

By: Representatives Moore, Wells-Smith

To: Judiciary B

HOUSE BILL NO. 669

1 AN ACT TO CREATE THE SEX OFFENDER ESTIMATING CONFERENCE AND
 2 SPECIFY THE DUTIES THEREOF; TO AMEND SECTION 45-33-25, MISSISSIPPI
 3 CODE OF 1972, TO REQUIRE ADDITIONAL INFORMATION FROM SEX OFFENDERS
 4 WHO ARE REQUIRED TO REGISTER; TO AMEND SECTION 45-33-31,
 5 MISSISSIPPI CODE OF 1972, TO REQUIRE THE DEPARTMENT OF PUBLIC
 6 SAFETY TO DEVELOP AND IMPLEMENT A VERIFICATION SYSTEM FOR THE
 7 REGISTRATION INFORMATION GIVEN BY SEX OFFENDERS; TO AMEND SECTION
 8 45-33-33, MISSISSIPPI CODE OF 1972, TO CREATE THE CRIME OF
 9 CONSPIRING WITH A SEX OFFENDER TO ELUDE REGISTRATION AND OF
 10 PROVIDING FALSE REGISTRATION INFORMATION; TO AMEND SECTION
 11 45-33-47, MISSISSIPPI CODE OF 1972, TO ALLOW A LIFETIME REGISTRANT
 12 TO PETITION THE CIRCUIT COURT FOR RELIEF FROM THE DUTY TO
 13 REGISTER; TO AMEND SECTION 45-33-49, MISSISSIPPI CODE OF 1972, TO
 14 REQUIRE SHARING OF REGISTRATION INFORMATION BETWEEN LAW
 15 ENFORCEMENT AGENCIES; TO CREATE NEW SECTION 47-5-1017, MISSISSIPPI
 16 CODE OF 1972, TO PROVIDE FOR ELECTRONIC MONITORING OF SEX
 17 OFFENDERS UPON WHOM A SPLIT SENTENCE IS IMPOSED; TO CREATE NEW
 18 SECTION 47-5-1019, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR
 19 PUNISHMENT FOR TAMPERING WITH AN ELECTRONIC MONITORING DEVICE; TO
 20 CREATE NEW SECTION 47-7-32, MISSISSIPPI CODE OF 1972, TO REQUIRE
 21 THE DEPARTMENT OF CORRECTIONS TO STUDY INSTANCES OF SEX OFFENDERS
 22 WHO ARE SUBSEQUENTLY ARRESTED; TO AMEND SECTION 47-7-33,
 23 MISSISSIPPI CODE OF 1972, TO REQUIRE ELECTRONIC MONITORING OF
 24 CERTAIN PAROLEES AND PROBATIONERS; TO AMEND SECTION 47-7-34,
 25 MISSISSIPPI CODE OF 1972, TO CONFORM TO SPLIT SENTENCING; TO AMEND
 26 SECTION 47-7-35, MISSISSIPPI CODE OF 1972, TO MANDATE ELECTRONIC
 27 MONITORING UNDER CERTAIN CIRCUMSTANCES; TO AMEND SECTION 47-7-37,
 28 MISSISSIPPI CODE OF 1972, TO ENACT CERTAIN RESTRICTIONS ON THE
 29 IMPOSITION OF BAIL FOR PERSONS WHO ARE REQUIRED TO REGISTER AS SEX
 30 OFFENDERS; TO AMEND SECTION 97-5-23, MISSISSIPPI CODE OF 1972, TO
 31 IMPOSE A MORE SEVERE PENALTY ON FOR FONDLING WHEN THE VICTIM IS
 32 BELOW A CERTAIN AGE; TO CREATE NEW SECTION 99-19-84, MISSISSIPPI
 33 CODE OF 1972, TO AUTHORIZE A SPLIT SENTENCE FOR SEX OFFENDERS; TO
 34 AMEND SECTION 99-19-101, MISSISSIPPI CODE OF 1972, TO SPECIFY THAT
 35 CERTAIN SEX OFFENSES ARE AN AGGRAVATING CIRCUMSTANCE IN SENTENCING
 36 FOR A CAPITAL OFFENSE; TO CREATE NEW SECTION 99-19-205,
 37 MISSISSIPPI CODE OF 1972, TO MANDATE ELECTRONIC SUPERVISION FOR
 38 CERTAIN SEX OFFENDERS UPON EXPIRATION OF ANY TERM OF
 39 INCARCERATION; TO REQUIRE THE DEPARTMENT OF PUBLIC SAFETY TO STUDY
 40 THE SEX OFFENDER REGISTRY SYSTEM AND THE PEER COMMITTEE TO
 41 PERIODICALLY REVIEW THE SYSTEM; TO PROHIBIT PLEA BARGAINING FOR
 42 SEX OFFENSES; AND FOR RELATED PURPOSES.

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

44 **SECTION 1.** (1) The Sex Offender Estimating Conference is
 45 hereby created. The purpose of the Sex Offender Estimating
 46 Conference shall be to develop such official information relating
 47 to the number of sex offenders who are subject to electronic

48 monitoring as the conference determines is needed for the state
49 planning and budgeting system.

50 (2) The conference shall consist of the following members:
51 the Commissioner of the Department of Corrections or his designee;
52 the Commissioner of the Department of Public Safety or his
53 designee; the Director of the Administrative Office of Courts; the
54 Director of the Department of Finance and Administration or his
55 designee; the Director of the Legislative Budget Office or his
56 designee; the Attorney General or his designee; a member of the
57 Governor's staff appointed by the Governor who shall preside over
58 meetings of the conference and exercise the authority to call
59 meetings.

