

REPORT OF CONFERENCE COMMITTEE

MADAM PRESIDENT AND MR. SPEAKER:

We, the undersigned conferees, have had under consideration the amendments to the following entitled BILL:

S. B. No. 2756: Crimes; revise provisions regarding computer crimes.

We, therefore, respectfully submit the following report and recommendation:

1. That the House recede from its Amendment No. 1.

2. That the Senate and House adopt the following amendment:

Amend by striking all after the enacting clause and inserting in lieu thereof the following:

22 **SECTION 1.** Section 97-5-31, Mississippi Code of 1972, is
23 amended as follows:

24 97-5-31. As used in Sections 97-5-33 through 97-5-37, the
25 following words and phrases shall have the meanings given to them
26 in this section:

27 (a) "Child" means any individual who has not attained
28 the age of eighteen (18) years.

29 (b) "Sexually explicit conduct" means actual or
30 simulated:

31 (i) Sexual intercourse, including genital-genital,
32 oral-genital, anal-genital, or oral-anal, whether between persons
33 of the same or opposite sex;

34 (ii) Bestiality;

35 (iii) Masturbation;

36 (iv) Sadistic or masochistic abuse;

37 (v) Lascivious exhibition of the genitals or pubic
38 area of any person; or

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

41 (c) "Producing" means producing, directing,
42 manufacturing, issuing, publishing or advertising.

43 (d) "Visual depiction" includes without limitation

44 developed or undeveloped film and video tape or other visual
45 unaltered reproductions by computer.

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

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

51 **SECTION 2.** Section 97-5-33, Mississippi Code of 1972, is
52 amended as follows:

53 97-5-33. (1) No person shall, by any means including
54 computer, cause, solicit or knowingly permit any child to engage
55 in sexually explicit conduct or in the simulation of sexually
56 explicit conduct for the purpose of producing any visual depiction
57 of such conduct.

58 (2) No person shall, by any means including computer,
59 photograph, * * * film, video tape or otherwise depict or record a
60 child engaging in sexually explicit conduct or in the simulation
61 of sexually explicit conduct.

62 (3) No person shall, by any means including computer,
63 knowingly send, transport, transmit, ship, mail or receive any
64 photograph, drawing, sketch, film, video tape or other visual
65 depiction of an actual child engaging in sexually explicit
66 conduct.

67 (4) No person shall, by any means including computer,
68 receive with intent to distribute, distribute for sale, sell or
69 attempt to sell in any manner any photograph, drawing, sketch,
70 film, video tape or other visual depiction of an actual child
71 engaging in sexually explicit conduct.

72 (5) No person shall, by any means including computer,
73 possess any photograph, drawing, sketch, film, video tape or other
74 visual depiction of an actual child engaging in sexually explicit
75 conduct.

76 (6) No person shall, by any means including computer,
77 knowingly entice, induce, persuade, seduce, solicit, advise,
78 coerce, or order a child to meet with the defendant or any other
79 person for the purpose of engaging in sexually explicit conduct.

80 (7) The fact that an undercover operative or law enforcement
81 officer was involved in the detection and investigation of an
82 offense under this section shall not constitute a defense to a
83 prosecution under this section.

84 (8) For purposes of determining jurisdiction, the offense is
85 committed in this state if all or part of the conduct described in
86 this section occurs in the State of Mississippi or if the
87 transmission that constitutes the offense either originates in
88 this state or is received in this state.

89 **SECTION 3.** Section 97-5-35, Mississippi Code of 1972, is
90 amended as follows:

91 97-5-35. Any person who violates any provision of
92 subsections (1) through (6) of Section 97-5-33 shall be guilty of
93 a felony and upon conviction shall pay a fine of not * * * more
94 than Fifty Thousand Dollars (\$50,000.00) and shall be imprisoned
95 for not less than two (2) years nor more than twenty (20) years,
96 or by both such fine and imprisonment. Any person convicted of a
97 second or subsequent violation of subsections (1) through (6) of
98 Section 97-5-33 shall pay a fine of not more than One Hundred
99 Thousand Dollars (\$100,000.00) and shall be imprisoned not less
100 than ten (10) years nor more than thirty (30) years, or by both
101 such fine and imprisonment.

