

By: Senator(s) Tollison, Albritton, Burton, Butler, Clarke, Cuevas, Davis, Dawkins, Dearing, Flowers, Harvey, Hyde-Smith, Jackson (15th), Jackson (11th), Jackson (32nd), Jordan, King, Lee (47th), Lee (35th), Morgan, Nunnelee, Ross, Thames, Thomas, Walley, Walls

To: Judiciary, Division B

SENATE BILL NO. 2864
(As Passed the Senate)

1 AN ACT TO AMEND SECTION 97-5-33, MISSISSIPPI CODE OF 1972, BY
2 PROHIBITING EXPLOITATION OF A CHILD BY CAUSING THAT CHILD TO TAKE
3 SEXUALLY PROVOCATIVE PICTURES; TO AMEND SECTION 97-5-35,
4 MISSISSIPPI CODE OF 1972, TO REVISE THE PENALTIES FOR EXPLOITATION
5 OF CHILDREN; TO AMEND SECTION 97-5-39, MISSISSIPPI CODE OF 1972,
6 TO REVISE THE PENALTIES FOR FELONIOUS ABUSE OR BATTERY OF A CHILD;
7 AND FOR RELATED PURPOSES.

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

9 SECTION 1. Section 97-5-33, Mississippi Code of 1972, is
10 amended as follows:

11 97-5-33. (1) No person shall, by any means including
12 computer, cause, solicit or knowingly permit any child to engage
13 in sexually explicit conduct or in the simulation of sexually
14 explicit conduct for the purpose of producing any visual depiction
15 of such conduct.

16 (2) No person shall, by any means including computer,
17 photograph, film, video tape or otherwise depict or record a child
18 engaging in sexually explicit conduct or in the simulation of
19 sexually explicit conduct.

20 (3) No person shall, by any means including computer,
21 knowingly send, transport, transmit, ship, mail or receive any
22 photograph, drawing, sketch, film, video tape or other visual
23 depiction of an actual child engaging in sexually explicit
24 conduct.

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

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

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

38 (7) No person shall by any means, including computer,
39 knowingly entice, induce, persuade, seduce, solicit, advise,
40 coerce or order a child to produce any visual depiction of adult
41 sexual conduct or any sexually explicit conduct.

42 (8) The fact that an undercover operative or law enforcement
43 officer was involved in the detection and investigation of an
44 offense under this section shall not constitute a defense to a
45 prosecution under this section.

46 (9) For purposes of determining jurisdiction, the offense is
47 committed in this state if all or part of the conduct described in
48 this section occurs in the State of Mississippi or if the
49 transmission that constitutes the offense either originates in
50 this state or is received in this state.

51 **SECTION 2.** Section 97-5-35, Mississippi Code of 1972, is
52 amended as follows:

53 97-5-35. Any person who violates any provision of * * *
54 Section 97-5-33 shall be guilty of a felony and upon conviction
55 shall be fined not less than Fifty Thousand Dollars (\$50,000.00)
56 nor more than Five Hundred Thousand Dollars (\$500,000.00) and
57 shall be imprisoned for not less than five (5) years nor more than
58 forty (40) years * * *. Any person convicted of a second or
59 subsequent violation of * * * Section 97-5-33 shall be fined not
60 less than One Hundred Thousand Dollars (\$100,000.00) nor more than
61 One Million Dollars (\$1,000,000.00) and shall be confined in the
62 custody of the Department of Corrections for life or such lesser

63 term as the court may determine, but not less than twenty (20)
64 years * * *.

65 SECTION 3. Section 97-5-39, Mississippi Code of 1972, is
66 amended as follows:

67 97-5-39. (1) (a) Except as otherwise provided in this
68 section, any parent, guardian or other person who willfully
69 commits any act or omits the performance of any duty, which act or
70 omission contributes to or tends to contribute to the neglect or
71 delinquency of any child or which act or omission results in the
72 abuse * * * of any child, as defined in Section 43-21-105(m) of
73 the Youth Court Law, or who knowingly aids any child in escaping
74 or absenting himself from the guardianship or custody of any
75 person, agency or institution, or knowingly harbors or conceals,
76 or aids in harboring or concealing, any child who has absented
77 himself without permission from the guardianship or custody of any
78 person, agency or institution to which the child shall have been
79 committed by the youth court shall be guilty of a misdemeanor, and
80 upon conviction shall be punished by a fine not to exceed One
81 Thousand Dollars (\$1,000.00), or by imprisonment not to exceed one
82 (1) year in jail, or by both such fine and imprisonment.

