

By: Representative Darnell

To: Judiciary B

COMMITTEE SUBSTITUTE
FOR
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 or any person eighteen
56 (18) years of age who violates the provision of Section 97-5-33
57 with a person who is at least fourteen (14) years of age but under
58 sixteen (16) years of age shall be guilty of a felony and upon
59 conviction shall be fined not less than Fifty Thousand Dollars
60 (\$50,000.00) nor more than Five Hundred Thousand Dollars
61 (\$500,000.00) and shall be imprisoned for not less than five (5)
62 years nor more than forty (40) years. Any person eighteen (18)
63 years of age or older or any person eighteen (18) years of age who
64 violates the provision of Section 97-5-33 with a person who is at
65 least fourteen (14) years of age but under sixteen (16) years of
66 age convicted of a second or subsequent violation of Section
67 97-5-33 shall be fined not less than One Hundred Thousand Dollars
68 (\$100,000.00) nor more than One Million Dollars (\$1,000,000.00)
69 and shall be confined in the custody of the Department of



70 Corrections for life or such lesser term as the court may
71 determine, but not less than twenty (20) years.

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

74 97-5-27. (1) Any person who intentionally and knowingly
75 disseminates sexually oriented material to any person under
76 eighteen (18) years of age shall be guilty of a misdemeanor and,
77 upon conviction, shall be fined for each offense not less than
78 Five Hundred Dollars (\$500.00) nor more than Five Thousand Dollars
79 (\$5,000.00) or be imprisoned for not more than one (1) year in the
80 county jail, or be punished by both such fine and imprisonment. A
81 person disseminates sexually oriented material within the meaning
82 of this section if he:

83 (a) Sells, delivers or provides, or offers or agrees to
84 sell, deliver or provide, any sexually oriented writing, picture,
85 record or other representation or embodiment that is sexually
86 oriented; or

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

90 (c) Exhibits, presents, rents, sells, delivers or
91 provides, or offers or agrees to exhibit, present, rent or to
92 provide any sexually oriented still or motion picture, film,
93 filmstrip or projection slide, or sound recording, sound tape or
94 sound track or any matter or material of whatever form which is a



95 representation, embodiment, performance or publication that is
96 sexually oriented.

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

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

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

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

113 (ii) By means of such communication he importunes,
114 invites or induces a person under the age of eighteen (18) years
115 to engage in sexual intercourse, deviant sexual intercourse or
116 sexual contact with him, or to engage in a sexual performance,
117 obscene sexual performance or sexual conduct for his benefit.



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

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

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

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

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

136 (iv) The defendant has in good faith established a
137 mechanism such that the labeling, segregation or other mechanism
138 enables such material to be automatically blocked or screened by
139 software or other capabilities reasonably available to responsible
140 adults wishing to effect such blocking or screening and the
141 defendant has not otherwise solicited minors not subject to such



142 screening or blocking capabilities to access that material or to
143 circumvent any such screening or blocking.

144 (d) In any prosecution for computer luring:

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

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

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

165 (e) Computer luring is a felony, and any person
166 convicted thereof shall be punished by commitment to the custody



167 of the Department of Corrections for a term not to exceed three
168 (3) years and by a fine not to exceed Ten Thousand Dollars
169 (\$10,000.00).

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

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

