

# MISSISSIPPI STATE OBSCENITY & LIBRARY/SCHOOL FILTERING STATUTES

(Last Updated Summer 2012)

Miss. Code Ann.

## **Miss. Code Ann. § 97-29-101. Distribution or wholesale distribution of obscene materials or performances; character and reputation as evidence; prosecutor's bond**

A person commits the offense of distributing obscene materials or obscene performances when he sells, rents, leases, advertises, publishes or exhibits to any person any obscene material or obscene performance of any description knowing the obscene nature thereof, or offers to do so, or possesses such material with the intent to do so. A person commits the offense of wholesale distributing obscene materials or obscene performances when he distributes for the purpose of resale any obscene material or obscene performance of any description knowing the obscene nature thereof, or offers to do so, or possesses such material with the intent to do so. The word "knowing" as used in this section means either actual or constructive knowledge of the obscene contents of the subject matter, and a person has constructive knowledge of the obscene contents if he has knowledge of facts which would put a reasonable and prudent person on notice as to the suspect nature of the material. The character and reputation of an individual charged with an offense under Sections 97-29-101 through 97-29-109 and, if a commercial dissemination of obscene material or an obscene performance is involved, the character and reputation of the business establishment involved, may be placed in evidence by the defendant on the question of intent to violate Sections 97-29-101 through 97-29-109.

Any person, other than a city attorney, county prosecuting attorney or district attorney, who shall sign an affidavit charging an offense prescribed by this section shall file a bond in the amount of five hundred dollars (\$ 500.00) at the time such affidavit is lodged. Such bond shall be conditioned that the affidavit was not filed frivolously, maliciously or out of ill will.

## **§ 97-29-103. Definitions**

- (1) Material or performance is obscene if:
  - (a) To the average person, applying contemporary community standards, taken as a whole, it appeals to the prurient interest, that is, a lustful, erotic, shameful, or morbid interest in nudity, sex or excretion; and
  - (b) The material taken as a whole lacks serious literary, artistic, political or scientific value; and
  - (c) The material depicts or describes in a patently offensive way, sexual conduct specifically defined in subparagraphs (i) through (v) below:
    - (i) Acts of sexual intercourse, heterosexual or homosexual, normal or perverted, actual or simulated;
    - (ii) Acts of masturbation;
    - (iii) Acts involving excretory functions or lewd exhibition of the genitals;
    - (iv) Acts of bestiality or the fondling of sex organs of animals; or
    - (v) Sexual acts of flagellation, torture or other violence indicating a sadomasochistic sexual relationship.
- (2) Undeveloped photographs, molds, printing plates and the like shall be deemed obscene material, notwithstanding that processing or other acts may be required to make the obscenity patent or to distribute it.

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- (3) "Performance" means a play, motion picture, dance or other exhibition performed before an audience.
- (4) "Patently offensive" means so offensive on its face as to affront current community standards of decency.
- (5) "Wholesale distributes" means to distribute for the purpose of resale.
- (6) "Material" means any book, magazine, newspaper, advertisement, pamphlet, poster, print, picture, figure, image, drawing, description, motion picture film, phonographic record, recording tape, video tape, or other tangible thing producing, reproducing or capable of producing or reproducing an image, picture, sound or sensation through sight, sound or touch, but it does not include an actual three-dimensional sexual device as defined in Section 97-29-105.

## **§ 97-29-105. Distribution or wholesale distribution of unlawful sexual devices; prosecutor's bond**

A person commits the offense of distributing unlawful sexual devices when he knowingly sells, advertises, publishes or exhibits to any person any three-dimensional device designed or marketed as useful primarily for the stimulation of human genital organs, or offers to do so, or possesses such devices with the intent to do so. A person commits the offense of wholesale distributing unlawful sexual devices when he distributes for the purpose of resale any three-dimensional device designed or marketed as useful primarily for the stimulation of human genital organs, or offers to do so, or possesses such devices with the intent to do so.

Any person, other than a city attorney, county prosecuting attorney or district attorney, who shall sign an affidavit charging an offense prescribed by this section shall file a bond in the amount of five hundred dollars (\$ 500.00) at the time such affidavit is lodged. Such bond shall be conditioned that the affidavit was not filed frivolously, maliciously or out of ill will.