60 **SECTION 2.** The Sex Offender Estimating Conference created in
61 Section 1 of this act shall study the factors relating to the
62 sentencing of sex offenders from the point of arrest through the
63 imposition of sanctions by the sentencing court, including
64 original charges, plea negotiations, trial dispositions and
65 sanctions. The Department of Corrections, Department of Finance
66 and Administration, Administrative Office of Courts, Department of
67 Public Safety, Office of the Attorney General and the various
68 district attorneys shall provide information deemed necessary for
69 the study. The final report shall be filed with the Clerk of the
70 House and the Secretary of the Senate no later than November 1,
71 2006.

72 **SECTION 3.** Section 45-33-25, Mississippi Code of 1972, is
73 amended as follows:

74 45-33-25. (1) Any person residing in this state who has
75 been convicted of any sex offense or attempted sex offense or who
76 has been acquitted by reason of insanity for any sex offense or
77 attempted sex offense or twice adjudicated delinquent for any sex
78 offense or attempted sex offense shall register with the
79 Mississippi Department of Public Safety. Registration shall not
80 be required for an offense that is not a registrable sex offense.

81 The department shall provide the initial registration information
82 as well as every change of address to the sheriff of the county of
83 the residence address of the registrant through either written
84 notice, electronic or telephone transmissions, or online access to
85 registration information. Further, the department shall provide
86 this information to the Federal Bureau of Investigation.
87 Additionally, upon notification by the registrant that he intends
88 to reside outside the State of Mississippi, the department shall
89 notify the appropriate state law enforcement agency of any state
90 to which a registrant is moving or has moved.

91 (2) Any person required to register under this chapter shall
92 submit the following information at the time of registration:

93 (a) Name, including a former name which has been
94 legally changed;

95 (b) Street address of any permanent residence and of
96 any current temporary residence within state or out of state;

97 (c) Date and place of employment;

98 (d) Crime for which convicted;

99 (e) Date and place of conviction, adjudication or
100 acquittal by reason of insanity;

101 (f) Aliases used;

102 (g) Social security number;

103 (h) Date and place of birth;

104 (i) Age, race, sex, height, weight, and hair and eye
105 colors;

106 (j) A brief description of the offense or offenses for
107 which the registration is required;

108 (k) Identifying factors;

109 (l) Anticipated future residence;

110 (m) If the registrant's residence is a motor vehicle,
111 trailer, mobile home or manufactured home, the registrant shall
112 also provide vehicle identification number, license tag number,
113 registration number and a description, including color scheme, of

114 the motor vehicle, trailer, mobile home or manufactured home; if
115 the registrant's place of residence is a vessel or houseboat, the
116 registrant shall also provide the hull identification number,
117 manufacturer's serial number, name of the vessel or houseboat,
118 registration number and a description, including color scheme, of
119 the vessel or houseboat;

120 (n) Vehicle make, model, color and license tag number;

121 (o) Offense history;

122 (p) Photograph;

123 (q) Fingerprints;

124 (r) Documentation of any treatment received for any
125 mental abnormality or personality disorder of the person;

126 (s) Biological sample;

127 (t) Name of any institution of higher learning,
128 including each campus attended at which the offender is employed,
129 carries on a vocation (with or without compensation) or is
130 enrolled as a student, and the registrant's status; and

131 (u) Any other information deemed necessary.

132 (3) For purposes of this chapter, a person is considered to
133 be residing in this state if he maintains a permanent or temporary
134 residence as defined in Section 45-33-23, including students,
135 temporary employees and military personnel on assignment.

136 **SECTION 4.** Section 45-33-31, Mississippi Code of 1972, is
137 amended as follows:

138 45-33-31. (1) All registrants are required to personally
139 appear at a Department of Public Safety Driver's License Station
140 to reregister every ninety (90) days. Reregistration includes the
141 submission of current information to the department and the
142 verification of registration information, including the street
143 address and telephone number of the registrant; name, social
144 security number, street address and telephone number of the
145 registrant's employment along with any other registration
146 information that may need to be verified and the payment of any

147 required fees. A person who fails to reregister as required by
148 this section commits a violation of this chapter.

149 (2) The department shall implement a system for verifying
150 the addresses of registrants. The system must be consistent with
151 the provisions of the federal Jacob Wetterling Act, as amended,
152 and any other federal standards applicable to such verification or
153 required to be met as a condition for the receipt of federal funds
154 by the state. County and local law enforcement agencies, in
155 conjunction with the department, shall verify the addresses of
156 registrants who are not under the care, custody, control or
157 supervision of the Department of Corrections.

158 **SECTION 5.** Section 45-33-33, Mississippi Code of 1972, is
159 amended as follows:

160 45-33-33. (1) (a) The failure of an offender to personally
161 appear at a Department of Public Safety Driver's License Station
162 or to provide any registration or other information, including,
163 but not limited to, initial registration, reregistration or change
164 of address information, or required notification to a volunteer
165 organization, as required by this chapter, is a violation of the
166 law. Additionally, forgery of information or submission of
167 information under false pretenses is also a violation of the law.

168 (b) Any person who has reason to believe that a sex
169 offender is not complying, or has not complied, with the
170 requirements of this chapter and who, with the intent to assist
171 the sex offender in eluding a law enforcement agency that is
172 seeking to find the sex offender to question the sex offender
173 about, or to arrest the sex offender for, noncompliance with the
174 requirements of this chapter, commits a violation of this chapter;

175 (c) A person commits a violation of this chapter who:

176 (i) Withholds information from, or does not
177 notify, the law enforcement agency about the sex offender's
178 noncompliance with the requirements of this chapter, and, if
179 known, the whereabouts of the sex offender;

180 (ii) Harbors, or attempts to harbor, or assists
181 another person in harboring or attempting to harbor, the sex
182 offender;

183 (iii) Conceals, or attempts to conceal, or assists
184 another person in concealing or attempting to conceal, the sex
185 offender; or

186 (iv) Provides information to a law enforcement
187 agency regarding the sex offender which the person knows to be
188 false.

