

By: Representatives Owen, Hall

To: Judiciary B

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1308

1 AN ACT TO CREATE A NEW CODE SECTION, SECTION 97-5-32,
2 MISSISSIPPI CODE OF 1972, TO ESTABLISH THE OFFENSE OF GROOMING OF
3 A CHILD; TO DEFINE NECESSARY TERMS; TO PROVIDE PENALTIES FOR
4 VIOLATIONS; TO AMEND SECTIONS 45-33-23 AND 45-33-47, MISSISSIPPI
5 CODE OF 1972, TO INCLUDE GROOMING OF A CHILD AS A REGISTRABLE SEX
6 OFFENSE; TO AMEND SECTION 97-5-31, MISSISSIPPI CODE OF 1972, TO
7 REMOVE THE DEFINITION OF IDENTIFIABLE CHILD AND TO REMOVE
8 IDENTIFIABLE CHILD IN THE DEFINITION OF CHILD AND MORPHED IMAGES;
9 AND FOR RELATED PURPOSES.

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

11 **SECTION 1.** The following shall be codified as Section
12 97-5-32, Mississippi Code of 1972:

13 97-5-32. (1) As used in this section of this act, the
14 following terms shall have the meanings herein ascribed unless
15 context of use clearly requires otherwise:

16 (a) "Electronic device" means any device used for the
17 purpose of communicating with a child for sexual purposes or any
18 device used to visually depict a child engaged in sexually
19 explicit conduct, store any image or audio of a child engaged in
20 sexually explicit conduct, or transmit any audio or visual image
21 of a child for sexual purposes. Such term may include, but shall



not be limited to, a computer, cellular phone, thumb drive, video game system, or any other electronic device that can be used in furtherance of exploiting a child for sexual purposes.

(b) "Pattern of conduct or communication" means a pattern of conduct or communication that would cause a reasonable adult person to believe that the person is communicating with a child with the purpose to entice, coerce, solicit, or prepare a child to engage in sexually explicit conduct, human trafficking, or sexual servitude.

(c) "Human trafficking" has the same meaning as provided in Section 97-3-54.1.

(d) "Sexually explicit conduct" has the same meaning as provided in Section 97-5-31(b).

(e) "Procure sexual servitude of a child" means knowingly subjecting, or attempting to subject, or recruiting, enticing, harboring, transporting, providing or obtaining by any means, or attempting to recruit, entice, harbor, transport, provide, or obtain by any means, a child, knowing that the child will engage in commercial sexual activity, sexually explicit performance, or the production of sexually oriented material, or causing or attempting to cause a child to engage in commercial sexual activity, sexually explicit performance, or the production of sexually oriented material.

(f) "Child" means a person who is under sixteen (16) years of age for purposes of this section.



47 (2) A person over the age of twenty-one (21) commits the
48 offense of grooming of a child when such person knowingly engages
49 in a pattern of conduct or communication:

50 (a) In person;

51 (b) Through a third party;

52 (c) Through the use of an electronic device, computer,
53 social media or text messages; or

54 (d) By any other means to gain access to, to gain the
55 compliance of, to prepare, to persuade, to induce, or to coerce a
56 child to engage in sexually explicit conduct or human trafficking,
57 or to procure the sexual servitude of a child.

58 (3) (a) Any person who violates this section shall be
59 guilty of a felony, and upon conviction thereof, be imprisoned in
60 the custody of the Department of Corrections for not more than
61 five (5) years, or fined not more than Ten Thousand Dollars
62 (\$10,000.00), or both.

63 (b) Any person who violates this section that was in a
64 position of trust or authority over the child at the time of the
65 offense shall be guilty of a felony, and upon conviction thereof,
66 be imprisoned in the custody of the Department of Corrections for
67 not less than two (2) years nor more than ten (10) years, or fined
68 not more than Twenty Thousand Dollars (\$20,000.00), or both. For
69 purposes of this paragraph (b), a person "in a position of trust
70 or authority" over a child includes, without limitation, a child's
71 teacher, counselor, physician, psychiatrist, psychologist,



72 minister, priest, physical therapist, chiropractor, legal
73 guardian, parent, stepparent, aunt, uncle, scout leader or coach.

74 (c) Any person who commits a subsequent offense under
75 this section or who violates this section and who is also a sex
76 offender with a duty to register under Section 45-33-25, shall be
77 guilty of a felony, and upon conviction thereof, be imprisoned in
78 the custody of the Department of Corrections for not less than ten
79 (10) years nor more than twenty (20) years, or fined not more than
80 Thirty Thousand Dollars (\$30,000.00), or both.

