

By: Representative Reynolds

To: Judiciary B

## HOUSE BILL NO. 1238

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.