189 (2) Unless otherwise specified, a violation of this chapter
190 shall be considered a felony and shall be punishable by a fine not
191 more than Five Thousand Dollars (\$5,000.00) or imprisonment in the
192 State Penitentiary for not more than five (5) years, or both fine
193 and imprisonment.

194 (3) Whenever it appears that an offender has failed to
195 comply with the duty to register or reregister, the department
196 shall promptly notify the sheriff of the county of the last known
197 address of the offender. Upon notification, the sheriff shall
198 attempt to locate the offender at his last known address.

199 (a) If the sheriff locates the offender, he shall
200 enforce the provisions of this chapter. The sheriff shall then
201 notify the department with the current information regarding the
202 offender.

203 (b) If the sheriff is unable to locate the offender,
204 the sheriff shall promptly notify the department and initiate a
205 criminal prosecution against the offender for the failure to
206 register or reregister. The sheriff shall make the appropriate
207 transactions into the Federal Bureau of Investigation's
208 wanted-person database.

209 (4) A first violation of this chapter may result in the
210 arrest of the offender. Upon any second or subsequent violation
211 of this chapter, the offender shall be arrested for the violation.

212 (5) Any prosecution for a violation of this section shall be
213 brought by a prosecutor in the county of the violation.

214 (6) A person required to register under this chapter who
215 commits any act or omission in violation of this chapter may be
216 prosecuted for the act or omission in the county in which the act
217 or omission was committed, the county of the last registered
218 address of the sex offender, or the county in which the conviction
219 occurred for the offense or offenses that meet the criteria
220 requiring the person to register. A sex offender may be
221 prosecuted for any such act or omission in the county in which he
222 was designated a sex offender.

223 (7) The Commissioner of Public Safety or his authorized
224 agent shall suspend the driver's license of any offender failing
225 to comply with the duty to report, register or reregister.

226 **SECTION 6.** Section 45-33-47, Mississippi Code of 1972, is
227 amended as follows:

228 45-33-47. (1) A sex offender with a duty to register under
229 Section 45-33-25 shall only be relieved of the duty under
230 subsection (2) of this section.

231 (2) (a) A person having a duty to register under Section
232 45-33-25 may petition the circuit court of the county in which the
233 registrant resides to be relieved of that duty under the following
234 conditions:

235 (i) The offender has maintained his registration
236 in Mississippi for not less than ten (10) years from the most
237 recent date of occurrence of at least one (1) of the following:
238 release from prison, placement on parole, supervised release or
239 probation. Incarceration for any offense will restart the
240 ten-year minimum registration requirement. Registration in any
241 other jurisdiction or state does not reduce the ten-year time
242 requirement for maintaining registration in Mississippi.

243 (ii) Except as provided in paragraph (b) of this
244 subsection, if the offender has been convicted of one (1) of the

245 following offenses, the offender is subject to lifetime
246 registration and shall not be relieved of the duty to register:

247 1. Section 97-3-65 relating to rape;

248 2. Section 97-3-71 relating to rape and
249 assault with intent to ravish;

250 3. Section 97-3-95 relating to sexual
251 battery;

252 4. Subsection (1) or (2) of Section 97-5-33
253 relating to the exploitation of children;

254 5. Section 97-5-41 relating to the carnal
255 knowledge of a stepchild, adopted child or child of a cohabiting
256 partner; or

257 6. Any conviction for violation of a similar
258 law of another jurisdiction or designation as a sexual predator in
259 another jurisdiction.

260 (b) A person having a lifetime duty to register under
261 paragraph (a) of this subsection may petition the circuit court in
262 the county in which the registrant resides to be relieved of that
263 duty if the offender has maintained his registration in
264 Mississippi for not less than twenty (20) years from the most
265 recent date of occurrence of at least one (1) of the following:
266 release from prison, placement on parole, supervised release or
267 probation. Incarceration for any offense will restart the
268 twenty-year minimum registration requirement. Registration in any
269 other jurisdiction or state does not reduce the twenty-year time
270 requirement for maintaining registration in Mississippi.

271 (c) An offender who has two (2) separate convictions
272 for any of the offenses described in Section 45-33-23 is subject
273 to lifetime registration and shall not be eligible to petition to
274 be relieved of the duty to register as long as at least one (1) of
275 the convictions was entered on or after July 1, 1995.

276 * * *

277 (d) An offender twice adjudicated delinquent in a youth
278 court for the crime of rape pursuant to Section 96-3-65 or sexual
279 battery pursuant to Section 97-3-95 is subject to lifetime
280 registration and shall not be eligible to petition to be relieved
281 of the duty to register except as is provided in subsection (2)(b)
282 of this section.

283 (e) Registration following arrest or arraignment for
284 failure to register is not a defense and does not relieve the sex
285 offender of criminal liability for failure to register.