81 (4) The fines assessed under this section shall be collected
82 and deposited into the Victims of Human Trafficking and Commercial
83 Sexual Exploitation Fund pursuant to Section 97-3-54.11.
84 Investigation and prosecution of a defendant under this section
85 does not preclude prosecution of the defendant for a violation of
86 other applicable criminal laws of this state.

87 (5) It shall not be a defense to prosecution under this
88 section that no sexually explicit conduct, human trafficking, or
89 sexual servitude occurred or was accomplished.

90 (6) For the purposes of establishing venue under this
91 section, any violation of this section shall be considered to have
92 been committed:

93 (a) In any county in which any act was performed in
94 furtherance of any violation of this section; or

95 (b) In any county in which the electronic device used
96 to violate this act established a signal, whether by wire,



electromagnetic waves, electronic connection, or any other means
of connectivity or communication; or

(c) In any county in which the child is located at the
time of the offense of this section.

(7) The fact that an undercover operative or law enforcement
officer posed as a child or was involved in any other manner in
the detection and investigation of an offense under this section
shall not constitute a defense to a prosecution under this
section.

SECTION 2. Section 45-33-23, Mississippi Code of 1972, is
amended as follows:

45-33-23. For the purposes of this chapter, the following
words shall have the meanings ascribed herein unless the context
clearly requires otherwise:

(a) "Conviction" means that, regarding the person's
offense, there has been a determination or judgment of guilt as a
result of a trial or the entry of a plea of guilty or nolo
contendere regardless of whether adjudication is withheld.
"Conviction of similar offenses" includes, but is not limited to,
a conviction by a federal or military tribunal, including a
court-martial conducted by the Armed Forces of the United States,
a conviction for an offense committed on an Indian Reservation or
other federal property, a conviction in any state of the United
States, the District of Columbia, the Commonwealth of Puerto Rico,
Guam, American Samoa, the Northern Marianna Islands or the United



States Virgin Islands, and a conviction in a foreign country if the foreign country's judicial system is such that it satisfies minimum due process set forth in the guidelines under Section 111(5) (B) Public Law 109-248.

(b) "Department" means the Mississippi Department of Public Safety, unless otherwise specified.

(c) "Jurisdiction" means any court or locality including any state court, federal court, military court, Indian tribunal or foreign court, the fifty (50) states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Northern Marianna Islands or the United States Virgin Islands, and Indian tribes that elect to function as registration jurisdictions under Title 1, SORNA Section 127 of the Adam Walsh Child Safety Act.

(d) "Permanent residence" means a place where the person abides, lodges, or resides for a period of fourteen (14) or more aggregate days in a six (6) month period.

(e) "Registration" means providing information to the appropriate agency within the timeframe specified as required by this chapter.

(f) "Registration duties" means obtaining the registration information required on the form specified by the department as well as the photograph, fingerprints and biological sample of the registrant. Biological samples are to be forwarded to the Mississippi Forensics Laboratory pursuant to Section



147 45-33-37; the photograph, fingerprints and other registration
148 information are to be forwarded to the Department of Public Safety
149 immediately.

150 (g) "Responsible agency" is defined as the person or
151 government entity whose duty it is to obtain information from a
152 criminal sex offender upon conviction and to transmit that
153 information to the Mississippi Department of Public Safety.

154 (i) For a criminal sex offender being released
155 from the custody of the Department of Corrections, the responsible
156 agency is the Department of Corrections.

157 (ii) For a criminal sex offender being released
158 from a county jail, the responsible agency is the sheriff of that
159 county.

160 (iii) For a criminal sex offender being released
161 from a municipal jail, the responsible agency is the police
162 department of that municipality.

163 (iv) For a sex offender in the custody of the
164 youth court, the responsible agency is the youth court.

165 (v) For a criminal sex offender who is being
166 placed on probation, including conditional discharge or
167 unconditional discharge, without any sentence of incarceration,
168 the responsible agency is the sentencing court.

169 (vi) For an offender who has been committed to a
170 mental institution following an acquittal by reason of insanity,
171 the responsible agency is the facility from which the offender is



released. Specifically, the director of the facility shall notify the Department of Public Safety before the offender's release.

(vii) For a criminal sex offender who is being released from a jurisdiction outside this state or who has a prior conviction in another jurisdiction and who is to reside, work or attend school in this state, the responsible agency is both the sheriff of the proposed county of residence and the department.

