

Mississippi

§ 97-5-23. Touching, handling, etc., child, mentally defective or incapacitated person or physically helpless person.

(1) Any person above the age of eighteen (18) years, who, for the purpose of gratifying his or her lust, or indulging his or her depraved licentious sexual desires, shall handle, touch or rub with hands or any part of his or her body or any member thereof, any child under the age of sixteen (16) years, with or without the child's consent, or a mentally defective, mentally incapacitated or physically helpless person as defined in Section 97-3-97, shall be guilty of a felony and, upon conviction thereof, shall be fined in a sum not less than One Thousand Dollars (\$1,000.00) nor more than Five Thousand Dollars (\$5,000.00), or be committed to the custody of the State Department of Corrections not less than two (2) years nor more than fifteen (15) years, or be punished by both such fine and imprisonment, at the discretion of the court.

(2) Any person above the age of eighteen (18) years, who, for the purpose of gratifying his or her lust, or indulging his or her depraved licentious sexual desires, shall handle, touch or rub with hands or any part of his or her body or any member thereof, any child younger than himself or herself and under the age of eighteen (18) years who is not such person's spouse, with or without the child's consent, when the person occupies a position of trust or authority over the child shall be guilty of a felony and, upon conviction thereof, shall be fined in a sum not less than One Thousand Dollars (\$1,000.00) nor more than Five Thousand Dollars (\$5,000.00), or be committed to the custody of the State Department of Corrections not less than two (2) years nor more than fifteen (15) years, or be punished by both such fine and imprisonment, at the discretion of the court. A person in a position of trust or authority over a child includes without limitation a child's teacher, counselor, physician, psychiatrist, psychologist, minister, priest, physical therapist, chiropractor, legal guardian, parent, stepparent, aunt, uncle, scout leader or coach.

(3) Upon a second conviction for an offense under this section, the person so convicted shall be punished by commitment to the State Department of Corrections for a term not to exceed twenty (20) years, however, upon conviction and sentencing, the offender shall serve at least one-half (1/2) of the sentence so imposed.

Sources: Codes, Hemingway's 1921 Supp. § 1142c; Laws, 1930, § 826; Laws, 1942, § 2052; Laws, 1920, ch. 215; Laws, 1958, ch. 276; Laws, 1980, ch. 387; Laws, 1985, ch. 389, § 1; Laws, 1993, ch. 512, § 4; Laws, 1995, ch. 487, § 1; Laws, 1998, ch. 549, § 5, eff from and after July 1, 1998.

§ 97-5-24. Sexual involvement of school employee with student; duty to report.

If any person eighteen (18) years or older who is employed by any public or private school district in this state is accused of fondling or having any type of sexual involvement with any child under the age of eighteen (18) years who is enrolled in such school, the principal of such school and the superintendent of such school district shall timely notify the district attorney with jurisdiction where the school is located of such accusation, provided that such accusation is reported to the principal and to the school superintendent and that there is a reasonable basis to believe that such accusation is true.

Sources: Laws, 1994, ch. 595, § 11, eff from and after July 1, 1994.

§ 97-5-27. Dissemination of sexually oriented material to persons under eighteen years of age; use of computer for purpose of luring or inducing persons under eighteen years of age to engage in sexual contact.

(1) Any person who intentionally and knowingly disseminates sexually oriented material to any person under eighteen (18) years of age shall be guilty of a misdemeanor and upon conviction shall be fined for each offense not less than Five Hundred Dollars (\$500.00) nor more than Five Thousand Dollars (\$5,000.00) or be imprisoned for not more than one (1) year in the county jail, or be punished by both such

fine and imprisonment. A person disseminates sexually oriented material within the meaning of this section if he:

(a) Sells, delivers or provides, or offers or agrees to sell, deliver or provide, any sexually oriented writing, picture, record or other representation or embodiment that is sexually oriented; or

(b) Presents or directs a sexually oriented play, dance or other performance or participates directly in that portion thereof which makes it sexually oriented; or

(c) Exhibits, presents, rents, sells, delivers or provides, or offers or agrees to exhibit, present, rent or to provide any sexually oriented still or motion picture, film, filmstrip or projection slide, or sound recording, sound tape or sound track or any matter or material of whatever form which is a representation, embodiment, performance or publication that is sexually oriented.