286 (3) In determining whether to release an offender from the
287 obligation to register, the court shall consider the nature of the
288 registrable offense committed and the criminal and relevant
289 noncriminal behavior of the petitioner both before and after
290 conviction. The court may relieve the offender of the duty to
291 register only if the petitioner shows, by clear and convincing
292 evidence, that the registrant properly maintained his registration
293 as required by law and that future registration of the petitioner
294 will not serve the purposes of this chapter and the court is
295 otherwise satisfied that the petitioner is not a current or
296 potential threat to public safety. The district attorney in the
297 circuit in which the petition is filed must be given notice of the
298 petition at least three (3) weeks before the hearing on the
299 matter. The district attorney may present evidence in opposition
300 to the requested relief or may otherwise demonstrate the reasons
301 why the petition should be denied. If the court denies the
302 petition, the court may set a future date at which the sex
303 offender may again petition the court for relief, subject to the
304 standards set forth in this section.

305 (4) The offender will be required to continue registration
306 for any sex offense conviction unless the conviction is set aside
307 in any post-conviction proceeding, the offender receives a pardon,
308 or the charge is dismissed. Upon submission of the appropriate

309 documentation to the department of one (1) of these occurrences,
310 registration duties will be discontinued.

311 **SECTION 7.** Section 45-33-49, Mississippi Code of 1972, is
312 amended as follows:

313 45-33-49. (1) Records maintained pursuant to this chapter
314 shall be open to law enforcement agencies which shall be
315 authorized to release relevant and necessary information regarding
316 sex offenders to the public.

317 (2) The identity of a victim of an offense that requires
318 registration under this chapter shall not be released.

319 (3) A sheriff shall maintain records for registrants of the
320 county and shall make available to any person upon request the
321 name, address, place of employment, crime for which convicted,
322 date and place of conviction of any registrant, and any other
323 information deemed necessary for the protection of the public.
324 The sheriffs shall be responsible for verifying their respective
325 registries annually against the department's records to ensure
326 current information is available at both levels.

327 (4) Upon written request, the department may also provide to
328 any person the name, address, photograph, if available, date of
329 photograph, place of employment, crime for which convicted, date
330 and place of conviction of any registrant, hair, eye color,
331 height, race, sex and date of birth of any registrant, and any
332 other information deemed necessary for the protection of the
333 public. Additionally, the department may utilize an Internet
334 website or other electronic means to release the information.

335 (5) The Department of Education, the Mississippi Private
336 School Association and the Department of Health shall notify all
337 schools and licensed day care centers annually regarding the
338 availability upon request of this information.

339 (6) Nothing in this section shall be construed to prevent
340 law enforcement officers from notifying members of the public
341 exposed to danger of any circumstances or individuals that pose a

342 danger under circumstances that are not enumerated in this
343 section.

344 (7) Nothing in this chapter shall be construed to prevent
345 law enforcement officers from providing community notification of
346 any circumstances or individuals that pose or could pose a danger
347 under circumstances that are not enumerated in this chapter.

348 (8) The Department of Public Safety shall share sex offender
349 information with local law enforcement agencies in an effort to
350 ensure that sex offenders who fail to respond to address
351 verification attempts or who otherwise abscond from registration
352 are located in a timely manner. The department shall use
353 analytical resources to assist local law enforcement agencies to
354 determine the potential whereabouts of any sex offender who fails
355 to respond to address verification attempts or who otherwise
356 absconds from registration. The department shall review and
357 analyze all available information concerning any such offender who
358 fails to respond to address verification attempts or who otherwise
359 absconds from registration and provide the information to local
360 law enforcement agencies in order to assist the agencies in
361 locating and apprehending the sex offender.

362 (9) The department shall provide, through a toll-free
363 telephone number, public access to registration information
364 regarding sex offenders and may provide other information reported
365 to the department which is not exempt from public disclosure.

366 **SECTION 8.** The following shall be codified as Section
367 47-5-1017, Mississippi Code of 1972:

368 47-5-1017. The department shall electronically monitor an
369 offender upon whom a split sentence is imposed pursuant to Section
370 99-19-84. The department, in carrying out a court order to
371 electronically monitor an offender, must use a system that
372 actively monitors and identifies the offender's location and
373 timely reports or records the offender's presence near or within a

374 crime scene or in prohibited areas or the offender's departure
375 from specified geographic limitations.

376 **SECTION 9.** The following shall be codified as Section
377 47-5-1019, Mississippi Code of 1972:

378 47-5-1019. A person who intentionally alters, tampers with,
379 damages or destroys any electronic monitoring equipment, unless
380 the person is the owner of the equipment or an agent of the owner
381 performing ordinary maintenance and repairs, commits a felony
382 punishable by imprisonment not to exceed five (5) years in the
383 custody of the Department of Corrections.

384 **SECTION 10.** The following shall be codified as Section
385 47-7-32, Mississippi Code of 1972:

386 47-7-32. (1) The Department of Corrections shall review the
387 circumstances related to any offender placed on supervision who is
388 subject to registration as a sex offender under Title 45, Chapter
389 33, who is subsequently arrested.

390 (2) The department shall provide a statistical data summary
391 from these reviews to the Joint Committee on Performance
392 Evaluation and Expenditure Review which shall analyze this data
393 and file a written report with the Secretary of the Senate and the
394 Clerk of the House of Representatives by November 1, 2007. The
395 report must include, at a minimum, any identified systemic
396 deficiencies in managing high-risk offenders on supervision; any
397 patterns of noncompliance by probation and parole officers; and
398 recommendations for improving the department's supervision of
399 offenders.