(h) "Sex offense" or "registrable offense" means any of the following offenses:

(i) Section 97-3-53 relating to kidnapping, if the victim was below the age of eighteen (18);

(ii) Section 97-3-65 relating to rape; however, conviction or adjudication under Section 97-3-65(1)(a) when the offender was eighteen (18) years of age or younger at the time of the alleged offense, shall not be a registrable sex offense;

(iii) Section 97-3-71 relating to rape and assault with intent to ravish;

(iv) Section 97-3-95 relating to sexual battery; however, conviction or adjudication under Section 97-3-95(1)(c) when the offender was eighteen (18) years of age or younger at the time of the alleged offense, shall not be a registrable sex offense;

(v) Section 97-5-5 relating to enticing a child for concealment, prostitution or marriage;



196 (vi) Section 97-5-23 relating to the touching of a
197 child, mentally defective or incapacitated person or physically
198 helpless person for lustful purposes;

199 (vii) Section 97-5-27 relating to the
200 dissemination of sexually oriented material to children;

201 (viii) Section 97-5-33 relating to the
202 exploitation of children;

203 (ix) Section 97-5-41 relating to the carnal
204 knowledge of a stepchild, adopted child or child of a cohabiting
205 partner;

206 (x) Section 97-29-3 relating to sexual intercourse
207 between teacher and student;

208 (xi) Section 97-29-59 relating to unnatural
209 intercourse;

210 (xii) Section 43-47-18 relating to sexual abuse of
211 a vulnerable person;

212 (xiii) Section 97-3-54.1(1)(c) relating to
213 procuring sexual servitude of a minor and Section 97-3-54.3
214 relating to aiding, abetting or conspiring to violate Section
215 97-3-54.1(1)(c);

216 (xiv) Section 97-29-61(2) relating to voyeurism
217 when the victim is a child under sixteen (16) years of age;

218 (xv) Section 97-29-63 relating to filming another
219 without permission where there is an expectation of privacy;



220 (xvi) Section 97-29-45(1)(a) relating to obscene
221 electronic communication;

222 (xvii) Section 97-3-104 relating to the crime of
223 sexual activity between law enforcement, correctional or custodial
224 personnel and prisoners;

225 (xviii) Section 97-5-39(1)(e) relating to
226 contributing to the neglect or delinquency of a child, felonious
227 abuse or battery of a child, if the victim was sexually abused;

228 (xix) Section 97-29-51 relating to procuring or
229 promoting prostitution when the victim is a child under eighteen
230 (18) years of age;

231 (xx) Section 97-5-35 relating to grooming of a
232 child, if the sentencing judge determines on the record that
233 registration is warranted;

234 (* * *xxi) Section 97-1-7 relating to attempt to
235 commit any of the offenses referenced in this paragraph (h);

236 (* * *xxii) Any other offense resulting in a
237 conviction in another jurisdiction which, if committed in this
238 state, would be deemed to be such a crime without regard to its
239 designation elsewhere;

240 (* * *xxiii) Any offense resulting in a
241 conviction in another jurisdiction for which registration is
242 required in the jurisdiction where the conviction was had;



(* * *xxiv) Any conviction of conspiracy to
commit, accessory to commission, or attempt to commit any offense
listed in this section;

(* * *xxv) Capital murder when one (1) of the
above-described offenses is the underlying crime.

(i) "Temporary residence" is defined as any place where
the person abides, lodges, or resides for a period of seven (7) or
more aggregate days in a six (6) month period which is not the
person's permanent residence.

(j) "Address" means the actual physical street address
of a person's permanent or temporary residence. For a person who
is homeless but is subject to registration under this chapter, the
address information must provide a specific description of where
the person habitually lives; the term "homeless" or similar
description does not constitute an address within the
contemplation of this chapter.

SECTION 3. Section 45-33-47, Mississippi Code of 1972, is
amended as follows:

45-33-47. (1) A sex offender with a duty to register under
Section 45-33-25 shall only be relieved of the duty under
subsection (2) of this section.

(2) A person required to register for a registrable sex
offense under Section 45-33-25 may petition the circuit court of
the sentencing jurisdiction, or for a person whose duty to
register arose in another jurisdiction, the county in which the



registrant resides, to be relieved of that duty under the following conditions:

(a) The offender has maintained his registration in Mississippi for the required minimum registration from the most recent date of occurrence of at least one (1) of the following: release from prison, placement on parole, supervised release or probation or as determined by the offender's tier classification. Incarceration for any offense will restart the minimum registration requirement. Registration in any other jurisdiction does not reduce the minimum time requirement for maintaining registration in Mississippi.