(2) For purposes of this section, any material is sexually oriented if the material contains representations or descriptions, actual or simulated, of masturbation, sodomy, excretory functions, lewd exhibition of the genitals or female breasts, sadomasochistic abuse (for the purpose of sexual stimulation or gratification), homosexuality, lesbianism, bestiality, sexual intercourse, or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or the breast or breasts of a female for the purpose of sexual stimulation, gratification or perversion.

(3) (a) A person is guilty of computer luring when:

(i) Knowing the character and content of any communication of sexually oriented material, he intentionally uses any computer communication system allowing the input, output, examination or transfer of computer data or computer programs from one computer to another, to initiate or engage in such communication with a person under the age of eighteen (18); and

(ii) By means of such communication he importunes, invites or induces a person under the age of eighteen (18) years to engage in sexual intercourse, deviant sexual intercourse or sexual contact with him, or to engage in a sexual performance, obscene sexual performance or sexual conduct for his benefit.

(b) A person who engages in the conduct proscribed by this subsection (3) is presumed to do so with knowledge of the character and content of the material.

(c) In any prosecution for computer luring, it shall be a defense that:

(i) The defendant made a reasonable effort to ascertain the true age of the minor and was unable to do so as a result of actions taken by the minor; or

(ii) The defendant has taken, in good faith, reasonable, effective and appropriate actions under the circumstances to restrict or prevent access by minors to the materials prohibited, which may involve any appropriate measures to restrict minors from access to such communications, including any method which is feasible under available technology; or

(iii) The defendant has restricted access to such materials by requiring use of a verified credit card, debit account, adult access code or adult personal identification number; or

(iv) The defendant has in good faith established a mechanism such that the labeling, segregation or other mechanism enables such material to be automatically blocked or screened by software or other capabilities reasonably available to responsible adults wishing to effect such blocking or screening and the defendant has not otherwise solicited minors not subject to such screening or blocking capabilities to access that material or to circumvent any such screening or blocking.

(d) In any prosecution for computer luring:

(i) No person shall be held to have violated this subsection (3) solely for providing access or connection to or from a facility, system, or network not under that person's control, including transmission, downloading, intermediate storage, access software or other related capabilities that are incidental to providing such access or connection that do not include the creation of the content of the communication.

(ii) No employer shall be held liable for the actions of an employee or agent unless the employee's or agent's conduct is within the scope of his employment or agency or the employer, having knowledge of such conduct, authorizes or ratifies such conduct, or recklessly disregards such conduct.

(iii) The limitations provided by this paragraph (d) shall not be applicable to a person who is a conspirator with an entity actively involved in the creation or knowing distribution of communications that violate such provisions, or who knowingly advertises the availability of such communications, nor to a person who provides access or connection to a facility, system or network engaged in the violation of such provisions that is owned or controlled by such person.

(e) Computer luring is a felony, and any person convicted thereof shall be punished by commitment to the custody of the Department of Corrections for a term not to exceed three (3) years and by a fine not to exceed Ten Thousand Dollars (\$10,000.00).

Sources: Laws, 1979, ch. 475, § 1; Laws, 2002, ch. 319, § 1, eff from and after July 1, 2002.

§ 97-5-29. Public display of sexually oriented materials.

(1) Any person who intentionally and knowingly places sexually oriented materials upon public display, or who knowingly and intentionally fails to take prompt action to remove such a display from property in his possession after learning of its existence shall be guilty of a misdemeanor and upon conviction shall be fined for each offense not less than five hundred dollars (\$500.00) nor more than five thousand dollars (\$5,000.00) or be imprisoned for not more than one (1) year in the county jail, or be punished by both such fine and imprisonment.

(2) For purposes of this section any material is sexually oriented if the material consists of representations or descriptions of actual or simulated masturbation, sodomy, excretory functions, lewd exhibition of the genitals or female breasts, sadomasochistic abuse (for the purpose of sexual stimulation or gratification), homosexuality, lesbianism, bestiality, sexual intercourse, or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or the breast or breasts of a female for the purpose of sexual stimulation, gratification or perversion.

