

By: Senator(s) Ross

To: Judiciary, Division A;
Corrections

SENATE BILL NO. 2527

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, REQUIRE SHOWINGS OF FACT WHEN
 12 PETITIONING 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.

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

156 45-33-33. (1) (a) The failure of an offender to personally
157 appear at a Department of Public Safety Driver's License Station
158 or to provide any registration or other information, including,
159 but not limited to, initial registration, reregistration or change
160 of address information, or required notification to a volunteer
161 organization, as required by this chapter, is a violation of the
162 law. Additionally, forgery of information or submission of
163 information under false pretenses is also a violation of the law.

164 (b) Any person who knows that a sex offender is not
165 complying, or has not complied, with the requirements of this
166 chapter and who knowingly assists the sex offender in eluding a
167 law enforcement agency that is seeking to find the sex offender to
168 question the sex offender about, or to arrest the sex offender
169 for, noncompliance with the requirements of this chapter, commits
170 a violation of this chapter;

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

172 (i) Knowingly harbors, or knowingly attempts to
173 harbor, or assists another person in harboring or attempting to
174 harbor, a sex offender who is in violation of this chapter;

175 (ii) Knowingly conceals, or knowingly attempts to
176 conceal, or knowingly assists another person in concealing or
177 attempting to conceal, a sex offender who is in violation of this
178 chapter; or

179 (iii) Provides information to a law enforcement
180 agency regarding a sex offender which the person knows to be
181 false.

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

187 (3) Whenever it appears that an offender has failed to
188 comply with the duty to register or reregister, the department
189 shall promptly notify the sheriff of the county of the last known
190 address of the offender. Upon notification, the sheriff shall
191 attempt to locate the offender at his last known address.

192 (a) If the sheriff locates the offender, he shall
193 enforce the provisions of this chapter. The sheriff shall then
194 notify the department with the current information regarding the
195 offender.

196 (b) If the sheriff is unable to locate the offender,
197 the sheriff shall promptly notify the department and initiate a
198 criminal prosecution against the offender for the failure to
199 register or reregister. The sheriff shall make the appropriate
200 transactions into the Federal Bureau of Investigation's
201 wanted-person database.

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

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

207 (6) A person required to register under this chapter who
208 commits any act or omission in violation of this chapter may be
209 prosecuted for the act or omission in the county in which the act
210 or omission was committed, the county of the last registered
211 address of the sex offender, the county in which the conviction

212 occurred for the offense or offenses that meet the criteria
213 requiring the person to register, or in the county in which he was
214 designated a sex offender.

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

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

220 45-33-47. (1) A sex offender with a duty to register under
221 Section 45-33-25 shall only be relieved of the duty under
222 subsection (2) of this section.

223 (2) A person having a duty to register under Section
224 45-33-25 may petition the circuit court of the county in which the
225 registrant resides to be relieved of that duty under the following
226 conditions:

227 (a) The offender has maintained his registration in
228 Mississippi for not less than ten (10) years from the most recent
229 date of occurrence of at least one (1) of the following: release
230 from prison, placement on parole, supervised release or probation.
231 Incarceration for any offense will restart the ten-year minimum
232 registration requirement. Registration in any other jurisdiction
233 or state does not reduce the ten-year time requirement for
234 maintaining registration in Mississippi.

235 (b) If the offender has been convicted of one (1) of
236 the following offenses, the offender is subject to lifetime
237 registration and shall not be relieved of the duty to register:

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

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

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

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

243 relating to the exploitation of children;

244 (v) Section 97-5-41 relating to the carnal
245 knowledge of a stepchild, adopted child or child of a cohabiting
246 partner; or

247 (vi) Any conviction for violation of a similar law
248 of another jurisdiction or designation as a sexual predator in
249 another jurisdiction.

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

255 * * *

256 (d) An offender twice adjudicated delinquent in a youth
257 court for the crime of rape pursuant to Section 96-3-65 or sexual
258 battery pursuant to Section 97-3-95 is subject to lifetime
259 registration and shall not be eligible to petition to be relieved
260 of the duty to register.