102 **SECTION 4.** Section 97-45-1, Mississippi Code of 1972, is
103 amended as follows:

104 97-45-1. For the purposes of this chapter, the following
105 words shall have the meanings ascribed herein unless the context
106 clearly requires otherwise:

107 (a) "Access" means to program, to execute programs on,
108 to communicate with, store data in, retrieve data from or
109 otherwise make use of any resources, including data or programs,
110 of a computer, computer system or computer network.

111 (b) "Computer" includes an electronic, magnetic,
112 optical or other high-speed data processing device or system
113 performing logical arithmetic and storage functions and includes
114 any property, data storage facility or communications facility
115 directly related to or operating in conjunction with such device

116 or system. "Computer" shall not include an automated typewriter
117 or typesetter, a machine designed solely for word processing which
118 contains no data base intelligence or a portable hand-held
119 calculator nor shall "computer" include any other device which
120 contains components similar to those in computers but in which the
121 components have the sole function of controlling the device for
122 the single purpose for which the device is intended unless the
123 thus controlled device is a processor of data or is a storage of
124 intelligence in which case it too is included.

125 (c) "Computer network" means a set of related, remotely
126 connected devices and communication facilities including at least
127 one (1) computer system with the capability to transmit data
128 through communication facilities.

129 (d) "Computer program" means an ordered set of data
130 representing coded instructions or statements that when executed
131 by a computer cause the computer to process data.

132 (e) "Computer software" means a set of computer
133 programs, procedures and associated documentation concerned with
134 operation of a computer system.

135 (f) "Computer system" means a set of functionally
136 related, connected or unconnected, computer equipment, devices or
137 computer software.

138 (g) "Computer services" means providing access to or
139 service or data from a computer, a computer system or a computer
140 network and includes the actual data processing.

141 (h) "Credible threat" means a threat made with the
142 intent and the apparent ability to carry out the threat so as to
143 cause the person who is the target of the threat to reasonably
144 fear for his or her safety.

145 (i) "Loss or damage" includes any reasonable cost to
146 any victim, including the cost of responding to an offense,
147 conducting a damage assessment, and restoring the data, program,
148 system, or information to its condition prior to the offense, and
149 any revenue lost, cost incurred or other consequential damages
150 incurred because of interruption of service.

151 (j) "Device" includes, but is not limited to, an

152 electronic, magnetic, electrochemical, biochemical, hydraulic,
153 optical, or organic object that performs input, output, or storage
154 functions by the manipulation of electronic, magnetic or other
155 impulses.

156 (k) "Electronic communication" means any transfer of
157 signs, signals, writing, images, sounds, data, or intelligence of
158 any nature, transmitted in whole or in part by a wire, radio,
159 computer, electromagnetic, photoelectric or photo-optical system.

160 (l) "Electronic mail" means the transmission of
161 information or communication by the use of the Internet, a
162 computer, a facsimile machine, a pager, a cellular telephone, a
163 video recorder or other electronic means sent to a person
164 identified by a unique address or address number and received by
165 that person.

166 (m) "Emotional distress" means significant mental
167 suffering or distress that may, but does not necessarily, require
168 medical or other professional treatment or counseling.

169 (n) "Financial instrument" means any check, draft,
170 money order, certificate of deposit, letter of credit, bill of
171 exchange, credit card as defined in Section 97-19-9(b),
172 Mississippi Code of 1972, or marketable security.

173 (o) "Financial transaction device" means any of the
174 following:

175 (i) An electronic funds transfer card.

176 (ii) A credit card.

177 (iii) A debit card.

178 (iv) A point-of-sale card.

