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To: Judiciary B

HOUSE BILL NO. 831

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; AND FOR RELATED PURPOSES.

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

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

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

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

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

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

73 45-33-25. (1) Any person residing in this state who has
74 been convicted of any sex offense or attempted sex offense or who
75 has been acquitted by reason of insanity for any sex offense or
76 attempted sex offense or twice adjudicated delinquent for any sex
77 offense or attempted sex offense shall register with the
78 Mississippi Department of Public Safety. Registration shall not
79 be required for an offense that is not a registrable sex offense.

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

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

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

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

96 (c) Date and place of employment;

97 (d) Crime for which convicted;

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

100 (f) Aliases used;

101 (g) Social security number;

102 (h) Date and place of birth;

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

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

107 (k) Identifying factors;

108 (l) Anticipated future residence;

109 (m) If the registrant's residence is a motor vehicle,

110 trailer, mobile home or manufactured home, the registrant shall

111 also provide vehicle identification number, license tag number,

112 registration number and a description, including color scheme, of

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

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

120 (o) Offense history;

121 (p) Photograph;

122 (q) Fingerprints;

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

125 (s) Biological sample;

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

130 (u) Any other information deemed necessary.

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

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

137 45-33-31. (1) All registrants are required to personally
138 appear at a Department of Public Safety Driver's License Station
139 to reregister every ninety (90) days. Reregistration includes the
140 submission of current information to the department and the
141 verification of registration information, including the street
142 address and telephone number of the registrant; name, social
143 security number, street address and telephone number of the
144 registrant's employment along with any other registration
145 information that may need to be verified and the payment of any

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

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

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

159 45-33-33. (1) (a) The failure of an offender to personally
160 appear at a Department of Public Safety Driver's License Station
161 or to provide any registration or other information, including,
162 but not limited to, initial registration, reregistration or change
163 of address information, or required notification to a volunteer
164 organization, as required by this chapter, is a violation of the
165 law. Additionally, forgery of information or submission of
166 information under false pretenses is also a violation of the law.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

227 45-33-47. (1) A sex offender with a duty to register under
228 Section 45-33-25 shall only be relieved of the duty under
229 subsection (2) of this section.

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

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

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

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

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

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

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

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

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

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

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

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

275 * * *

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

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

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

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

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

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

312 45-33-49. (1) Records maintained pursuant to this chapter
313 shall be open to law enforcement agencies which shall be
314 authorized to release relevant and necessary information regarding
315 sex offenders to the public.

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

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

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

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

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

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

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

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

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

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

367 47-5-1017. The department shall electronically monitor an
368 offender upon whom a split sentence is imposed pursuant to Section
369 99-19-84. The department, in carrying out a court order to
370 electronically monitor an offender, must use a system that
371 actively monitors and identifies the offender's location and
372 timely reports or records the offender's presence near or within a

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

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

377 47-5-1019. A person who intentionally alters, tampers with,
378 damages or destroys any electronic monitoring equipment, unless
379 the person is the owner of the equipment or an agent of the owner
380 performing ordinary maintenance and repairs, commits a felony
381 punishable by imprisonment not to exceed five (5) years in the
382 custody of the Department of Corrections.

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

385 47-7-32. (1) The Department of Corrections shall review the
386 circumstances related to any offender placed on supervision who is
387 subject to registration as a sex offender under Title 45, Chapter
388 33, who is subsequently arrested.

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

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

401 47-7-33. (1) When it appears to the satisfaction of any
402 circuit court or county court in the State of Mississippi having
403 original jurisdiction over criminal actions, or to the judge
404 thereof, that the ends of justice and the best interest of the
405 public, as well as the defendant, will be served thereby, such

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

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

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

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

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

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

443 47-7-34. (1) When a court imposes a sentence upon a
444 conviction for any felony committed after June 30, 1995, the
445 court, in addition to any other punishment imposed if the other
446 punishment includes a term of incarceration in a state or local
447 correctional facility, may impose a term of post-release
448 supervision. However, the total number of years of incarceration
449 plus the total number of years of post-release supervision shall
450 not exceed the maximum sentence authorized to be imposed by law
451 for the felony committed. The defendant shall be placed under
452 post-release supervision upon release from the term of
453 incarceration. The period of supervision shall be established by
454 the court.