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

264 (3) In determining whether to release an offender from the
265 obligation to register, the court shall consider the nature of the
266 registrable offense committed and the criminal and relevant
267 noncriminal behavior of the petitioner both before and after
268 conviction. The court may relieve the offender of the duty to
269 register only if the petitioner shows, by clear and convincing
270 evidence, that the registrant properly maintained his registration
271 as required by law and that future registration of the petitioner
272 will not serve the purposes of this chapter and the court is
273 otherwise satisfied that the petitioner is not a current or
274 potential threat to public safety. The district attorney in the
275 circuit in which the petition is filed must be given notice of the
276 petition at least three (3) weeks before the hearing on the

277 matter. The district attorney may present evidence in opposition
278 to the requested relief or may otherwise demonstrate the reasons
279 why the petition should be denied. If the court denies the
280 petition, the court may set a future date at which the sex
281 offender may again petition the court for relief, subject to the
282 standards set forth in this section.

283 (4) The offender will be required to continue registration
284 for any sex offense conviction unless the conviction is set aside
285 in any post-conviction proceeding, the offender receives a pardon,
286 or the charge is dismissed. Upon submission of the appropriate
287 documentation to the department of one (1) of these occurrences,
288 registration duties will be discontinued.

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

291 45-33-49. (1) Records maintained pursuant to this chapter
292 shall be open to law enforcement agencies which shall be
293 authorized to release relevant and necessary information regarding
294 sex offenders to the public.

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

297 (3) A sheriff shall maintain records for registrants of the
298 county and shall make available to any person upon request the
299 name, address, place of employment, crime for which convicted,
300 date and place of conviction of any registrant, and any other
301 information deemed necessary for the protection of the public.
302 The sheriffs shall be responsible for verifying their respective
303 registries annually against the department's records to ensure
304 current information is available at both levels.

305 (4) Upon written request, the department may also provide to
306 any person the name, address, photograph, if available, date of
307 photograph, place of employment, crime for which convicted, date
308 and place of conviction of any registrant, hair, eye color,
309 height, race, sex and date of birth of any registrant, and any

310 other information deemed necessary for the protection of the
311 public. Additionally, the department may utilize an Internet
312 website or other electronic means to release the information.

313 (5) The Department of Education, the Mississippi Private
314 School Association and the Department of Health shall notify all
315 schools and licensed day care centers annually regarding the
316 availability upon request of this information.

317 (6) Nothing in this section shall be construed to prevent
318 law enforcement officers from notifying members of the public
319 exposed to danger of any circumstances or individuals that pose a
320 danger under circumstances that are not enumerated in this
321 section.

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

326 (8) The Department of Public Safety shall share sex offender
327 information with local law enforcement agencies in an effort to
328 ensure that sex offenders who fail to respond to
329 address-verification attempts or who otherwise abscond from
330 registration are located in a timely manner. The department shall
331 use analytical resources to assist local law enforcement agencies
332 to determine the potential whereabouts of any sex offender who
333 fails to respond to address-verification attempts or who otherwise
334 absconds from registration. The department shall review and
335 analyze all available information concerning any such offender who
336 fails to respond to address-verification attempts or who otherwise
337 absconds from registration and provide the information to local
338 law enforcement agencies in order to assist the agencies in
339 locating and apprehending the sex offender.

340 (9) The department shall provide, through a toll-free
341 telephone number, public access to registration information

342 regarding sex offenders and may provide other information reported
343 to the department which is not exempt from public disclosure.

344 **SECTION 8.** The following shall be codified as Section
345 47-5-1017, Mississippi Code of 1972:

346 47-5-1017. The department shall electronically monitor an
347 offender upon whom a split sentence is imposed pursuant to Section
348 99-19-84. The department, in carrying out a court order to
349 electronically monitor an offender, must use a system that
350 actively monitors and identifies the offender's location and
351 timely reports or records the offender's presence near or within a
352 crime scene or in prohibited areas or the offender's departure
353 from specified geographic limitations.

354 **SECTION 9.** The following shall be codified as Section
355 47-5-1019, Mississippi Code of 1972:

356 47-5-1019. A person who intentionally alters, tampers with,
357 damages or destroys any electronic monitoring equipment, unless
358 the person is the owner of the equipment or an agent of the owner
359 performing ordinary maintenance and repairs, commits a felony
360 punishable by imprisonment not to exceed five (5) years in the
361 custody of the Department of Corrections.

362 **SECTION 10.** The following shall be codified as Section
363 47-7-32, Mississippi Code of 1972:

364 47-7-32. (1) The Department of Corrections shall review the
365 circumstances related to any offender placed on supervision who is
366 subject to registration as a sex offender under Title 45, Chapter
367 33, who is subsequently arrested.