179 (v) Any instrument, device, card, plate, code,

180 account number, personal identification number, or a record or

181 copy of a code, account number, or personal identification number

182 or other means of access to a credit account or deposit account,

183 or a driver's license or state identification card used to access

184 a proprietary account, other than access originated solely by a

185 paper instrument, that can be used alone or in conjunction with

186 another access device, for any of the following purposes.

187 1. Obtaining money, cash refund or credit

188 account credit, goods, services or any other thing of value.

189 2. Certifying or guaranteeing to a person or
190 business the availability to the device holder of funds on deposit
191 to honor a draft or check payable to the order of that person or
192 business.

193 3. Providing the device holder access to a
194 deposit account for the purpose of making deposits, withdrawing
195 funds, transferring funds between deposit accounts, obtaining
196 information pertaining to a deposit account or making an
197 electronic funds transfer.

198 (p) "Intellectual property" includes data, computer
199 programs, computer software, trade secrets, copyrighted materials
200 and confidential or proprietary information in any form or medium
201 when such is stored in, produced by or intended for use or storage
202 with or in a computer, a computer system or a computer network.

203 (q) "Internet" means that term as defined in Section
204 230 of Title II of the Communications Act of 1934, Chapter 652,
205 110 Stat. 137, 47 USCS 230.

206 (r) "Medical records" includes, but is not limited to,
207 medical and mental health histories, reports, summaries, diagnoses
208 and prognoses, treatment and medication information, notes,
209 entries, and x-rays and other imaging records.

210 (s) "Personal identity information" means any of the
211 following information of another person:

212 (i) A social security number.

213 (ii) A driver's license number or state personal
214 identification card number.

215 (iii) Employment information.

216 (iv) Information regarding any financial account
217 held by another person including, but not limited to, any of the
218 following:

219 1. A savings or checking account number.

220 2. A financial transaction device account
221 number.

222 3. A stock or other security certificate or
223 account number.

224 4. A personal information number for an
225 account described in items 1 through 4.

226 (t) "Post a message" means transferring, sending,
227 posting, publishing, disseminating, or otherwise communicating or
228 attempting to transfer, send, post, publish, disseminate or
229 otherwise communicate information, whether truthful or untruthful,
230 about the victim.

231 (u) "Property" means property as defined in Section
232 1-3-45, Mississippi Code of 1972, and shall specifically include,
233 but not be limited to, financial instruments, electronically
234 stored or produced data and computer programs, whether in machine
235 readable or human readable form.

236 (v) "Proper means" includes:

237 (i) Discovery by independent invention;

238 (ii) Discovery by "reverse engineering"; that is,
239 by starting with the known product and working backward to find
240 the method by which it was developed. The acquisition of the
241 known product must be by lawful means;

242 (iii) Discovery under license or authority of the
243 owner;

244 (iv) Observation of the property in public use or
245 on public display; or

246 (v) Discovery in published literature.

247 (w) "Unconsented contact" means any contact with
248 another individual that is initiated or continued without that
249 individual's consent or in disregard of that individual's
250 expressed desire that the contact be avoided or discontinued.

251 Unconsented contact includes any of the following:

252 (i) Following or appearing within sight of the
253 victim.

254 (ii) Approaching or confronting the victim in a
255 public place or on private property.

256 (iii) Appearing at the victim's workplace or
257 residence.

258 (iv) Entering onto or remaining on property owned,
259 leased or occupied by the victim.

260 (v) Contacting the victim by telephone.

261 (vi) Sending mail or electronic communications to
262 the victim through the use of any medium, including the Internet
263 or a computer, computer program, computer system or computer
264 network.

265 (vii) Placing an object on, or delivering or
266 having delivered an object to, property owned, leased or occupied
267 by the victim.

268 (x) "Use" means to make use of, to convert to one's
269 service, to avail oneself of or to employ. In the context of this
270 act, "use" includes to instruct, communicate with, store data in
271 or retrieve data from, or otherwise utilize the logical arithmetic
272 or memory functions of a computer.

273 (y) "Victim" means the individual who is the target of
274 the conduct elicited by the posted message or a member of that
275 individual's immediate family.

