labeling, segregation or other mechanism enables such material to be automatically blocked or screened by software or other capabilities reasonably available to responsible



adults wishing to effect such blocking or screening and the defendant has not otherwise solicited minors not subject to such screening or blocking capabilities to access that material or to circumvent any such screening or blocking.

(d) In any prosecution for computer luring:

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

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

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



(e) Except as otherwise provided in Section 1 of this act, computer luring * * * shall be a felony, and any person convicted thereof shall be punished by commitment to the custody of the Department of Corrections for a term not to exceed three (3) years and by a fine not to exceed Ten Thousand Dollars (\$10,000.00).

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

SECTION 3. Section 97-5-35, Mississippi Code of 1972, is amended as follows:

97-5-35. Except as otherwise provided in Section 1 of this act, any person who violates * * * the provisions of Section 97-5-33 shall be guilty of a felony and upon conviction shall be fined not less than Fifty Thousand Dollars (\$50,000.00) nor more than Five Hundred Thousand Dollars (\$500,000.00) and shall be imprisoned for not less than five (5) years nor more than forty (40) years. Any person convicted of a second or subsequent violation of Section 97-5-33 shall be fined not less than One Hundred Thousand Dollars (\$100,000.00) nor more than One Million Dollars (\$1,000,000.00) and shall be confined in the custody of the Department of Corrections for life or such lesser term as the court may determine, but not less than twenty (20) years.



245 **SECTION 4.** This act shall take effect and be in force from
246 and after July 1, 2021.

