

By: Senator(s) Fillingane, Chassaniol

To: Judiciary, Division B

## SENATE BILL NO. 2309

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

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

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

12 97-5-32. (1) As used in this section, the following terms  
13 shall have the meanings herein ascribed:

14 (a) "Electronic device" means any device used for the  
15 purpose of communicating with a child for sexual purposes or any  
16 device used to visually depict a child engaged in sexually  
17 explicit conduct, store any image or audio of a child engaged in  
18 sexually explicit conduct, or transmit any audio or visual image  
19 of a child for sexual purposes. Such term may include, but shall  
20 not be limited to, a computer, cellular phone, thumb drive, video



21 game system, or any other electronic device that can be used in  
22 furtherance of exploiting a child for sexual purposes.

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

29 (c) "Human trafficking" means that term as defined in  
30 Section 97-3-54.1.

31 (d) "Sexually explicit conduct" means that term as  
32 defined in Section 97-5-31(b).

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

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



45           (2) A person over the age of twenty-one (21) commits the  
46 offense of grooming of a child when such person knowingly engages  
47 in a pattern of conduct or communication in person; through a  
48 third party; through the use of an electronic device, computer,  
49 social media, or text messages; or by any other means to gain  
50 access to, to gain the compliance of, to prepare, to persuade, to  
51 induce, or to coerce a child to engage in sexually explicit  
52 conduct or human trafficking or to procure the sexual servitude of  
53 a child.

54           (3) (a) Any person who violates this section shall be  
55 guilty of a felony, and upon conviction thereof, be imprisoned in  
56 the custody of the Department of Corrections for not less than two  
57 (2) years nor more than ten (10) years, or fined not more than Ten  
58 Thousand Dollars (\$10,000.00), or both.

59           (b) (i) Any person who violates this section while  
60 that person was in a position of trust or authority over the child  
61 at the time of the offense shall be guilty of a felony, and upon  
62 conviction thereof, be imprisoned in the custody of the Department  
63 of Corrections for not less than five (5) years nor more than ten  
64 (10) years, or fined not more than Twenty Thousand Dollars  
65 (\$20,000.00), or both.

66                       (ii) A person in a position of trust or authority  
67 over a child includes without limitation a child's teacher,  
68 counselor, physician, psychiatrist, psychologist, minister,



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

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

(4) The fines under this section shall be collected and deposited into the Victims of Human Trafficking and Commercial Sexual Exploitation Fund pursuant to Section 97-3-54.11.

(5) Investigation and prosecution of a defendant under this section does not preclude prosecution of the defendant for a violation of other applicable criminal laws of this state.

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

(7) For the purposes of venue under this section, any violation of this section shall be considered to have been committed:

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



(b) In any county in which the electronic device used 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.

(8) 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



118 States, the District of Columbia, the Commonwealth of Puerto Rico,  
119 Guam, American Samoa, the Northern Marianna Islands or the United  
120 States Virgin Islands, and a conviction in a foreign country if  
121 the foreign country's judicial system is such that it satisfies  
122 minimum due process set forth in the guidelines under Section  
123 111(5) (B) Public Law 109-248.

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

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

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

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

140 (f) "Registration duties" means obtaining the  
141 registration information required on the form specified by the  
142 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 45-33-37; the photograph, fingerprints and other registration information are to be forwarded to the Department of Public Safety immediately.