276 **SECTION 5.** Section 97-45-3, Mississippi Code of 1972, is
277 amended as follows:

278 97-45-3. (1) Computer fraud is the accessing or causing to
279 be accessed of any computer, computer system, computer network or
280 any part thereof with the intent to:

281 (a) Defraud; * * *

282 (b) Obtain money, property or services by means of
283 false or fraudulent conduct, practices or representations; or
284 through the false or fraudulent alteration, deletion or insertion
285 of programs or data; or

286 (c) Insert or attach or knowingly create the
287 opportunity for an unknowing and unwanted insertion or attachment
288 of a set of instructions or a computer program into a computer
289 program, computer, computer system, or computer network, that is
290 intended to acquire, alter, damage, delete, disrupt, or destroy
291 property or otherwise use the services of a computer program,
292 computer, computer system or computer network.

293 (2) Whoever commits the offense of computer fraud shall be
294 punished, upon conviction, by a fine of not more than One Thousand
295 Dollars (\$1,000.00), or by imprisonment for not more than six (6)

296 months, or by both such fine and imprisonment. However, when the
297 damage or loss or attempted damage or loss amounts to a value of
298 Five Hundred Dollars (\$500.00) or more, the offender may be
299 punished, upon conviction, by a fine of not more than Ten Thousand
300 Dollars (\$10,000.00) or by imprisonment for not more than five (5)
301 years, or by both such fine and imprisonment.

302 **SECTION 6.** The following shall be codified as Section
303 97-45-15, Mississippi Code of 1972:

304 97-45-15. (1) It is unlawful for a person to:

305 (a) Use in electronic mail or electronic communication
306 any words or language threatening to inflict bodily harm to any
307 person or to that person's child, sibling, spouse or dependent, or
308 physical injury to the property of any person, or for the purpose
309 of extorting money or other things of value from any person.

310 (b) Electronically mail or electronically communicate
311 to another repeatedly, whether or not conversation ensues, for the
312 purpose of threatening, terrifying or harassing any person.

313 (c) Electronically mail or electronically communicate
314 to another and to knowingly make any false statement concerning
315 death, injury, illness, disfigurement, indecent conduct, or
316 criminal conduct of the person electronically mailed or of any
317 member of the person's family or household with the intent to
318 threaten, terrify or harass.

319 (d) Knowingly permit an electronic communication device
320 under the person's control to be used for any purpose prohibited
321 by this section.

322 (2) Whoever commits the offense of cyberstalking shall be
323 punished, upon conviction:

324 (a) Except as provided herein, the person is guilty of
325 a felony punishable by imprisonment for not more than two (2)
326 years or a fine of not more than Five Thousand Dollars
327 (\$5,000.00), or both.

328 (b) If any of the following apply, the person is guilty
329 of a felony punishable by imprisonment for not more than five (5)
330 years or a fine of not more than Ten Thousand Dollars
331 (\$10,000.00), or both:

332 (i) The offense is in violation of a restraining
333 order and the person has received actual notice of that
334 restraining order or posting the message is in violation of an
335 injunction or preliminary injunction.

336 (ii) The offense is in violation of a condition of
337 probation, a condition of parole, a condition of pretrial release
338 or a condition of release on bond pending appeal.

339 (iii) The offense results in a credible threat
340 being communicated to the victim, a member of the victim's family,
341 or another individual living in the same household as the victim.

342 (iv) The person has been previously convicted of
343 violating this section or a substantially similar law of another
344 state, a political subdivision of another state, or of the United
345 States.

346 (3) This section does not apply to any peaceable,
347 nonviolent, or nonthreatening activity intended to express
348 political views or to provide lawful information to others. This
349 section shall not be construed to impair any constitutionally
350 protected activity, including speech, protest or assembly.