(b) **Tier One.** (i) Tier One requires registration for a minimum of fifteen (15) years in this state and includes any of the following listed registrable sex offenses:

1. Section 97-5-27(1) relating to dissemination of sexually oriented material to children;
2. Section 97-29-61(2) relating to voyeurism when the victim is a child under sixteen (16) years of age;
3. Section 97-29-3 relating to misdemeanor sexual intercourse between teacher and student;
4. Section 97-29-45(1)(a) relating to obscene electronic communication;
5. Any conviction of conspiracy to commit, accessory to commission, or attempt to commit any offense listed in this tier;



293 6. Any conviction for violation of a similar
294 law of another jurisdiction of any offense listed in this tier;

295 7. Any offense resulting in a conviction in
296 another jurisdiction for which registration is required in the
297 jurisdiction where the conviction was had, although registration
298 would not be otherwise required in this state.

299 (ii) Notwithstanding any other provision of this
300 chapter, an offender may petition the appropriate circuit court to
301 be relieved of the duty to register upon fifteen (15) years'
302 satisfaction of the requirements of this section for the
303 convictions classified as Tier One offenses.

304 (c) **Tier Two.** (i) Tier Two requires registration for
305 a minimum of twenty-five (25) years in this state and includes any
306 of the following listed registrable sex offenses:

307 1. Section 97-5-33(3) through (9) relating to
308 the exploitation of children;

309 2. Section 97-29-59 relating to unnatural
310 intercourse;

311 3. Section 97-29-63, relating to filming
312 another without permission where there is an expectation of
313 privacy;

314 4. Section 97-3-104 relating to crime of
315 sexual activity between law enforcement or correctional personnel
316 and prisoners;



317 5. Section 43-47-18(2)(a) and (b) relating to
318 gratification of lust or fondling by health care employees or
319 persons in position of trust or authority;

320 6. Section 97-5-32, relating to grooming of a
321 child, if on the record the sentencing judge determines that
322 registration is warranted;

323 * * *7. Any conviction of conspiracy to
324 commit, accessory to commission, or attempt to commit any offense
325 listed in this tier;

326 * * *8. Any conviction for violation of a
327 similar law of another jurisdiction of any offense listed in this
328 tier; or

329 * * *9. Any conviction of a Tier One offense
330 if it is the offender's second or subsequent conviction of a
331 registrable sex offense;

332 (ii) Notwithstanding any other provision of this
333 chapter, an offender may petition the appropriate circuit court to
334 be relieved of the duty to register upon twenty-five (25) years'
335 satisfaction of the requirements of this section for the
336 convictions classified as Tier Two offenses.

337 (d) **Tier Three.** Tier Three requires lifetime
338 registration, the registrant not being eligible to be relieved of
339 the duty to register except as otherwise provided in this section,
340 and includes any of the following listed registrable sex offenses:

341 (i) Section 97-3-65 relating to rape;



(ii) Section 97-3-71 relating to rape and assault with intent to ravish;

(iii) Section 97-3-95 relating to sexual battery;

(iv) Subsection (1) or (2) of Section 97-5-33 relating to the exploitation of children;

(v) Section 97-5-5 relating to enticing a child for concealment, prostitution or marriage;

(vi) Section 97-5-41 relating to the carnal knowledge of a stepchild, adopted child or child of a cohabiting partner;

(vii) Section 97-3-53 relating to kidnapping if the victim is under the age of eighteen (18);

(viii) Section 97-3-54.1(1)(c) relating to procuring sexual servitude of a minor;

(ix) Section 97-3-54.3 relating to aiding, abetting or conspiring to violate antihuman trafficking provisions;

(x) Section 97-5-23 relating to the touching of a child, mentally defective or incapacitated person or physically helpless person for lustful purposes;

(xi) Section 43-47-18 relating to sexual abuse of a vulnerable person by health care employees or persons in a position of trust or authority;

(xii) Section 97-5-39(1)(c) relating to contributing to the neglect or delinquency of a child, felonious



abuse and/or battery of a child, if the victim was sexually
abused;

(xiii) Capital murder when one (1) of the
above-described offenses is the underlying crime;

(xiv) Any conviction for violation of a similar
law of another jurisdiction or designation as a sexual predator in
another jurisdiction;

(xv) Any conviction of conspiracy to commit,
accessory to commission, or attempt to commit any offense listed
in this tier; or

(xvi) Any conviction of a Tier Two offense if it
is the offender's second or subsequent conviction of a registrable
sex offense.