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

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

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

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

477 47-7-35. (1) The courts referred to in Section 47-7-33 or
478 47-7-34 shall determine the terms and conditions of probation or
479 post-release supervision and may alter or modify, at any time
480 during the period of probation or post-release supervision the
481 conditions and may include among them the following or any other:

482 That the, offender shall:

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

485 (b) Avoid injurious or vicious habits;

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

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

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

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

494 (g) Remain within a specified area;

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

496 (i) Support his dependents;

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

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

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

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

511 47-7-37. The period of probation shall be fixed by the
512 court, and may at any time be extended or terminated by the court,
513 or judge in vacation. Such period with any extension thereof
514 shall not exceed five (5) years, except that in cases of desertion
515 and/or failure to support minor children, the period of probation
516 may be fixed and/or extended by the court for so long as the duty
517 to support such minor children exists.

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

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

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

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

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

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

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

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

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

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

597 97-5-23. (1) Any person above the age of eighteen (18)
598 years, who, for the purpose of gratifying his or her lust, or
599 indulging his or her depraved licentious sexual desires, shall
600 handle, touch or rub with hands or any part of his or her body or
601 any member thereof, any child under the age of sixteen (16) years,
602 with or without the child's consent, or a mentally defective,
603 mentally incapacitated or physically helpless person as defined in

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

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

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

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

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

643 99-19-84. Whenever punishment by imprisonment for a
644 misdemeanor or a felony, except for a capital felony, is
645 prescribed for an offense for which registration as a sex offender
646 is required under Title 45, Chapter 33, the court, in its
647 discretion at the time of sentencing, may impose a split sentence
648 whereby the defendant is to be placed on electronic monitoring
649 following release from incarceration for any term of years or for
650 life.

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

653 99-19-101. (1) Upon conviction or adjudication of guilt of
654 a defendant of capital murder or other capital offense, the court
655 shall conduct a separate sentencing proceeding to determine
656 whether the defendant should be sentenced to death, life
657 imprisonment without eligibility for parole, or life imprisonment.
658 The proceeding shall be conducted by the trial judge before the
659 trial jury as soon as practicable. If, through impossibility or
660 inability, the trial jury is unable to reconvene for a hearing on
661 the issue of penalty, having determined the guilt of the accused,
662 the trial judge may summon a jury to determine the issue of the
663 imposition of the penalty. If the trial jury has been waived, or
664 if the defendant pleaded guilty, the sentencing proceeding shall
665 be conducted before a jury impaneled for that purpose or may be
666 conducted before the trial judge sitting without a jury if both
667 the State of Mississippi and the defendant agree thereto in
668 writing. In the proceeding, evidence may be presented as to any
669 matter that the court deems relevant to sentence, and shall

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

750 (iv) Subsection (1) or (2) of Section 97-5-33

751 relating to the exploitation of children;

752 (v) Section 97-5-41 relating to the carnal

753 knowledge of a stepchild, adopted child or child of a cohabiting
754 partner; or

755 (vi) Any conviction for violation of a similar law

756 of another jurisdiction or designation as a sexual predator in
757 another jurisdiction.

758 (6) Mitigating circumstances shall be the following:

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

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

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

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

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

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

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

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

776 (a) The defendant actually killed;

777 (b) The defendant attempted to kill;

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

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

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

783 99-19-205. Any person who is convicted of a sex offense on
784 or after July 1, 2006, and who is sentenced to any state or local
785 correctional facility, placed on probation, given a suspended
786 sentence or other disposition, and the unlawful activity involved
787 a victim who was under sixteen (16) years of age and the offender
788 was eighteen (18) years of age or older, or the offender is
789 subject to lifetime registration under Section 45-33-47(2), shall
790 be sentenced by the court to mandatory electronic monitoring for
791 life subsequent to the offender's release from incarceration.

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

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

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

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

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

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

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

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

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

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

856 **SECTION 21.** This act shall take effect and be in force from
857 and after July 1, 2006.