## **§ 97-29-107. Exemptions from application of Sections 97-29-101 through 97-29-109; procedure for claiming exemption; defenses**

- (1) Sections 97-29-101 through 97-29-109 shall not apply when the distribution or wholesale distribution of the material, performance or device was made by:
  - (a) A person, corporation, company, partnership, firm, association, business, establishment or other legal entity to a person associated with an institution of higher learning, either as a member of the faculty or as a matriculated student, teaching or pursuing a course of study related to such material, performance or device;
  - (b) A licensed physician or a licensed psychologist to a person whose receipt of such material or device was authorized in writing by such physician or psychologist in the course of medical or psychological treatment or care;
  - (c) A person who while acting in his capacity as an employee is employed on a full-time or part-time basis by (i) any recognized historical society or museum accorded charitable status by the federal government; (ii) any state, county or municipal public library; or (iii) any library of any public or private school, college or university in this state; or
  - (d) A community television antenna services system or a cable television system operating pursuant to a written agreement not in conflict with this

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paragraph granted by a county, municipality or other political subdivision of this state, or by an employee of such system while acting within the scope of his employment, when the signal transmitting the material or performance originates outside of the state of Mississippi.

- (2) Any exemption from prosecution claimed under the provisions of this section may be raised at a pretrial hearing by motion, and the court shall determine whether sufficient evidence exists to constitute an exemption from prosecution under the provisions of Sections 97-29-101 through 97-29-109. If the motion is sustained, the case shall be dismissed; provided, however, if the motion is not sustained then the defendant may offer into evidence at trial as an affirmative defense to conviction under this act any matter which could have been raised by the defendant in the motion to dismiss.

## § 97-29-109. Penalties

Any person, except one who wholesale distributes, who violates Section 97-29-101 or Section 97-29-105 shall be guilty of a misdemeanor and, upon conviction, shall, in the case of the first offense, be fined not more than five thousand dollars (\$ 5,000.00) or imprisoned in the county jail for a term not to exceed six (6) months, or both. If the person has been previously convicted of a violation of Section 97-29-101 or Section 97-29-105 or of Section 97-5-27 or 97-5-29, Mississippi Code of 1972, then the person shall be fined not less than two thousand five hundred dollars (\$ 2,500.00) nor more than ten thousand dollars (\$ 10,000.00) or imprisoned for a term not to exceed one (1) year, or both.

Any person who wholesale distributes in violation of Section 97-29-101 or Section 97-29-105 shall, upon conviction, be fined not more than ten thousand dollars (\$ 10,000.00) or imprisoned for a term not to exceed one (1) year, or both. If the person has been previously convicted of a violation of Section 97-29-101 or Section 97-29-105 or of Section 97-5-27 or 97-5-29, Mississippi Code of 1972, then the person shall, upon conviction, be fined not less than two thousand five hundred dollars (\$ 2,500.00) nor more than fifty thousand dollars (\$ 50,000.00) or imprisoned for a term not to exceed one (1) year, or both.

A corporation, company, partnership, firm, association, business, establishment, organization or other legal entity other than an individual convicted of distributing obscenity or unlawful sexual devices or wholesale distribution of obscenity or unlawful sexual devices shall be fined not less than one thousand dollars (\$ 1,000.00) nor more than ten thousand dollars (\$ 10,000.00). If such legal entity has been previously convicted of distributing obscenity or unlawful sexual devices or wholesale distribution of obscenity or unlawful sexual devices or of a violation of Section 97-5-27 or Section 97-5-29, Mississippi Code of 1972, then such legal entity shall be fined not less than five thousand dollars (\$ 5,000.00) nor more than fifty thousand dollars (\$ 50,000.00).

## § 97-29-45. Obscene electronic communications

- (1) It shall be unlawful for any person or persons:
  - (a) To make any comment, request, suggestion or proposal by means of telecommunication or electronic communication which is obscene, lewd or