351 **SECTION 7.** The following shall be codified as Section
352 97-45-17, Mississippi Code of 1972:

353 97-45-17. (1) A person shall not post a message for the
354 purpose of causing injury to any person through the use of any
355 medium of communication, including the Internet or a computer,
356 computer program, computer system or computer network, or other
357 electronic medium of communication without the victim's consent,
358 for the purpose of causing injury to any person.

359 (2) A person who violates this section, upon conviction,
360 shall be guilty of a felony punishable by imprisonment for not
361 more than five (5) years or a fine of not more than Ten Thousand
362 Dollars (\$10,000.00), or both.

363 **SECTION 8.** The following shall be codified as Section
364 97-45-19, Mississippi Code of 1972:

365 97-45-19. (1) A person shall not obtain or attempt to
366 obtain personal identity information of another person with the
367 intent to unlawfully use that information for any of the following

368 purposes without that person's authorization:

369 (a) To obtain financial credit.

370 (b) To purchase or otherwise obtain or lease any real
371 or personal property.

372 (c) To obtain employment.

373 (d) To obtain access to medical records or information
374 contained in medical records.

375 (e) To commit any illegal act.

376 (2) A person who violates this section is guilty of a felony
377 punishable by imprisonment for not more than five (5) years or a
378 fine of not more than Ten Thousand Dollars (\$10,000.00), or both.

379 (3) This section does not prohibit the person from being
380 charged with, convicted of, or sentenced for any other violation
381 of law committed by that person using information obtained in
382 violation of this section.

383 (4) This section does not apply to a person who obtains or
384 attempts to obtain personal identity information of another person
385 pursuant to the discovery process of a civil action, an
386 administrative proceeding or an arbitration proceeding.

387 **SECTION 9.** The following shall be codified as Section
388 97-45-21, Mississippi Code of 1972:

389 97-45-21. For purposes of bringing a criminal action under
390 this chapter, a person who causes, by any means, the access of a
391 computer, computer system or computer network in one jurisdiction
392 from another jurisdiction is deemed to have personally accessed
393 the computer, computer system or computer network in each
394 jurisdiction.

395 **SECTION 10.** The following shall be codified as Section
396 97-45-23, Mississippi Code of 1972:

397 97-45-23. Prosecutions for violations under Title 97,
398 Chapter 45, or Section 97-5-33, may be instituted by the Attorney
399 General, his designee or the district attorney of the district in
400 which the violation occurred, and shall be conducted in the name
401 of the State of Mississippi. In the prosecution of any criminal
402 proceeding in accordance with this subsection by the Attorney
403 General, his designee, and in any proceeding before a grand jury

404 in connection therewith, the Attorney General, or his designee,
405 shall exercise all the powers and perform all the duties which the
406 district attorney would otherwise be authorized or required to
407 exercise or perform. The Attorney General, or his designee, shall
408 have the authority to issue and serve subpoenas in the
409 investigation of any matter which may violate Title 97, Chapter
410 45, or Section 97-5-33.

411 **SECTION 11.** The following shall be codified as Section
412 97-45-25, Mississippi Code of 1972:

413 97-45-25. In a proceeding for violations under Title 97,
414 Chapter 45, or Section 97-5-33, the court, in addition to the
415 criminal penalties imposed under this chapter, shall assess
416 against the defendant convicted of such violation double those
417 reasonable costs that are expended by the Office of Attorney
418 General, the district attorney's office, the sheriff's office or
419 police department involved in the investigation of such case,
420 including, but not limited to, the cost of investigators, software
421 and equipment utilized in the investigation, together with costs
422 associated with process service, court reporters and expert
423 witnesses. The Attorney General or district attorney may
424 institute and maintain proceedings in his name for enforcement of
425 payment in the circuit court of the county of residence of the
426 defendant and, if the defendant is a nonresident, such proceedings
427 shall be in the Circuit Court of the First Judicial District of
428 Hinds County, Mississippi. The Attorney General or district
429 attorney shall distribute the property or interest assessed under
430 this section as follows:

431 (a) Fifty percent (50%) shall be distributed to the
432 unit of state or local government whose officers or employees
433 conducted the investigation into computer fraud or child
434 exploitation which resulted in the arrest or arrests and
435 prosecution. Amounts distributed to units of local government
436 shall be used for training or enforcement purposes relating to
437 detection, investigation or prosecution of computer and financial
438 crimes, including computer fraud or child exploitation.