368 (2) The department shall provide a statistical data summary
369 from these reviews to the Joint Committee on Performance
370 Evaluation and Expenditure Review which shall analyze this data
371 and file a written report with the Secretary of the Senate and the
372 Clerk of the House of Representatives by November 1, 2007. The
373 report must include, at a minimum, any identified systemic
374 deficiencies in managing high-risk offenders on supervision; any

375 patterns of noncompliance by probation and parole officers; and
376 recommendations for improving the department's supervision of
377 offenders.

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

380 47-7-33. (1) When it appears to the satisfaction of any
381 circuit court or county court in the State of Mississippi having
382 original jurisdiction over criminal actions, or to the judge
383 thereof, that the ends of justice and the best interest of the
384 public, as well as the defendant, will be served thereby, such
385 court, in termtime or in vacation, shall have the power, after
386 conviction or a plea of guilty, except in a case where a death
387 sentence or life imprisonment is the maximum penalty which may be
388 imposed or where the defendant has been convicted of a felony on a
389 previous occasion in any court or courts of the United States and
390 of any state or territories thereof, to suspend the imposition or
391 execution of sentence, and place the defendant on probation as
392 herein provided, except that the court shall not suspend the
393 execution of a sentence of imprisonment after the defendant shall
394 have begun to serve such sentence. In placing any defendant on
395 probation, the court, or judge, shall direct that such defendant
396 be under the supervision of the Department of Corrections.

397 (2) When any circuit or county court places an offender on
398 probation, the court shall give notice to the Mississippi
399 Department of Corrections within fifteen (15) days of the court's
400 decision to place the offender on probation. Notice shall be
401 delivered to the central office of the Mississippi Department of
402 Corrections and to the regional office of the department which
403 will be providing supervision to the offender on probation.

404 (3) When any circuit court or county court places a person
405 on probation in accordance with the provisions of this section and
406 that person is ordered to make any payments to his family, if any
407 member of his family whom he is ordered to support is receiving

408 public assistance through the State Department of Public Welfare,
409 the court shall order him to make such payments to the county
410 welfare officer of the county rendering public assistance to his
411 family, for the sole use and benefit of said family.

412 (4) If probation or parole is revoked by the court and the
413 offender is designated as a sex offender for unlawful sexual
414 activity involving a victim under sixteen (16) years of age and
415 the offender is eighteen (18) years of age or older, and if the
416 court imposes a subsequent term of supervision following the
417 revocation of supervision, the court must order electronic
418 monitoring as a condition of any subsequent term of probation or
419 parole.

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

422 47-7-34. (1) When a court imposes a sentence upon a
423 conviction for any felony committed after June 30, 1995, the
424 court, in addition to any other punishment imposed if the other
425 punishment includes a term of incarceration in a state or local
426 correctional facility, may impose a term of post-release
427 supervision. However, the total number of years of incarceration
428 plus the total number of years of post-release supervision shall
429 not exceed the maximum sentence authorized to be imposed by law
430 for the felony committed. The defendant shall be placed under
431 post-release supervision upon release from the term of
432 incarceration. The period of supervision shall be established by
433 the court.

434 (2) The period of post-release supervision shall be
435 conducted in the same manner as a like period of supervised
436 probation, including a requirement that the defendant shall abide
437 by any terms and conditions as the court may establish. Failure
438 to successfully abide by the terms and conditions shall be grounds
439 to terminate the period of post-release supervision and to
440 recommit the defendant to the correctional facility from which he

441 was previously released. Procedures for termination and
442 recommitment shall be conducted in the same manner as procedures
443 for the revocation of probation and imposition of a suspended
444 sentence.

445 (3) Post-release supervision programs shall be operated
446 through the probation and parole unit of the Division of Community
447 Corrections of the department. The maximum amount of time that
448 the Mississippi Department of Corrections may supervise an
449 offender on the post-release supervision program is five (5)
450 years.

451 (4) The provisions of this section shall not affect the
452 ability of a court to impose a split sentence pursuant to Section
453 99-19-84.

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

456 47-7-35. (1) The courts referred to in Section 47-7-33 or
457 47-7-34 shall determine the terms and conditions of probation or
458 post-release supervision and may alter or modify, at any time
459 during the period of probation or post-release supervision the
460 conditions and may include among them the following or any other:

461 That the, offender shall:

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

464 (b) Avoid injurious or vicious habits;

465 (c) Avoid persons or places of disreputable or harmful
466 character;

467 (d) Report to the probation and parole officer as
468 directed;

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

471 (f) Work faithfully at suitable employment so far as
472 possible;

473 (g) Remain within a specified area;

474 (h) Pay his fine in one (1) or several sums;
475 (i) Support his dependents;
476 (j) Submit, as provided in Section 47-5-601, to any
477 type of breath, saliva or urine chemical analysis test, the
478 purpose of which is to detect the possible presence of alcohol or
479 a substance prohibited or controlled by any law of the State of
480 Mississippi or the United States.

