

By: Representatives Darnell, Karriem, Stamps To: Judiciary B

HOUSE BILL NO. 1207

1 AN ACT TO AMEND SECTION 97-5-33, MISSISSIPPI CODE OF 1972, TO  
2 CLARIFY THE PENALTIES FOR CERTAIN TYPES OF EXPLOITATION; TO AMEND  
3 SECTION 97-5-35, MISSISSIPPI CODE OF 1972, TO CONFORM TO THE  
4 PRECEDING SECTION; TO BRING FORWARD SECTION 97-5-27, MISSISSIPPI  
5 CODE OF 1972, WHICH PROVIDES FOR THE CRIME OF COMPUTER LURING, FOR  
6 PURPOSES OF AMENDMENT; AND FOR RELATED PURPOSES.

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

8 **SECTION 1.** Section 97-5-33, Mississippi Code of 1972, is  
9 amended as follows:

10 97-5-33. (1) No person shall, by any means, including  
11 computer, cause, solicit or knowingly permit any child to engage  
12 in sexually explicit conduct or in the simulation of sexually  
13 explicit conduct for the purpose of producing any visual depiction  
14 of such conduct.

15 (2) No person shall, by any means, including computer,  
16 photograph, film, video tape or otherwise depict or record a child  
17 engaging in sexually explicit conduct or in the simulation of  
18 sexually explicit conduct.

19 (3) No person shall, by any means, including computer,  
20 knowingly send, transport, transmit, ship \* \* \* or mail \* \* \* any



21 photograph, drawing, sketch, film, video tape or other visual  
22 depiction of an actual child engaging in sexually explicit  
23 conduct.

24 (4) No person shall, by any means, including computer,  
25 receive with intent to \* \* \* distribute for sale, sell or attempt  
26 to sell in any manner any photograph, drawing, sketch, film, video  
27 tape or other visual depiction of an actual child engaging in  
28 sexually explicit conduct.

29 (5) No person shall, by any means, including computer,  
30 knowingly possess or knowingly access with intent to view any  
31 photograph, drawing, sketch, film, video tape or other visual  
32 depiction of an actual child engaging in sexually explicit  
33 conduct.

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

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

42 (8) The fact that an undercover operative or law enforcement  
43 officer posed as a child or was involved in any other manner in  
44 the detection and investigation of an offense under this section



45 shall not constitute a defense to a prosecution under this  
46 section.

47 (9) For purposes of determining jurisdiction, the offense is  
48 committed in this state if all or part of the conduct described in  
49 this section occurs in the State of Mississippi or if the  
50 transmission that constitutes the offense either originates in  
51 this state or is received in this state.

52 **SECTION 2.** Section 97-5-35, Mississippi Code of 1972, is  
53 amended as follows:

54 97-5-35. Any person eighteen (18) years of age or older who  
55 violates any provision of Section 97-5-33 shall be guilty of a  
56 felony and upon conviction shall be fined not less than Fifty  
57 Thousand Dollars (\$50,000.00) nor more than Five Hundred Thousand  
58 Dollars (\$500,000.00) and shall be imprisoned for not less than  
59 five (5) years nor more than forty (40) years. Any person  
60 eighteen (18) years of age or older convicted of a second or  
61 subsequent violation of Section 97-5-33 shall be fined not less  
62 than One Hundred Thousand Dollars (\$100,000.00) nor more than One  
63 Million Dollars (\$1,000,000.00) and shall be confined in the  
64 custody of the Department of Corrections for life or such lesser  
65 term as the court may determine, but not less than twenty (20)  
66 years.

67 **SECTION 3.** Section 97-5-27, Mississippi Code of 1972, is  
68 brought forward as follows:



69           97-5-27. (1) Any person who intentionally and knowingly  
70 disseminates sexually oriented material to any person under  
71 eighteen (18) years of age shall be guilty of a misdemeanor and,  
72 upon conviction, shall be fined for each offense not less than  
73 Five Hundred Dollars (\$500.00) nor more than Five Thousand Dollars  
74 (\$5,000.00) or be imprisoned for not more than one (1) year in the  
75 county jail, or be punished by both such fine and imprisonment. A  
76 person disseminates sexually oriented material within the meaning  
77 of this section if he:

78                   (a) Sells, delivers or provides, or offers or agrees to  
79 sell, deliver or provide, any sexually oriented writing, picture,  
80 record or other representation or embodiment that is sexually  
81 oriented; or

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

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

92           (2) For purposes of this section, any material is sexually  
93 oriented if the material contains representations or descriptions,



94 actual or simulated, of masturbation, sodomy, excretory functions,  
95 lewd exhibition of the genitals or female breasts, sadomasochistic  
96 abuse (for the purpose of sexual stimulation or gratification),  
97 homosexuality, lesbianism, bestiality, sexual intercourse, or  
98 physical contact with a person's clothed or unclothed genitals,  
99 pubic area, buttocks, or the breast or breasts of a female for the  
100 purpose of sexual stimulation, gratification or perversion.

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

102 (i) Knowing the character and content of any  
103 communication of sexually oriented material, he intentionally uses  
104 any computer communication system allowing the input, output,  
105 examination or transfer of computer data or computer programs from  
106 one (1) computer to another, to initiate or engage in such  
107 communication with a person under the age of eighteen (18); and

108 (ii) By means of such communication he importunes,  
109 invites or induces a person under the age of eighteen (18) years  
110 to engage in sexual intercourse, deviant sexual intercourse or  
111 sexual contact with him, or to engage in a sexual performance,  
112 obscene sexual performance or sexual conduct for his benefit.

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

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



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

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

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

131 (iv) The defendant has in good faith established a  
132 mechanism such that the labeling, segregation or other mechanism  
133 enables such material to be automatically blocked or screened by  
134 software or other capabilities reasonably available to responsible  
135 adults wishing to effect such blocking or screening and the  
136 defendant has not otherwise solicited minors not subject to such  
137 screening or blocking capabilities to access that material or to  
138 circumvent any such screening or blocking.

139 (d) In any prosecution for computer luring:

140 (i) No person shall be held to have violated this  
141 subsection (3) solely for providing access or connection to or  
142 from a facility, system, or network not under that person's



143 control, including transmission, downloading, intermediate  
144 storage, access software or other related capabilities that are  
145 incidental to providing such access or connection that do not  
146 include the creation of the content of the communication.

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

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

160 (e) Computer luring is a felony, and any person  
161 convicted thereof shall be punished by commitment to the custody  
162 of the Department of Corrections for a term not to exceed three  
163 (3) years and by a fine not to exceed Ten Thousand Dollars  
164 (\$10,000.00).

165 (4) Investigation and prosecution of a defendant under this  
166 section does not preclude prosecution of the defendant for a  
167 violation of other applicable criminal laws, including, but not



168 limited to, the Mississippi Human Trafficking Act, Section 97-3-54  
169 et seq.

170           **SECTION 4.** This act shall take effect and be in force from  
171 and after July 1, 2022.