400 **SECTION 11.** Section 47-7-33, Mississippi Code of 1972, is
401 amended as follows:

402 47-7-33. (1) When it appears to the satisfaction of any
403 circuit court or county court in the State of Mississippi having
404 original jurisdiction over criminal actions, or to the judge
405 thereof, that the ends of justice and the best interest of the
406 public, as well as the defendant, will be served thereby, such

407 court, in termtime or in vacation, shall have the power, after
408 conviction or a plea of guilty, except in a case where a death
409 sentence or life imprisonment is the maximum penalty which may be
410 imposed or where the defendant has been convicted of a felony on a
411 previous occasion in any court or courts of the United States and
412 of any state or territories thereof, to suspend the imposition or
413 execution of sentence, and place the defendant on probation as
414 herein provided, except that the court shall not suspend the
415 execution of a sentence of imprisonment after the defendant shall
416 have begun to serve such sentence. In placing any defendant on
417 probation, the court, or judge, shall direct that such defendant
418 be under the supervision of the Department of Corrections.

419 (2) When any circuit or county court places an offender on
420 probation, the court shall give notice to the Mississippi
421 Department of Corrections within fifteen (15) days of the court's
422 decision to place the offender on probation. Notice shall be
423 delivered to the central office of the Mississippi Department of
424 Corrections and to the regional office of the department which
425 will be providing supervision to the offender on probation.

426 (3) When any circuit court or county court places a person
427 on probation in accordance with the provisions of this section and
428 that person is ordered to make any payments to his family, if any
429 member of his family whom he is ordered to support is receiving
430 public assistance through the State Department of Public Welfare,
431 the court shall order him to make such payments to the county
432 welfare officer of the county rendering public assistance to his
433 family, for the sole use and benefit of said family.

434 (4) If probation or parole is revoked by the court and the
435 offender is designated as a sex offender for unlawful sexual
436 activity involving a victim under sixteen (16) years of age and
437 the offender is eighteen (18) years of age or older, and if the
438 court imposes a subsequent term of supervision following the
439 revocation of supervision, the court must order electronic

440 monitoring as a condition of any subsequent term of probation or
441 parole.

442 **SECTION 12.** Section 47-7-34, Mississippi Code of 1972, is
443 amended as follows:

444 47-7-34. (1) When a court imposes a sentence upon a
445 conviction for any felony committed after June 30, 1995, the
446 court, in addition to any other punishment imposed if the other
447 punishment includes a term of incarceration in a state or local
448 correctional facility, may impose a term of post-release
449 supervision. However, the total number of years of incarceration
450 plus the total number of years of post-release supervision shall
451 not exceed the maximum sentence authorized to be imposed by law
452 for the felony committed. The defendant shall be placed under
453 post-release supervision upon release from the term of
454 incarceration. The period of supervision shall be established by
455 the court.

456 (2) The period of post-release supervision shall be
457 conducted in the same manner as a like period of supervised
458 probation, including a requirement that the defendant shall abide
459 by any terms and conditions as the court may establish. Failure
460 to successfully abide by the terms and conditions shall be grounds
461 to terminate the period of post-release supervision and to
462 recommit the defendant to the correctional facility from which he
463 was previously released. Procedures for termination and
464 recommitment shall be conducted in the same manner as procedures
465 for the revocation of probation and imposition of a suspended
466 sentence.

467 (3) Post-release supervision programs shall be operated
468 through the probation and parole unit of the Division of Community
469 Corrections of the department. The maximum amount of time that
470 the Mississippi Department of Corrections may supervise an
471 offender on the post-release supervision program is five (5)
472 years.

473 (4) The provisions of this section shall not affect the
474 ability of a court to impose a split sentence pursuant to Section
475 99-19-84.

476 **SECTION 13.** Section 47-7-35, Mississippi Code of 1972, is
477 amended as follows:

478 47-7-35. (1) The courts referred to in Section 47-7-33 or
479 47-7-34 shall determine the terms and conditions of probation or
480 post-release supervision and may alter or modify, at any time
481 during the period of probation or post-release supervision the
482 conditions and may include among them the following or any other:

483 That the, offender shall:

484 (a) Commit no offense against the laws of this or any
485 other state of the United States, or of the United States;

486 (b) Avoid injurious or vicious habits;

487 (c) Avoid persons or places of disreputable or harmful
488 character;

489 (d) Report to the probation and parole officer as
490 directed;

491 (e) Permit the probation and parole officer to visit
492 him at home or elsewhere;

493 (f) Work faithfully at suitable employment so far as
494 possible;

495 (g) Remain within a specified area;

496 (h) Pay his fine in one (1) or several sums;

497 (i) Support his dependents;

498 (j) Submit, as provided in Section 47-5-601, to any
499 type of breath, saliva or urine chemical analysis test, the
500 purpose of which is to detect the possible presence of alcohol or
501 a substance prohibited or controlled by any law of the State of
502 Mississippi or the United States.

503 (2) When any court places a defendant on misdemeanor
504 probation, the court must cause to be conducted a search of the
505 probationer's name or other identifying information against the

506 registration information regarding sex offenders maintained under
507 Title 45, Chapter 33. The search may be conducted using the
508 Internet site maintained by the Department of Public Safety Sex
509 Offender Registry.

510 **SECTION 14.** Section 47-7-37, Mississippi Code of 1972, is
511 amended as follows:

512 47-7-37. The period of probation shall be fixed by the
513 court, and may at any time be extended or terminated by the court,
514 or judge in vacation. Such period with any extension thereof
515 shall not exceed five (5) years, except that in cases of desertion
516 and/or failure to support minor children, the period of probation
517 may be fixed and/or extended by the court for so long as the duty
518 to support such minor children exists.

