

By: Representatives McLean, Arnold,
Carpenter, Darnell, Owen

To: Judiciary A

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 995

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; TO BRING FORWARD SECTIONS
11 97-3-95 AND SECTION 97-3-97, MISSISSIPPI CODE OF 1972, WHICH
12 PROVIDE FOR THE CRIME OF SEXUAL BATTERY AND DEFINITIONS RELATED TO
13 THE CRIME FOR PURPOSES OF AMENDMENT; AND FOR RELATED PURPOSES.

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

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

17 97-3-69. In the trial of all cases under * * * Section
18 97-3-68, no person shall be convicted upon the uncorroborated
19 testimony of the injured * * * person.

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21 provides for spousal rape, is repealed.

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



24 97-3-65. (1) The crime of statutory rape is committed when:

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

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

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

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

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

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

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

37 * * *

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

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

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

47 (b) If twenty-one (21) years of age or older and
48 convicted under subsection (1)(a) of this section, to imprisonment



49 of not more than thirty (30) years in the State Penitentiary or a
50 fine of not more than Ten Thousand Dollars (\$10,000.00), or both,
51 for the first offense, and not more than forty (40) years in the
52 State Penitentiary for each subsequent offense;

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

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

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



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

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

81 (6) (a) Upon conviction under this section, the court may
82 issue a criminal sexual assault protection order prohibiting the
83 offender from any contact with the victim, without regard to the
84 relationship between the victim and offender. The court may
85 include in a criminal sexual assault protection order any relief
86 available under Section 93-21-15. The term of a criminal sexual
87 assault protection order shall be for a time period determined by
88 the court, but all orders shall, at a minimum, remain in effect
89 for a period of two (2) years after the expiration of any sentence
90 of imprisonment and subsequent period of community supervision,
91 conditional release, probation, or parole. Upon issuance of a
92 criminal sexual assault protection order, the clerk of the issuing
93 court shall enter the order in the Mississippi Protection Order
94 Registry within twenty-four (24) hours of issuance, with no
95 exceptions for weekends or holidays as provided in Section
96 93-21-25, and a copy must be provided to both the victim and
97 offender.



98 (b) Criminal sexual assault protection orders shall be
99 issued on the standardized form developed by the Office of the
100 Attorney General.

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

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



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

124 97-3-68. (1) In any prosecution for rape under Section
125 97-3-65, 97-3-67 or 97-3-71, if evidence of sexual conduct of the
126 complaining witness is offered to attack the credibility of said
127 complaining witness, the following procedure shall be followed:

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

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

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

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



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

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

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

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

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

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



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

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

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

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



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

205 (b) Criminal sexual assault protection orders shall be
206 issued on the standardized form developed by the Office of the
207 Attorney General.

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



222 **SECTION 7.** Section 97-3-95, Mississippi Code of 1972, is
223 brought forward as follows:

224 97-3-95. (1) A person is guilty of sexual battery if he or
225 she engages in sexual penetration with:

226 (a) Another person without his or her consent;

227 (b) A mentally defective, mentally incapacitated or
228 physically helpless person;

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

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

235 (2) A person is guilty of sexual battery if he or she
236 engages in sexual penetration with a child under the age of
237 eighteen (18) years if the person is in a position of trust or
238 authority over the child including, without limitation, the
239 child's teacher, counselor, physician, psychiatrist, psychologist,
240 minister, priest, physical therapist, chiropractor, legal
241 guardian, parent, stepparent, aunt, uncle, scout leader or coach.

242 **SECTION 8.** Section 97-3-97, Mississippi Code of 1972, is
243 brought forward as follows:

244 97-3-97. For purposes of Sections 97-3-95 through 97-3-103
245 the following words shall have the meaning ascribed herein unless
246 the context otherwise requires:



247 (a) "Sexual penetration" includes cunnilingus,
248 fellatio, buggery or pederasty, any penetration of the genital or
249 anal openings of another person's body by any part of a person's
250 body, and insertion of any object into the genital or anal
251 openings of another person's body.

252 (b) A "mentally defective person" is one who suffers
253 from a mental disease, defect or condition which renders that
254 person temporarily or permanently incapable of knowing the nature
255 and quality of his or her conduct.

256 (c) A "mentally incapacitated person" is one rendered
257 incapable of knowing or controlling his or her conduct, or
258 incapable of resisting an act due to the influence of any drug,
259 narcotic, anesthetic, or other substance administered to that
260 person without his or her consent.

261 (d) A "physically helpless person" is one who is
262 unconscious or one who for any other reason is physically
263 incapable of communicating an unwillingness to engage in an act.

264 **SECTION 9.** This act shall take effect and be in force from
265 and after July 1, 2023.