(3) A person places sexually oriented material upon public display within the meaning of this section if he places the material on or in a billboard, viewing screen, theater stage or marquee, newsstand, display rack, window, showcase, display case or similar place so that sexually oriented material is easily visible from a public street, public road or sidewalk or from areas of public businesses in which minors are normally business invitees.

Sources: Laws, 1979, ch. 475, § 2, eff from and after July 1, 1979.

§ 97-5-31. Exploitation of children; definitions.

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

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

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

- (i) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;
 - (ii) Bestiality;
 - (iii) Masturbation;
 - (iv) Sadistic or masochistic abuse;
 - (v) Lascivious exhibition of the genitals or pubic area of any person; or
 - (vi) Fondling or other erotic touching of the genitals, pubic area, buttocks, anus or breast.
- (c) "Producing" means producing, directing, manufacturing, issuing, publishing or advertising.
- (d) "Visual depiction" includes without limitation developed or undeveloped film and video tape or other visual unaltered reproductions by computer.
- (e) "Computer" has the meaning given in Title 18, United States Code, Section 1030.
- (f) "Simulated" means any depicting of the genitals or rectal areas that gives the appearance of sexual conduct or incipient sexual conduct.

Sources: Laws, 1979, ch. 479, § 1; Laws, 1995, ch. 484, § 1; Laws, 2003, ch. 562, § 1, eff from and after July 1, 2003.

§ 97-5-33. Exploitation of children; prohibitions.

- (1) No person shall, by any means including computer, cause, solicit or knowingly permit any child to engage in sexually explicit conduct or in the simulation of sexually explicit conduct for the purpose of producing any visual depiction of such conduct.
- (2) No person shall, by any means including computer, photograph, film, video tape or otherwise depict or record a child engaging in sexually explicit conduct or in the simulation of sexually explicit conduct.
- (3) No person shall, by any means including computer, knowingly send, transport, transmit, ship, mail or receive any photograph, drawing, sketch, film, video tape or other visual depiction of an actual child engaging in sexually explicit conduct.
- (4) No person shall, by any means including computer, receive with intent to distribute, distribute for sale, sell or attempt to sell in any manner any photograph, drawing, sketch, film, video tape or other visual depiction of an actual child engaging in sexually explicit conduct.
- (5) No person shall, by any means including computer, possess any photograph, drawing, sketch, film, video tape or other visual depiction of an actual child engaging in sexually explicit conduct.
- (6) No person shall, by any means including computer, knowingly entice, induce, persuade, seduce, solicit, advise, coerce, or order a child to meet with the defendant or any other person for the purpose of engaging in sexually explicit conduct.
- (7) The fact that an undercover operative or law enforcement officer was involved in the detection and investigation of an offense under this section shall not constitute a defense to a prosecution under this section.

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

Sources: Laws, 1979, ch. 479, § 2; Laws, 1988, ch. 558; Laws, 1995, ch. 484, § 2; Laws, 2003, ch. 562, § 2, eff from and after July 1, 2003.

§ 97-5-35. Exploitation of children; penalties.

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

Sources: Laws, 1979, ch. 479, § 3; Laws, 1995, ch. 484, § 3; Laws, 2003, ch. 562, § 3, eff from and after July 1, 2003.

§ 97-5-37. Exploitation of children; other remedies.

The provisions of Sections 97-5-31 to 97-5-37 are supplemental to any statute relating to child abuse or neglect, obscenity, enticement of children or contributing to delinquency of a minor and acquittal or conviction pursuant to any other statute shall not be a bar to prosecution under Sections 97-5-31 to 97-5-37. Acquittal or conviction under Sections 97-5-31 to 97-5-37 shall not be a bar to prosecution and conviction under other statutes defining crimes or misdemeanors, nor to any civil or administrative remedy otherwise available.

Sources: Laws, 1979, ch. 479, § 4, eff from and after July 1, 1979.

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