519 At any time during the period of probation the court, or
520 judge in vacation, may issue a warrant for violating any of the
521 conditions of probation or suspension of sentence and cause the
522 probationer to be arrested. Any probation and parole officer may
523 arrest a probationer without a warrant, or may deputize any other
524 officer with power of arrest to do so by giving him a written
525 statement setting forth that the probationer has, in the judgment
526 of the probation and parole officer, violated the conditions of
527 probation. Such written statement delivered with the probationer
528 by the arresting officer to the official in charge of a county
529 jail or other place of detention shall be sufficient warrant for
530 the detention of the probationer.

531 If a probationer or offender is subject to registration as a
532 sex offender, the court must make a finding that the probationer
533 or offender is not a danger to the public prior to release with or
534 without bail. In determining the danger posed by the release of
535 the offender or probationer, the court may consider the nature and
536 circumstances of the violation and any new offenses charged; the
537 offender or probationer's past and present conduct, including
538 convictions of crimes and any record of arrests without conviction

539 for crimes involving violence or sex crimes; any other evidence of
540 allegations of unlawful sexual conduct or the use of violence by
541 the offender or probationer; the offender or probationer's family
542 ties, length of residence in the community, employment history and
543 mental condition; the offender or probationer's history and
544 conduct during the probation or other supervised release and any
545 other previous supervisions, including disciplinary records of
546 previous incarcerations; the likelihood that the offender or
547 probationer will engage again in a criminal course of conduct; the
548 weight of the evidence against the offender or probationer; and
549 any other facts the court considers relevant.

550 The probation and parole officer after making an arrest shall
551 present to the detaining authorities a similar statement of the
552 circumstances of violation. The probation and parole officer
553 shall at once notify the court of the arrest and detention of the
554 probationer and shall submit a report in writing showing in what
555 manner the probationer has violated the conditions of probation.
556 Thereupon, or upon an arrest by warrant as herein provided, the
557 court, in termtime or vacation, shall cause the probationer to be
558 brought before it and may continue or revoke all or any part of
559 the probation or the suspension of sentence, and may cause the
560 sentence imposed to be executed or may impose any part of the
561 sentence which might have been imposed at the time of conviction.

562 If the probationer is arrested in a circuit court district in
563 the State of Mississippi other than that in which he was
564 convicted, the probation and parole officer, upon the written
565 request of the sentencing judge, shall furnish to the circuit
566 court or the county court of the county in which the arrest is
567 made, or to the judge of such court, a report concerning the
568 probationer, and such court or the judge in vacation shall have
569 authority, after a hearing, to continue or revoke all or any part
570 of probation or all or any part of the suspension of sentence, and
571 may in case of revocation proceed to deal with the case as if

572 there had been no probation. In such case, the clerk of the court
573 in which the order of revocation is issued shall forward a
574 transcript of such order to the clerk of the court of original
575 jurisdiction, and the clerk of that court shall proceed as if the
576 order of revocation had been issued by the court of original
577 jurisdiction. Upon the revocation of probation or suspension of
578 sentence of any offender, such offender shall be placed in the
579 legal custody of the State Department of Corrections and shall be
580 subject to the requirements thereof.

581 Any probationer who removes himself from the State of
582 Mississippi without permission of the court placing him on
583 probation, or the court to which jurisdiction has been
584 transferred, shall be deemed and considered a fugitive from
585 justice and shall be subject to extradition as now provided by
586 law. No part of the time that one is on probation shall be
587 considered as any part of the time that he shall be sentenced to
588 serve.

589 The arresting officer, except when a probation and parole
590 officer, shall be allowed the same fees as now provided by law for
591 arrest on warrant, and such fees shall be taxed against the
592 probationer and paid as now provided by law.

593 The arrest, revocation and recommitment procedures of this
594 section also apply to persons who are serving a period of
595 post-release supervision imposed by the court.

596 **SECTION 15.** Section 97-5-23, Mississippi Code of 1972, is
597 amended as follows:

598 97-5-23. (1) Any person above the age of eighteen (18)
599 years, who, for the purpose of gratifying his or her lust, or
600 indulging his or her depraved licentious sexual desires, shall
601 handle, touch or rub with hands or any part of his or her body or
602 any member thereof, any child under the age of sixteen (16) years,
603 with or without the child's consent, or a mentally defective,
604 mentally incapacitated or physically helpless person as defined in

605 Section 97-3-97, shall be guilty of a felony and, upon conviction
606 thereof, shall be as follows: If the victim is over the age of
607 twelve (12) years but under the age of sixteen (16) years, the
608 offender shall be fined in a sum not less than One Thousand
609 Dollars (\$1,000.00) nor more than Five Thousand Dollars
610 (\$5,000.00), or be committed to the custody of the State
611 Department of Corrections not less than two (2) years nor more
612 than fifteen (15) years, or be punished by both such fine and
613 imprisonment, at the discretion of the court; if the victim is
614 under the age of twelve (12), the offender shall be committed to
615 the custody of the State Department of Corrections for life
616 without possibility of probation or parole.

617 (2) Any person above the age of eighteen (18) years, who,
618 for the purpose of gratifying his or her lust, or indulging his or
619 her depraved licentious sexual desires, shall handle, touch or rub
620 with hands or any part of his or her body or any member thereof,
621 any child younger than himself or herself who is at least sixteen
622 (16) years of age but under the age of eighteen (18) years who is
623 not such person's spouse, with or without the child's consent,
624 when the person occupies a position of trust or authority over the
625 child shall be guilty of a felony and, upon conviction thereof,
626 shall be fined in a sum not less than One Thousand Dollars
627 (\$1,000.00) nor more than Five Thousand Dollars (\$5,000.00), or be
628 committed to the custody of the State Department of Corrections
629 not less than two (2) years nor more than fifteen (15) years, or
630 be punished by both such fine and imprisonment, at the discretion
631 of the court. A person in a position of trust or authority over a
632 child includes without limitation a child's teacher, counselor,
633 physician, psychiatrist, psychologist, minister, priest, physical
634 therapist, chiropractor, legal guardian, parent, stepparent, aunt,
635 uncle, scout leader or coach.