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- lascivious with intent to abuse, threaten or harass any party to a telephone conversation, telecommunication or electronic communication;
- (b) To make a telecommunication or electronic communication with intent to terrify, intimidate or harass, and threaten to inflict injury or physical harm to any person or to his property;
- (c) To make a telephone call, whether or not conversation ensues, without disclosing his identity and with intent to annoy, abuse, threaten or harass any person at the called number;
- (d) To make or cause the telephone of another repeatedly or continuously to ring, with intent to harass any person at the called number;
- (e) To make repeated telephone calls, during which conversation ensues, solely to harass any person at the called number; or
- (f) Knowingly to permit a computer or a telephone of any type under his control to be used for any purpose prohibited by this section.
- (2) Upon conviction of any person for the first offense of violating subsection (1) of this section, such person shall be fined not more than Five Hundred Dollars (\$ 500.00) or imprisoned in the county jail for not more than six (6) months, or both.
- (3) Upon conviction of any person for the second offense of violating subsection (1) of this section, the offenses being committed within a period of five (5) years, such person shall be fined not more than One Thousand Dollars (\$ 1,000.00) or imprisoned in the county jail for not more than one (1) year, or both.
- (4) For any third or subsequent conviction of any person violating subsection (1) of this section, the offenses being committed within a period of five (5) years, such person shall be guilty of a felony and fined not more than Two Thousand Dollars (\$ 2,000.00) and/or imprisoned in the State Penitentiary for not more than two (2) years, or both.
- (5) The provisions of this section do not apply to a person or persons who make a telephone call that would be covered by the provisions of the federal Fair Debt Collection Practices Act, 15 USCS Section 1692 et seq.
- (6) Any person violating this section may be prosecuted in the county where the telephone call, conversation or language originates in case such call, conversation or language originates in the State of Mississippi. In case the call, conversation or language originates outside of the State of Mississippi then such person shall be prosecuted in the county to which it is transmitted.
- (7) For the purposes of this section, telecommunication and electronic communication mean and include any type of telephonic, electronic or radio communications, or transmission of signs, signals, data, writings, images and sounds or intelligence of any nature by telephone, including cellular telephones, wire, cable, radio, electromagnetic, photoelectronic or photo-optical system or the creation, display, management, storage, processing, transmission or distribution of images, text, voice, video or data by wire, cable or wireless means, including the Internet.
- (8) No person shall be held to have violated this section solely for providing access or connection to telecommunications or electronic communications services where the services do not include the creation of the content of the communication. Companies organized to do business as commercial broadcast radio stations, television stations, telecommunications service providers, Internet service providers, cable service providers or news organizations shall not be criminally liable under this section.

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## § 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

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- (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).

## § 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



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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 other similar place, including a viewing screen in a vehicle, 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.

## § 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.

## § 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.

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- (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) No person shall by any means, including computer, knowingly entice, induce, persuade, seduce, solicit, advise, coerce or order a child to produce any visual depiction of adult sexual conduct or any sexually explicit conduct.
- (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.
- (9) 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.

## § 97-29-59. Unnatural intercourse

Every person who shall be convicted of the detestable and abominable crime against nature committed with mankind or with a beast, shall be punished by imprisonment in the penitentiary for a term of not more than ten years.

## § 97-29-63. Photographing or filming another without permission where there is expectation of privacy

Any person who with lewd, licentious or indecent intent secretly photographs, films, videotapes, records or otherwise reproduces the image of another person without the permission of such person when such a person is located in a place where a person would intend to be in a state of undress and have a reasonable expectation of privacy, including, but not limited to, private dwellings or any facility, public or private, used as a restroom, bathroom, shower room, tanning booth, locker room, fitting room, dressing room or bedroom shall be guilty of a felony and upon conviction shall be punished by a fine of Five Thousand Dollars (\$ 5,000.00) or by imprisonment of not more than five (5) years in the custody of the Department of Corrections, or both.

### 2012 Miss. S.B. 2376

Enacted, May 22, 2012

**Reporter:** 2012 Miss. S.B. 2376

**Added:** Text highlighted in green

Synopsis

AN ACT TO AMEND SECTION 97-29-61, MISSISSIPPI CODE OF 1972, TO CREATE A FELONY LEVEL OF THE OFFENSE OF VOYEURISM WHEN THE VICTIM IS A CHILD UNDER A CERTAIN AGE; TO AMEND SECTION 97-29-63, MISSISSIPPI CODE OF 1972, TO CREATE A FELONY



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LEVEL OF THE OFFENSE OF PHOTOGRAPHING OR FILMING ANOTHER WITHOUT PERMISSION WHEN THE VICTIM IS A CHILD UNDER A CERTAIN AGE; TO AMEND SECTION 45-33-23, MISSISSIPPI CODE OF 1972, TO CONFORM THE DEFINITION OF SEX OFFENSE UNDER THE SEX OFFENDER REGISTRATION LAW FOR THE PURPOSES OF THIS ACT; AND FOR RELATED PURPOSES.

