

By: Representative McLean

To: Judiciary B

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1080

1 AN ACT TO AMEND SECTION 97-3-69, MISSISSIPPI CODE OF 1972, TO
2 REVISE THE EVIDENTIARY REQUIREMENTS FOR RAPE TRIALS; TO REPEAL
3 SECTION 97-3-99, MISSISSIPPI CODE OF 1972, WHICH PROVIDES FOR
4 SPOUSAL RAPE; TO AMEND SECTION 97-3-65, MISSISSIPPI CODE OF 1972,
5 TO CONFORM TO THE PRECEDING SECTION; TO BRING FORWARD SECTION
6 97-3-68, MISSISSIPPI CODE OF 1972, WHICH PROVIDES THE EVIDENTIARY
7 PROCEDURES FOR RAPE PROSECUTIONS; TO AMEND SECTION 97-3-71,
8 MISSISSIPPI CODE OF 1972, TO CLARIFY THE ELEMENTS OF THE CRIME OF
9 RAPE; TO AMEND SECTION 97-3-101, MISSISSIPPI CODE OF 1972, TO
10 REVISE THE DEFINITION OF SEXUAL BATTERY; AND FOR RELATED PURPOSES.

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

12 **SECTION 1.** Section 97-3-69, Mississippi Code of 1972, is
13 amended as follows:

14 97-3-69. In the trial of all cases under * * * Section
15 97-3-68, no person shall be convicted upon the uncorroborated
16 testimony of the injured female.

17 **SECTION 2.** Section 97-3-99, Mississippi Code of 1972, which
18 provides for spousal rape, is repealed.

19 **SECTION 3.** Section 97-3-65, Mississippi Code of 1972, is
20 amended as follows:

21 97-3-65. (1) The crime of statutory rape is committed when:



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

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

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

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

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

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

32 (ii) Is twenty-four (24) or more months younger
33 than the person * * *.

34 * * *

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

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

39 (a) If eighteen (18) years of age or older, but under
40 twenty-one (21) years of age, and convicted under subsection
41 (1)(a) of this section, to imprisonment for not more than five (5)
42 years in the State Penitentiary or a fine of not more than Five
43 Thousand Dollars (\$5,000.00), or both;

44 (b) If twenty-one (21) years of age or older and
45 convicted under subsection (1)(a) of this section, to imprisonment
46 of not more than thirty (30) years in the State Penitentiary or a



47 fine of not more than Ten Thousand Dollars (\$10,000.00), or both,
48 for the first offense, and not more than forty (40) years in the
49 State Penitentiary for each subsequent offense;

50 (c) If eighteen (18) years of age or older and
51 convicted under subsection (1) (b) of this section, to imprisonment
52 for life in the State Penitentiary or such lesser term of
53 imprisonment as the court may determine, but not less than twenty
54 (20) years;

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

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



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

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

78 (6) (a) Upon conviction under this section, the court may
79 issue a criminal sexual assault protection order prohibiting the
80 offender from any contact with the victim, without regard to the
81 relationship between the victim and offender. The court may
82 include in a criminal sexual assault protection order any relief
83 available under Section 93-21-15. The term of a criminal sexual
84 assault protection order shall be for a time period determined by
85 the court, but all orders shall, at a minimum, remain in effect
86 for a period of two (2) years after the expiration of any sentence
87 of imprisonment and subsequent period of community supervision,
88 conditional release, probation, or parole. Upon issuance of a
89 criminal sexual assault protection order, the clerk of the issuing
90 court shall enter the order in the Mississippi Protection Order
91 Registry within twenty-four (24) hours of issuance, with no
92 exceptions for weekends or holidays as provided in Section
93 93-21-25, and a copy must be provided to both the victim and
94 offender.



95 (b) Criminal sexual assault protection orders shall be
96 issued on the standardized form developed by the Office of the
97 Attorney General.

98 (c) It is a misdemeanor to knowingly violate any
99 condition of a criminal sexual assault protection order. Upon
100 conviction for a violation, the defendant shall be punished by a
101 fine of not more than Five Hundred Dollars (\$500.00) or by
102 imprisonment in the county jail for not more than six (6) months,
103 or both. Any sentence imposed for the violation of a criminal
104 sexual assault protection order shall run consecutively to any
105 other sentences imposed on the offender. The court shall also be
106 empowered to extend the criminal sexual assault protection order
107 for a period of one (1) year for each violation. The
108 incarceration of a person at the time of the violation is not a
109 bar to prosecution under this section. Nothing in this subsection
110 shall be construed to prohibit the imposition of any other
111 penalties or disciplinary action otherwise allowed by law or
112 policy.

113 (7) For the purposes of this section, "sexual intercourse"
114 shall mean a joining of the sexual organs of a male and female
115 human being in which the penis of the male is inserted into the
116 vagina of the female or the penetration of the sexual organs of a
117 male or female human being in which the penis or an object is
118 inserted into the genitals, anus or perineum of a male or female.