636 (3) Upon a second conviction for an offense under this
637 section when the offense is subject to imprisonment of less than

638 life in prison without parole, the person so convicted shall be
639 punished by commitment to the State Department of Corrections for
640 a term not to exceed thirty (30) years, which sentence shall be
641 neither suspended nor reduced.

642 **SECTION 16.** The following shall be codified as Section
643 99-19-84, Mississippi Code of 1972:

644 99-19-84. Whenever punishment by imprisonment for a
645 misdemeanor or a felony, except for a capital felony, is
646 prescribed for an offense for which registration as a sex offender
647 is required under Title 45, Chapter 33, the court, in its
648 discretion at the time of sentencing, may impose a split sentence
649 whereby the defendant is to be placed on electronic monitoring
650 following release from incarceration for any term of years or for
651 life.

652 **SECTION 17.** Section 99-19-101, Mississippi Code of 1972, is
653 amended as follows:

654 99-19-101. (1) Upon conviction or adjudication of guilt of
655 a defendant of capital murder or other capital offense, the court
656 shall conduct a separate sentencing proceeding to determine
657 whether the defendant should be sentenced to death, life
658 imprisonment without eligibility for parole, or life imprisonment.
659 The proceeding shall be conducted by the trial judge before the
660 trial jury as soon as practicable. If, through impossibility or
661 inability, the trial jury is unable to reconvene for a hearing on
662 the issue of penalty, having determined the guilt of the accused,
663 the trial judge may summon a jury to determine the issue of the
664 imposition of the penalty. If the trial jury has been waived, or
665 if the defendant pleaded guilty, the sentencing proceeding shall
666 be conducted before a jury impaneled for that purpose or may be
667 conducted before the trial judge sitting without a jury if both
668 the State of Mississippi and the defendant agree thereto in
669 writing. In the proceeding, evidence may be presented as to any
670 matter that the court deems relevant to sentence, and shall

671 include matters relating to any of the aggravating or mitigating
672 circumstances. However, this subsection shall not be construed to
673 authorize the introduction of any evidence secured in violation of
674 the Constitutions of the United States or of the State of
675 Mississippi. The state and the defendant and/or his counsel shall
676 be permitted to present arguments for or against the sentence of
677 death.

678 (2) After hearing all the evidence, the jury shall
679 deliberate on the following matters:

680 (a) Whether sufficient factors exist as enumerated in
681 subsection (7) of this section;

682 (b) Whether sufficient aggravating circumstances exist
683 as enumerated in subsection (5) of this section;

684 (c) Whether sufficient mitigating circumstances exist
685 as enumerated in subsection (6) of this section, which outweigh
686 the aggravating circumstances found to exist; and

687 (d) Based on these considerations, whether the
688 defendant should be sentenced to life imprisonment, life
689 imprisonment without eligibility for parole, or death.

690 (3) For the jury to impose a sentence of death, it must
691 unanimously find in writing the following:

692 (a) That sufficient factors exist as enumerated in
693 subsection (7) of this section;

694 (b) That sufficient aggravating circumstances exist as
695 enumerated in subsection (5) of this section; and

696 (c) That there are insufficient mitigating
697 circumstances, as enumerated in subsection (6), to outweigh the
698 aggravating circumstances.

699 In each case in which the jury imposes the death sentence,
700 the determination of the jury shall be supported by specific
701 written findings of fact based upon the circumstances in
702 subsections (5) and (6) of this section and upon the records of
703 the trial and the sentencing proceedings. If, after the trial of

704 the penalty phase, the jury does not make the findings requiring
705 the death sentence or life imprisonment without eligibility for
706 parole, or is unable to reach a decision, the court shall impose a
707 sentence of life imprisonment.

708 (4) The judgment of conviction and sentence of death shall
709 be subject to automatic review by the Supreme Court of Mississippi
710 within sixty (60) days after certification by the sentencing court
711 of entire record, unless the time is extended for an additional
712 period by the Supreme Court for good cause shown. Such review by
713 the Supreme Court shall have priority over all other cases and
714 shall be heard in accordance with rules promulgated by the Supreme
715 Court.

716 (5) Aggravating circumstances shall be limited to the
717 following:

718 (a) The capital offense was committed by a person under
719 sentence of imprisonment.

720 (b) The defendant was previously convicted of another
721 capital offense or of a felony involving the use or threat of
722 violence to the person.

723 (c) The defendant knowingly created a great risk of
724 death to many persons.

725 (d) The capital offense was committed while the
726 defendant was engaged, or was an accomplice, in the commission of,
727 or an attempt to commit, or flight after committing or attempting
728 to commit, any robbery, rape, arson, burglary, kidnapping,
729 aircraft piracy, sexual battery, unnatural intercourse with any
730 child under the age of twelve (12), or nonconsensual unnatural
731 intercourse with mankind, or felonious abuse and/or battery of a
732 child in violation of subsection (2) of Section 97-5-39,
733 Mississippi Code of 1972, or the unlawful use or detonation of a
734 bomb or explosive device.

735 (e) The capital offense was committed for the purpose
736 of avoiding or preventing a lawful arrest or effecting an escape
737 from custody.

738 (f) The capital offense was committed for pecuniary
739 gain.

740 (g) The capital offense was committed to disrupt or
741 hinder the lawful exercise of any governmental function or the
742 enforcement of laws.

