

By: Representative Owen

To: Judiciary B

HOUSE BILL NO. 1336

1 AN ACT TO AMEND SECTION 97-3-65, MISSISSIPPI CODE OF 1972, TO
2 CREATE THE CRIME OF CAPITAL RAPE WHEN DAMAGE TO SEXUAL ORGANS OF A
3 CHILD UNDER 12 YEARS OF AGE OCCURS; TO AMEND SECTION 97-3-71,
4 MISSISSIPPI CODE OF 1972, TO CONFORM TO THE PRECEDING SECTION; AND
5 FOR RELATED PURPOSES.

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

7 **SECTION 1.** Section 97-3-65, Mississippi Code of 1972, is
8 amended as follows:

9 97-3-65. (1) The crime of statutory rape is committed when:

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

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

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

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

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

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



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

(c) A person of eighteen (18) years of age or older who has sexual intercourse with a child who:

(i) Is less than twelve (12) years of age; and

(ii) Damages the child's sexual organs.

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

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

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

(b) If twenty-one (21) years of age or older and convicted under subsection (1)(a) of this section, to imprisonment of not more than thirty (30) years in the State Penitentiary or a fine of not more than Ten Thousand Dollars (\$10,000.00), or both, for the first offense, and not more than forty (40) years in the State Penitentiary for each subsequent offense;

(c) If eighteen (18) years of age or older and convicted under subsection (1)(b) of this section, to imprisonment for life in the State Penitentiary or such lesser term of



imprisonment as the court may determine, but not less than twenty
(20) years;

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

(e) If eighteen (18) years of age or older and
convicted under subsection (1)(c) of this section, the person
shall be guilty of capital rape and sentenced to death or life
imprisonment as provided in Section 97-3-71.

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

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



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

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

90 (b) Criminal sexual assault protection orders shall be
91 issued on the standardized form developed by the Office of the
92 Attorney General.



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

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

SECTION 2. Section 97-3-71, Mississippi Code of 1972, is amended as follows:

97-3-71. (1) (a) * * * Except as otherwise provided in subsection (2) of this section, every person who shall be



convicted of an assault with intent of forcible sexual penetration of any person shall be punished by imprisonment in the Penitentiary for life, or for such shorter time as may be fixed by the jury, or by the court upon the entry of a plea of guilty.

(b) Every person who is eighteen (18) years of age or older who shall be convicted of an assault with intent of forcible sexual penetration of a person less than twelve (12) years old and damages the child's sexual organs shall be guilty of capital rape and sentenced to death or life imprisonment.

(c) If the prosecutor intends to seek the death penalty, the prosecutor must give notice to the defendant and file the notice with the court within forty-five (45) days after arraignment. The notice must contain a list of the aggravating factors the state intends to prove and has reason to believe it can prove beyond a reasonable doubt. The court may allow the prosecutor to amend the notice upon a showing of good cause.

(d) Upon conviction or adjudication of guilt of a defendant of a capital rape, the court shall conduct a separate sentencing proceeding to determine whether the defendant should be sentenced to death or life imprisonment as authorized. The proceeding shall be conducted by the trial judge before the trial jury as soon as practicable. If, through impossibility or inability, the trial jury is unable to reconvene for a hearing on the issue of penalty, having determined the guilt of the accused, the trial judge may summon a special juror or jurors determine the



issue of the imposition of the penalty. If the trial jury has
been waived, or if the defendant pleaded guilty, the sentencing
proceeding shall be conducted before a jury impaneled for that
purpose, unless waived by the defendant. In the proceeding,
evidence may be presented as to any matter that the court deems
relevant to the nature of the crime and the character of the
defendant and shall include matters relating to any of the
aggravating factors enumerated or mitigating circumstances in
paragraph (e). Any such evidence that the court deems to have
probative value may be received, regardless of its admissibility
under the exclusionary rules of evidence, provided the defendant
is accorded a fair opportunity to rebut any hearsay statements.
However, this subsection shall not be construed to authorize the
introduction of any evidence secured in violation of the United
States Constitution or the Florida Constitution. The state and
the defendant or the defendant's counsel shall be permitted to
present argument for or against a sentence of death.

(e) Aggravating factors shall be limited to the
following:

(i) The capital felony was committed by a person
previously convicted of a felony violation;

(ii) The defendant was previously convicted of
another felony or of a felony involving the use or threat of
violence to a person;



167 (iii) The capital felony was committed by a person
168 registered as a sexual offender or a person previously designated
169 as a sexual predator who had the sexual predator designation
170 removed;

171 (iv) The defendant knowingly created a great risk
172 of death to one or more persons such that participation in the
173 offense constituted reckless indifference or disregard for human
174 life;

175 (v) The defendant used a firearm or knowingly
176 directed, advised, authorized, or assisted another to use a
177 firearm to threaten, intimidate, assault, or injure a person in
178 committing the offense or in furtherance of the offense;

179 (vi) The capital felony was committed for
180 pecuniary gain;

181 (vii) The capital felony was especially heinous,
182 atrocious, or cruel; or

183 (viii) The victim of the capital felony was
184 particularly vulnerable due to age or disability, or because the
185 defendant stood in a position of familial or custodial authority
186 over the victim.

187 (f) Mitigating circumstances shall be the following:

188 (i) The defendant has no significant history of
189 prior criminal activity.



190 (ii) The capital felony was committed while the
191 defendant was under the influence of extreme mental or emotional
192 disturbance.

193 (iii) The defendant was an accomplice in the
194 capital felony committed by another person and his or her
195 participation was 216 relatively minor.

196 (iv) The defendant acted under extreme duress or
197 under the substantial domination of another person.

198 (v) The capacity of the defendant to appreciate the
199 criminality of his or her conduct or to conform his or her conduct
200 to the requirements of law was substantially impaired.

201 (vi) The age of the defendant at the time of the
202 crime.

203 (vii) The existence of any other factors in the
204 defendant's background that would mitigate against imposition of
205 the death.

206 **SECTION 3.** This act shall take effect and be in force from
207 and after July 1, 2025.