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

- SECTION 1. Section **97-29-61**, Mississippi Code of 1972, is amended as follows:
  - 97-29-61.
    - (1) Any person who enters upon real property whether the original entry is legal or not, and thereafter pries or peeps through a window or other opening in a dwelling or other building structure for the lewd, licentious and indecent purpose of spying upon the occupants thereof, shall be guilty of a felonious trespass, and upon conviction shall be imprisoned in the custody of the Department of Corrections not more than five (5) years.
    - (2) When one or more occupants spied upon is a child under sixteen (16) years of age, a person who violates subsection (1) of this section shall be guilty of felonious trespass, and upon conviction shall be imprisoned in the custody of the Department of Corrections not more than ten (10) years.
- SECTION 2. Section **97-29-63**, Mississippi Code of 1972, is amended as follows:
  - 97-29-63.
    - (1) Any person who with lewd, licentious or indecent intent secretly photographs, films, videotapes, records or otherwise reproduces the image of another person without the permission of such person when such a person is located in a place where a person would intend to be in a state of undress and have a reasonable expectation of privacy, including, but not limited to, private dwellings or any facility, public or private, used as a restroom, bathroom, shower room, tanning booth, locker room, fitting room, dressing room or bedroom shall be guilty of a felony and upon conviction shall be punished by a fine of Five Thousand Dollars (\$ 5,000.00) or by imprisonment of not more than five (5) years in the custody of the Department of Corrections, or both.
    - (2) Where the person who is secretly photographed, filmed, videotaped or otherwise reproduced is a child under sixteen (16) years of age, a person who violates subsection (1) of this section shall be guilty of a felony and upon conviction shall be punished by a fine of Five Thousand Dollars (\$ 5,000.00) or by imprisonment of not more than ten (10) years in the custody of the Department of Corrections, or both.
- SECTION 3. 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" shall mean 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

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- federal property, a conviction in any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Northern Mariana Islands or the United States Virgin Islands, and a conviction in a foreign country if the foreign country's judicial system is such that it satisfies minimum due process set forth in the guidelines under Section 111(5)(B) Public Law 109-248.
- (b) "Jurisdiction" means any court or locality including any state court, federal court, military court, Indian tribunal or foreign court, the fifty (50) states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Northern Mariana Islands or the United States Virgin Islands, and Indian tribes that elect to function as registration jurisdictions under Title 1, SORNA Section 127 of the Adam Walsh Child Safety Act.
  - (c) "Permanent residence" is defined as a place where the person abides, lodges, or resides for a period of fourteen (14) or more consecutive days.
  - (d) "Registration" means providing information to the appropriate agency within the time frame specified as required by this chapter.
  - (e) "Registration duties" means obtaining the registration information required on the form specified by the department as well as the photograph, fingerprints and biological sample of the registrant. Biological samples are to be forwarded to the State Crime 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.
  - (f) "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 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 said facility shall notify the Department of Public Safety prior to 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

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this state, the responsible agency is both the sheriff of the proposed county of residence and the department.

- (g) "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;
  - (v) Section 97-5-5 relating to enticing a child for concealment, prostitution or marriage;
  - (vi) Section 97-5-23 relating to the touching of a child, mentally defective or incapacitated person or physically helpless person for lustful purposes;
  - (vii) Section 97-5-27 relating to the dissemination of sexually oriented material to children;
  - (viii) Section 97-5-33 relating to the exploitation of children;
  - (ix) Section 97-5-41 relating to the carnal knowledge of a stepchild, adopted child or child of a cohabiting partner;
  - (x) Section 97-29-59 relating to unnatural intercourse;
  - (xi) Section 97-1-7 relating to attempt to commit any of the above-referenced offenses;
  - (xii) Section 43-47-18 relating to sexual abuse of a vulnerable adult;
  - (xiii) Section 97-3-54.1(1)(c) relating to procuring sexual servitude of a minor;
  - (xiv) Section 97-29-61(2) relating to voyeurism when the victim is a child under sixteen (16) years of age;
  - (xv) Section 97-29-63 relating to filming another without permission where there is an expectation of privacy;
  - (xvi) Section 97-29-45 relating to **obscene** electronic communication;
  - (xvii) Section 97-3-104 relating to the crime of sexual activity between law enforcement, correctional or custodial personnel and prisoners;
  - (xviii) Section 97-5-39(1)(c) relating to contributing to the neglect or delinquency of a child, felonious abuse or battery of a child, if the victim was sexually abused;
  - (xix) Any other offense resulting in a conviction in another jurisdiction which, if committed in this state, would be deemed to be such a crime without regard to its designation elsewhere;
  - (xx) Any offense resulting in a conviction in another jurisdiction for which registration is required in the jurisdiction where the conviction was had;