743 (h) The capital offense was especially heinous,
744 atrocious or cruel.

745 (i) The capital offense was committed by a person
746 previously convicted of one or more of the following offenses:

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

748 (ii) Section 97-3-71 relating to rape and assault
749 with intent to ravish;

750 (iii) Section 97-3-95 relating to sexual battery;

751 (iv) Subsection (1) or (2) of Section 97-5-33
752 relating to the exploitation of children;

753 (v) Section 97-5-41 relating to the carnal
754 knowledge of a stepchild, adopted child or child of a cohabiting
755 partner; or

756 (vi) Any conviction for violation of a similar law
757 of another jurisdiction or designation as a sexual predator in
758 another jurisdiction.

759 (6) Mitigating circumstances shall be the following:

760 (a) The defendant has no significant history of prior
761 criminal activity.

762 (b) The offense was committed while the defendant was
763 under the influence of extreme mental or emotional disturbance.

764 (c) The victim was a participant in the defendant's
765 conduct or consented to the act.

766 (d) The defendant was an accomplice in the capital
767 offense committed by another person and his participation was
768 relatively minor.

769 (e) The defendant acted under extreme duress or under
770 the substantial domination of another person.

771 (f) The capacity of the defendant to appreciate the
772 criminality of his conduct or to conform his conduct to the
773 requirements of law was substantially impaired.

774 (g) The age of the defendant at the time of the crime.

775 (7) In order to return and impose a sentence of death the
776 jury must make a written finding of one or more of the following:

777 (a) The defendant actually killed;

778 (b) The defendant attempted to kill;

779 (c) The defendant intended that a killing take place;

780 (d) The defendant contemplated that lethal force would
781 be employed.

782 **SECTION 18.** The following shall be codified as Section
783 99-19-205, Mississippi Code of 1972:

784 99-19-205. Any person who is convicted of a sex offense on
785 or after July 1, 2006, and who is sentenced to any state or local
786 correctional facility, placed on probation, given a suspended
787 sentence or other disposition, and the unlawful activity involved
788 a victim who was under sixteen (16) years of age and the offender
789 was eighteen (18) years of age or older, or the offender is
790 subject to lifetime registration under Section 45-33-47(2), shall
791 be sentenced by the court to mandatory electronic monitoring for
792 life subsequent to the offender's release from incarceration.

793 **SECTION 19.** (1) The Department of Public Safety shall
794 examine the collection and dissemination of offender information
795 within the criminal justice system and community and recommend
796 strategies and actions that may be implemented to enhance
797 coordination and cooperation among the various entities within the

798 criminal justice system with a common goal of public safety. The
799 department shall study:

800 (a) The collection and dissemination of offender
801 information, including criminal history and any other pertinent
802 matters, to the court, the prosecuting attorney and defense
803 counsel at first appearance hearings.

804 (b) The collection and dissemination of offender
805 information, including criminal history and any other pertinent
806 matters, to the court, the prosecuting attorney and defense
807 counsel at all court appearances subsequent to first appearance.

808 (c) The collection and dissemination of offender
809 information, including criminal history and any other pertinent
810 matters, to county probation officers or officials.

811 (d) Any other subject that the department deems
812 relevant to the collection and dissemination of offender
813 information within the criminal justice system and community.

814 (2) The department shall submit its findings and
815 recommendations to the Governor, the President of the Senate, and
816 the Speaker of the House of Representatives by November 1, 2007.
817 The final report shall be filed with the Governor, the President
818 of the Senate, and the Speaker of the House of Representatives.
819 In addition to the findings and recommendations included in the
820 final report, the report must include a draft of proposed rules
821 and proposed legislation for any recommendations requiring
822 proposed rules and proposed legislation.

823 (3) Each state agency shall fully cooperate with the task
824 force in the performance of its duties.

825 **SECTION 20.** The Joint Committee on Performance Evaluation
826 and Expenditure Review, every three (3) years, shall perform a
827 study of the effectiveness of Mississippi's sex offender
828 registration process and community and public notification
829 provisions. As part of determining the effectiveness of the
830 registration process, PEER shall examine the current practices of:

831 the Department of Corrections, county probation offices, clerk of
832 courts, court administrators, county jails and booking facilities,
833 Department of Children and Family Services, judges, district
834 attorneys' offices, Department of Public Safety, and local law
835 enforcement agencies as they relate to: sharing of offender
836 information regarding registered sex offenders for purposes of
837 fulfilling the requirements set forth in the registration laws;
838 ensuring the most accurate, current and comprehensive information
839 is provided in a timely manner to the registry; ensuring the
840 effective supervision and subsequent monitoring of sex offenders;
841 and ensuring informed decisions are made at each point of the
842 criminal justice and registration process. In addition to
843 determining the effectiveness of the registration process, the
844 report shall focus on the question of whether the notification
845 provisions in statute are sufficient to apprise communities of the
846 presence of sex offenders. The report shall examine how local law
847 enforcement agencies collect and disseminate information in an
848 effort to notify the public and communities of the presence of sex
849 offenders. If the report finds deficiencies in the registration
850 process, the notification provisions, or both, the report shall
851 provide options for correcting those deficiencies and shall
852 include the projected cost of implementing those options. In
853 conducting the study, PEER shall consult with interested entities
854 that may offer experiences and perspectives unique to this area of
855 research. The report shall be submitted to the President of the
856 Senate and the Speaker of the House of Representatives.

857 **SECTION 21.** No person charged with a sex offense, as that
858 term is defined in Section 45-33-23, shall be eligible for plea
859 bargaining.

860 **SECTION 22.** This act shall take effect and be in force from
861 and after July 1, 2006.