119 **SECTION 4.** Section 97-3-68, Mississippi Code of 1972, is
120 brought forward as follows:

121 97-3-68. (1) In any prosecution for rape under Section
122 97-3-65, 97-3-67 or 97-3-71, if evidence of sexual conduct of the
123 complaining witness is offered to attack the credibility of said
124 complaining witness, the following procedure shall be followed:

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

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

132 (c) If the court finds that the offer of proof is
133 sufficient, the court shall order a closed hearing in chambers,
134 out of the presence of the jury, if any, and at such closed
135 hearing allow the questioning of the complaining witness regarding
136 the offer of proof made by the defendant.

137 (d) At the conclusion of the hearing, if the court
138 finds that evidence proposed to be offered by the defendant
139 regarding the sexual conduct of the complaining witness is
140 relevant and otherwise admissible, the court may make an order
141 stating what evidence may be introduced by the defendant, and the
142 nature of the questions to be permitted. The defendant may then
143 offer evidence pursuant to the order of the court.



144 (2) As used in this section and Section 97-3-70,
145 "complaining witness" means the alleged victim of the crime
146 charged, the prosecution of which is subject to this section.

147 **SECTION 5.** Section 97-3-71, Mississippi Code of 1972, is
148 amended as follows:

149 97-3-71. * * * The penetration, no matter how slight, of the
150 vagina or anus with any body part or object, or oral penetration
151 by a sex organ of another person, whether or not his or her
152 spouse, accomplished (a) against the complaining person's will, by
153 force, threat or intimidation; (b) without the consent of the
154 victim or (c) committed against a person who is physically or
155 mentally helpless or incapacitated.

156 **SECTION 6.** Section 97-3-101, Mississippi Code of 1972, is
157 amended as follows:

158 97-3-101. (1) Every person who shall be convicted of sexual
159 battery under Section 97-3-95(1) (a), (b) or (2), or shall be
160 convicted of rape under Section 97-3-71, shall be imprisoned in
161 the State Penitentiary for a period of not more than thirty (30)
162 years, and for a second or subsequent such offense shall be
163 imprisoned in the Penitentiary for not more than forty (40) years.

164 (2) (a) Every person who shall be convicted of sexual
165 battery under Section 97-3-95(1) (c) who is at least eighteen (18)
166 but under twenty-one (21) years of age shall be imprisoned for not
167 more than five (5) years in the State Penitentiary or fined not
168 more than Five Thousand Dollars (\$5,000.00), or both;



169 (b) Every person who shall be convicted of sexual
170 battery under Section 97-3-95(1)(c) who is twenty-one (21) years
171 of age or older shall be imprisoned not more than thirty (30)
172 years in the State Penitentiary or fined not more than Ten
173 Thousand Dollars (\$10,000.00), or both, for the first offense, and
174 not more than forty (40) years in the State Penitentiary for each
175 subsequent offense.

176 (3) Every person who shall be convicted of sexual battery
177 under Section 97-3-95(1)(d) who is eighteen (18) years of age or
178 older shall be imprisoned for life in the State Penitentiary or
179 such lesser term of imprisonment as the court may determine, but
180 not less than twenty (20) years.

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

185 (5) (a) Upon conviction under this section, the court may
186 issue a criminal sexual assault protection order prohibiting the
187 offender from any contact with the victim, without regard to the
188 relationship between the victim and offender. The court may
189 include in a criminal sexual assault protection order any relief
190 available under Section 93-21-15. The term of a criminal sexual
191 assault protection order shall be for a time period determined by
192 the court, but all orders shall, at a minimum, remain in effect
193 for a period of two (2) years following the expiration of any



194 sentence of imprisonment and subsequent period of community
195 supervision, conditional release, probation, or parole. Upon
196 issuance of a criminal sexual assault protection order, the clerk
197 of the issuing court shall enter the order in the Mississippi
198 Protection Order Registry within twenty-four (24) hours of
199 issuance with no exceptions for weekends or holidays as provided
200 in Section 93-21-25, and a copy must be provided to both the
201 victim and offender.

202 (b) Criminal sexual assault protection orders shall be
203 issued on the standardized form developed by the Office of the
204 Attorney General.

205 (c) It is a misdemeanor to knowingly violate any
206 condition of a criminal sexual assault protection order. Upon
207 conviction for a violation, the defendant shall be punished by a
208 fine of not more than Five Hundred Dollars (\$500.00) or by
209 imprisonment in the county jail for not more than six (6) months,
210 or both. Any sentence imposed for the violation of a criminal
211 sexual assault protection order shall run consecutively to any
212 other sentences imposed on the offender. The court may extend the
213 criminal sexual assault protection order for a period of one (1)
214 year for each violation. The incarceration of a person at the
215 time of the violation is not a bar to prosecution under this
216 section. Nothing in this subsection shall be construed to
217 prohibit the imposition of any other penalties or disciplinary
218 action otherwise allowed by law or policy.



219 **SECTION 7.** This act shall take effect and be in force from
220 and after July 1, 2022.