(e) An offender who has two (2) separate convictions
for any of the registrable offenses described in Section 45-33-23
is subject to lifetime registration and shall not be eligible to
petition to be relieved of the duty to register if at least one
(1) of the convictions was entered on or after July 1, 1995.

(f) An offender, twenty-one (21) years of age or older,
who is convicted of any sex offense where the victim was fourteen
(14) years of age or younger shall be subject to lifetime
registration and shall not be relieved of the duty to register.

(g) A first-time offender fourteen (14) years of age or
older adjudicated delinquent in a youth court for a registrable
offense of rape pursuant to Section 96-3-65 or a registrable



offense of sexual battery pursuant to Section 97-3-95 is subject to lifetime registration, but shall be eligible to petition to be relieved of the duty to register after twenty-five (25) years of registration.

(h) Registration following arrest or arraignment for failure to register is not a defense and does not relieve the sex offender of criminal liability for failure to register.

(i) The department shall continue to list in the registry the name and registration information of all registrants who no longer work, reside or attend school in this state even after the registrant moves to another jurisdiction and registers in the new jurisdiction as required by law. The registry shall note that the registrant moved out of state.

(3) In determining whether to release an offender from the obligation to register, the court shall consider the nature of the registrable offense committed and the criminal and relevant noncriminal behavior of the petitioner both before and after conviction. The court may relieve the offender of the duty to register only if the petitioner shows, by clear and convincing evidence, that the registrant properly maintained his registration as required by law and that future registration of the petitioner will not serve the purposes of this chapter and the court is otherwise satisfied that the petitioner is not a current or potential threat to public safety. The district attorney in the circuit in which the petition is filed must be given notice of the



petition at least three (3) weeks before the hearing on the matter. The district attorney may present evidence in opposition to the requested relief or may otherwise demonstrate the reasons why the petition should be denied. If the court denies the petition, the petitioner may not again petition the court for relief until one (1) year has elapsed unless the court orders otherwise in its order of denial of relief.

(4) The offender will be required to continue registration for any sex offense conviction unless the conviction is set aside in any post-conviction proceeding, the offender receives a pardon, the charge is dismissed or the offender has received a court order pursuant to this section relieving him of the duty to register. Upon submission of the appropriate documentation to the department of one (1) of these occurrences, registration duties will be discontinued.

(5) A person required to register as a sex offender who is convicted under Section 45-33-33 of providing false registration information or of failure to register, reregister, update registration, or comply with electronic monitoring shall be subject to electronic monitoring at the expense of the offender under the program provided in Section 45-33-45. Termination of the duty to register also terminates the duty to be monitored.

SECTION 4. Section 97-5-31, Mississippi Code of 1972, is amended as follows:



441 97-5-31. As used in Sections 97-5-33 through 97-5-37, the
442 following words and phrases shall have the meanings given to them
443 in this section:

444 (a) "Child" means any individual who has not attained
445 the age of eighteen (18) years * * *.

446 (b) "Sexually explicit conduct" means actual, morphed
447 or simulated:

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

451 (ii) Bestiality;

452 (iii) Masturbation;

453 (iv) Sadistic or masochistic abuse;

454 (v) Lascivious exhibition of the genitals or pubic
455 area of any person; or

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

458 (c) "Producing" means producing, directing,
459 manufacturing, issuing, publishing, morphing or advertising.

460 (d) "Visual depiction" includes, without limitation,
461 developed or undeveloped film and video tape or other visual
462 unaltered, altered or morphed reproductions by computer and
463 technology.

464 (e) "Computer" has the meaning given in Title 18,
465 United States Code, Section 1030.



466 (f) "Morphed image" means any visual depiction or
467 representation, including any photograph, film, video, picture, or
468 computer or computer-generated image or picture, whether made or
469 produced by electronic, mechanical, simulated or other means, of
470 sexually explicit conduct, where such visual depiction or
471 representation has been created, adapted, or modified to
472 appear * * * to be a minor * * * engaging in sexual conduct or
473 sexually explicit activity or appearing in a state of sexually
474 explicit nudity.

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

478 * * *

479 **SECTION 5.** This act shall take effect and be in force from
480 and after July 1, 2025.