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

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

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

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

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

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



(vi) For an offender who has been committed to a mental institution following an acquittal by reason of insanity, 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;





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

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

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

199                   (viii)   Section 97-5-33 relating to the  
200 exploitation of children;

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

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

206                   (xi)   Section 97-29-59 relating to unnatural  
207 intercourse;

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

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

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



216 (xv) Section 97-29-63 relating to filming another  
217 without permission where there is an expectation of privacy;  
218 (xvi) Section 97-29-45(1)(a) relating to obscene  
219 electronic communication;  
220 (xvii) Section 97-3-104 relating to the crime of  
221 sexual activity between law enforcement, correctional or custodial  
222 personnel and prisoners;  
223 (xviii) Section 97-5-39(1)(e) relating to  
224 contributing to the neglect or delinquency of a child, felonious  
225 abuse or battery of a child, if the victim was sexually abused;  
226 (xix) Section 97-29-51 relating to procuring or  
227 promoting prostitution when the victim is a child under eighteen  
228 (18) years of age;  
229 (xx) Section 97-5-32 relating to grooming of a  
230 child;  
231 ( \* \* \*xxi) Section 97-1-7 relating to attempt to  
232 commit any of the offenses referenced in this paragraph (h);  
233 ( \* \* \*xxii) Any other offense resulting in a  
234 conviction in another jurisdiction which, if committed in this  
235 state, would be deemed to be such a crime without regard to its  
236 designation elsewhere;  
237 ( \* \* \*xxiii) Any offense resulting in a  
238 conviction in another jurisdiction for which registration is  
239 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;



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

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

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

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

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

306                   2. Section 97-29-59 relating to unnatural  
307 intercourse;

308                   3. Section 97-29-63, relating to filming  
309 another without permission where there is an expectation of  
310 privacy;

311                   4. Section 97-3-104 relating to crime of  
312 sexual activity between law enforcement or correctional personnel  
313 and prisoners;



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

317 6. Section 97-5-32 related to grooming of a  
318 child;

319 \* \* \* 7. Any conviction of conspiracy to  
320 commit, accessory to commission, or attempt to commit any offense  
321 listed in this tier;

322 \* \* \* 8. Any conviction for violation of a  
323 similar law of another jurisdiction of any offense listed in this  
324 tier; or

325 \* \* \* 9. Any conviction of a Tier One offense  
326 if it is the offender's second or subsequent conviction of a  
327 registrable sex offense;

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

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

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



338                   (ii) Section 97-3-71 relating to rape and assault  
339 with intent to ravish;  
340                   (iii) Section 97-3-95 relating to sexual battery;  
341                   (iv) Subsection (1) or (2) of Section 97-5-33  
342 relating to the exploitation of children;  
343                   (v) Section 97-5-5 relating to enticing a child  
344 for concealment, prostitution or marriage;  
345                   (vi) Section 97-5-41 relating to the carnal  
346 knowledge of a stepchild, adopted child or child of a cohabiting  
347 partner;  
348                   (vii) Section 97-3-53 relating to kidnapping if  
349 the victim is under the age of eighteen (18);  
350                   (viii) Section 97-3-54.1(1)(c) relating to  
351 procuring sexual servitude of a minor;  
352                   (ix) Section 97-3-54.3 relating to aiding,  
353 abetting or conspiring to violate antihuman trafficking  
354 provisions;  
355                   (x) Section 97-5-23 relating to the touching of a  
356 child, mentally defective or incapacitated person or physically  
357 helpless person for lustful purposes;  
358                   (xi) Section 43-47-18 relating to sexual abuse of  
359 a vulnerable person by health care employees or persons in a  
360 position of trust or authority;  
361                   (xii) Section 97-5-39(1)(c) relating to  
362 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:



437           97-5-31. As used in Sections 97-5-33 through 97-5-37, the  
438 following words and phrases shall have the meanings given to them  
439 in this section:

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

442           (b) "Sexually explicit conduct" means actual, morphed  
443 or simulated:

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

447                   (ii) Bestiality;

448                   (iii) Masturbation;

449                   (iv) Sadistic or masochistic abuse;

450                   (v) Lascivious exhibition of the genitals or pubic  
451 area of any person; or

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

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

456           (d) "Visual depiction" includes, without limitation,  
457 developed or undeveloped film and video tape or other visual  
458 unaltered, altered or morphed reproductions by computer and  
459 technology.

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



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

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

\* \* \*

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