83 (b) If the child's deprivation of necessary food,
84 clothing, shelter, health care or supervision appropriate to the
85 child's age results in substantial harm to the child's physical,
86 mental or emotional health, the person may be sentenced to
87 imprisonment for not more than five (5) years or to payment of a
88 fine of not more than Five Thousand Dollars (\$5,000.00), or both.

89 (c) A parent, legal guardian or other person who
90 knowingly permits the continuing physical or sexual abuse of a
91 child is guilty of neglect of a child and may be sentenced to
92 imprisonment for not more than five (5) years or to payment of a
93 fine of not more than Five Thousand Dollars (\$5,000.00), or both.

94 (2) (a) Any person who shall intentionally (i) burn any
95 child, (ii) torture any child or, (iii) except in self-defense or

96 in order to prevent bodily harm to a third party, whip, strike or
97 otherwise abuse or mutilate any child in such a manner as to cause
98 serious bodily harm, shall be guilty of felonious abuse * * * of a
99 child and, upon conviction, shall be sentenced to imprisonment in
100 the custody of the Department of Corrections for life or such
101 lesser term of imprisonment as the court may determine, but not
102 less than ten (10) years. For any second or subsequent conviction
103 under this subsection, the person shall be sentenced to
104 imprisonment for life.

105 (b) (i) A parent, legal guardian or caretaker who
106 endangers a child's person or health by knowingly causing or
107 permitting the child to be present where any person is selling,
108 manufacturing or possessing immediate precursors or chemical
109 substances with intent to manufacture, sell or possess a
110 controlled substance as prohibited under Section 41-29-139 or
111 41-29-313, is guilty of child endangerment and may be sentenced to
112 imprisonment for not more than five (5) years or to payment of a
113 fine of not more than Five Thousand Dollars (\$5,000.00), or both.

114 (ii) If the endangerment results in substantial
115 harm to the child's physical, mental or emotional health, the
116 person may be sentenced to imprisonment for not more than ten (10)
117 years or to payment of a fine of not more than Ten Thousand
118 Dollars (\$10,000.00), or both.

119 (3) Nothing contained in this section shall prevent
120 proceedings against the parent, guardian or other person under any
121 statute of this state or any municipal ordinance defining any act
122 as a crime or misdemeanor. Nothing in the provisions of this
123 section shall preclude any person from having a right to trial by
124 jury when charged with having violated the provisions of this
125 section.

126 (4) After consultation with the Department of Human
127 Services, a regional mental health center or an appropriate
128 professional person, a judge may suspend imposition or execution

129 of a sentence provided in subsections (1) and (2) of this section
130 and in lieu thereof require treatment over a specified period of
131 time at any approved public or private treatment facility. A
132 person may be eligible for treatment in lieu of criminal penalties
133 no more than one (1) time.

134 (5) In any proceeding resulting from a report made pursuant
135 to Section 43-21-353 of the Youth Court Law, the testimony of the
136 physician making the * * * report regarding the child's injuries
137 or condition or cause thereof shall not be excluded on the ground
138 that the physician's testimony violates the physician-patient
139 privilege or similar privilege or rule against disclosure. The
140 physician's report shall not be considered as evidence unless
141 introduced as an exhibit to his testimony.

142 (6) Any criminal prosecution arising from a violation of
143 this section shall be tried in the circuit, county, justice or
144 municipal court having jurisdiction; provided, however, that
145 nothing herein shall abridge or dilute the contempt powers of the
146 youth court.

147 **SECTION 4.** This act shall take effect and be in force from
148 and after July 1, 2005.