439 (b) Where the prosecution was maintained by the

440 district attorney, fifty percent (50%) shall be distributed to the
441 county in which the prosecution was instituted by the district
442 attorney and appropriated to the district attorney for use in
443 training or enforcement purposes relating to detection,
444 investigation or prosecution of computer and financial crimes,
445 including computer fraud or child exploitation. Where a
446 prosecution was maintained by the Attorney General, fifty percent
447 (50%) of the proceeds shall be paid or distributed into the
448 Attorney General's Cyber Crime Central. Where the Attorney
449 General and the district attorney have participated jointly in any
450 part of the proceedings, twenty-five percent (25%) of the property
451 forfeited shall be paid to the county in which the prosecution
452 occurred, and twenty-five percent (25%) shall be paid to the
453 Attorney General's Cyber Crime Central to be used for the purposes
454 as stated in this paragraph.

455 **SECTION 12.** If any provision of this act is held by a court
456 to be invalid, such invalidity shall not affect the remaining
457 provisions of this act, and to this end the provisions of this act
458 are declared severable.

459 **SECTION 13.** This act shall take effect and be in force from
460 and after July 1, 2003.

**Further, amend by striking the title in its entirety and
inserting in lieu thereof the following:**

1 AN ACT TO AMEND SECTION 97-5-31, MISSISSIPPI CODE OF 1972, TO
2 DEFINE AND CLARIFY CERTAIN TERMS; TO AMEND SECTION 97-5-33,
3 MISSISSIPPI CODE OF 1972, TO INCLUDE THE USE OF COMPUTERS IN THE
4 PROHIBITION OF EXPLOITATION OF CHILDREN; TO AMEND SECTION 97-5-35,
5 MISSISSIPPI CODE OF 1972, TO REVISE PENALTIES; TO AMEND SECTION
6 97-45-1, MISSISSIPPI CODE OF 1972, TO DEFINE CERTAIN TERMS RELATED
7 TO COMPUTER CRIMES; TO AMEND SECTION 97-45-3, MISSISSIPPI CODE OF
8 1972, TO REVISE COMPUTER FRAUD AND PENALTIES; TO CODIFY SECTION
9 97-45-15, MISSISSIPPI CODE OF 1972, TO CREATE THE OFFENSE OF
10 CYBERSTALKING AND PRESCRIBE PENALTIES FOR VIOLATIONS; TO CODIFY
11 SECTION 97-45-17, MISSISSIPPI CODE OF 1972, TO PROHIBIT POSTING
12 CERTAIN MESSAGES THROUGH ELECTRONIC MEDIA AND PRESCRIBE PENALTIES
13 FOR VIOLATIONS; TO CODIFY SECTION 97-45-19, MISSISSIPPI CODE OF
14 1972, TO PROHIBIT OBTAINING PERSONAL IDENTITY INFORMATION AND
15 PRESCRIBE PENALTIES FOR VIOLATIONS; TO CODIFY SECTION 97-45-21,
16 MISSISSIPPI CODE OF 1972, TO CLARIFY WHERE CRIMINAL ACTION MAY BE
17 BROUGHT; TO CODIFY SECTION 97-45-23, MISSISSIPPI CODE OF 1972, TO
18 PROVIDE FOR INVESTIGATIONS AND PROSECUTIONS; TO CODIFY SECTION
19 97-45-25, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR ADDITIONAL
20 PENALTIES; AND FOR RELATED PURPOSES.

CONFEREES FOR THE SENATE

X

Bennie L. Turner

X

Gray Tollison

X

Robert P. Chamberlin

CONFEREES FOR THE HOUSE

X

Edward Blackmon, Jr.

X

Warner F. McBride

X

Willie Bailey