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- (xxi) Any conviction of conspiracy to commit, accessory to commission, or attempt to commit any offense listed in this section;
- (xxii) Capital murder when one (1) of the above-described offenses is the underlying crime.
- (h) "Temporary residence" is defined as any place where the person abides, lodges, or resides for a period of seven (7) or more consecutive days which is not the person's permanent residence.
- (i) "Department" unless otherwise specified is defined as the Mississippi Department of Public Safety.
- SECTION 4. (Previous) This act shall take effect and be in force from and after July 1, 2012.

Approved by the Governor May 22, 2012

## **§ 97-29-65. Strip clubs prohibited within one-fourth mile of church, school, kindergarten, or courthouse**

It shall be unlawful to locate within one-fourth ( 1/4) of one (1) mile of any church, school, kindergarten or courthouse any establishment where public displays of nudity are present. Any person found guilty of violating this section shall, upon conviction, be fined not more than Ten Thousand Dollars (\$ 10,000.00) or imprisoned for not more than one (1) year, or both.

For the purposes of this section the term "nudity" and "public display" shall have the same meanings as those terms are defined in Section 19-5-103.

## **§ 19-5-103. Regulation of massage parlors and public displays of nudity**

- (1) In accordance with the provisions of Section 19-3-41, providing that additional powers may be conferred upon the boards of supervisors, the board of supervisors of any county bordering on the Gulf of Mexico and having two (2) judicial districts and the board of supervisors of any county adjacent to any county of this or any adjoining state wherein is located a city having a population in excess of two hundred thousand (200,000), according to the latest federal census, are hereby empowered to promulgate, adopt and enforce ordinances which are necessary and reasonable for the protection of public health and the maintenance of order in relation to the advertisement, the offering of services and the dispensation for compensation of personal services in establishments known as massage parlors and to promulgate, adopt and enforce ordinances which are necessary and reasonable for the protection of public health and the maintenance of order in relation to public displays of nudity.
- (2) For the purposes of this section, the term "massage parlor" shall mean any premises where a person manipulates, rubs, caresses, touches, massages, kneads, palpates or otherwise physically contacts the body or part or area of the body of another person. The term "massage parlor" shall not include gymnasias or other premises wherein persons engage in bona fide athletic or conditioning activities, duly licensed barbershop, beauty parlor, chiropractic clinic or other premises of a person practicing a vocation or profession regulated and licensed by the state.

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- For the purposes of this section, the term "nudity" means uncovered, or less than opaquely covered, postpubertal human genitals, pubic areas, the postpubertal human female breast below a point immediately above the top of the areola, or the covered human male genitals in a discernibly turgid state. For purposes of this definition, a female breast is considered uncovered if the nipple only or the nipple and areola only are uncovered, however, the term "nudity" does not include a woman's breast-feeding of her child whether or not the breast or any part of it is exposed as any element of breast-feeding.
- For the purposes of this section, the term "public display" means the exposing, exhibiting, revealing, or in any fashion displaying the nude human body or any representation thereof in any location in such a manner that it may be readily seen by the public by normal unaided vision and the term also means any play, motion picture, dance, show or other presentation, whether pictured, animated or live, performed before an audience and which in whole or in part depicts or reveals nudity or sexual conduct.
- (3) Ordinances adopted pursuant to this section shall comport with the elements of due process and shall include but not be limited to specificity, adequate notice, right to hearing, right to counsel, right to appeal adverse findings to a judicial authority and penalties rationally related to prohibited acts.
- (4) Boards of supervisors proposing such ordinances shall publish and post notice of such intentions not less than twenty (20) days prior to the holding of a public hearing whereat the purposes and substance of such ordinances shall be fully discussed.

## § 37-43-31. Selection of books by local school districts

(5) The State Board of Education shall not allow previously rejected textbooks to be used if such textbooks were rejected for any of the following reasons:

- (a) **Obscene**, lewd, sexist or vulgar material;
- (b) Advocating prejudicial behavior or actions; or
- (c) Encouraging acts determined to be anti-social or derogatory to any race, sex or religion.