481 (2) When any court places a defendant on misdemeanor
482 probation, the court must cause to be conducted a search of the
483 probationer's name or other identifying information against the
484 registration information regarding sex offenders maintained under
485 Title 45, Chapter 33. The search may be conducted using the
486 Internet site maintained by the Department of Public Safety Sex
487 Offender Registry.

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

490 47-7-37. The period of probation shall be fixed by the
491 court, and may at any time be extended or terminated by the court,
492 or judge in vacation. Such period with any extension thereof
493 shall not exceed five (5) years, except that in cases of desertion
494 and/or failure to support minor children, the period of probation
495 may be fixed and/or extended by the court for so long as the duty
496 to support such minor children exists.

497 At any time during the period of probation the court, or
498 judge in vacation, may issue a warrant for violating any of the
499 conditions of probation or suspension of sentence and cause the
500 probationer to be arrested. Any probation and parole officer may
501 arrest a probationer without a warrant, or may deputize any other
502 officer with power of arrest to do so by giving him a written
503 statement setting forth that the probationer has, in the judgment
504 of the probation and parole officer, violated the conditions of
505 probation. Such written statement delivered with the probationer
506 by the arresting officer to the official in charge of a county

507 jail or other place of detention shall be sufficient warrant for
508 the detention of the probationer.

509 If a probationer or offender is subject to registration as a
510 sex offender, the court must make a finding that the probationer
511 or offender is not a danger to the public prior to release with or
512 without bail. In determining the danger posed by the release of
513 the offender or probationer, the court may consider the nature and
514 circumstances of the violation and any new offenses charged; the
515 offender or probationer's past and present conduct, including
516 convictions of crimes and any record of arrests without conviction
517 for crimes involving violence or sex crimes; any other evidence of
518 allegations of unlawful sexual conduct or the use of violence by
519 the offender or probationer; the offender or probationer's family
520 ties, length of residence in the community, employment history and
521 mental condition; the offender or probationer's history and
522 conduct during the probation or other supervised release and any
523 other previous supervisions, including disciplinary records of
524 previous incarcerations; the likelihood that the offender or
525 probationer will engage again in a criminal course of conduct; the
526 weight of the evidence against the offender or probationer; and
527 any other facts the court considers relevant.

528 The probation and parole officer after making an arrest shall
529 present to the detaining authorities a similar statement of the
530 circumstances of violation. The probation and parole officer
531 shall at once notify the court of the arrest and detention of the
532 probationer and shall submit a report in writing showing in what
533 manner the probationer has violated the conditions of probation.
534 Thereupon, or upon an arrest by warrant as herein provided, the
535 court, in termtime or vacation, shall cause the probationer to be
536 brought before it and may continue or revoke all or any part of
537 the probation or the suspension of sentence, and may cause the
538 sentence imposed to be executed or may impose any part of the
539 sentence which might have been imposed at the time of conviction.

540 If the probationer is arrested in a circuit court district in
541 the State of Mississippi other than that in which he was
542 convicted, the probation and parole officer, upon the written
543 request of the sentencing judge, shall furnish to the circuit
544 court or the county court of the county in which the arrest is
545 made, or to the judge of such court, a report concerning the
546 probationer, and such court or the judge in vacation shall have
547 authority, after a hearing, to continue or revoke all or any part
548 of probation or all or any part of the suspension of sentence, and
549 may in case of revocation proceed to deal with the case as if
550 there had been no probation. In such case, the clerk of the court
551 in which the order of revocation is issued shall forward a
552 transcript of such order to the clerk of the court of original
553 jurisdiction, and the clerk of that court shall proceed as if the
554 order of revocation had been issued by the court of original
555 jurisdiction. Upon the revocation of probation or suspension of
556 sentence of any offender, such offender shall be placed in the
557 legal custody of the State Department of Corrections and shall be
558 subject to the requirements thereof.

559 Any probationer who removes himself from the State of
560 Mississippi without permission of the court placing him on
561 probation, or the court to which jurisdiction has been
562 transferred, shall be deemed and considered a fugitive from
563 justice and shall be subject to extradition as now provided by
564 law. No part of the time that one is on probation shall be
565 considered as any part of the time that he shall be sentenced to
566 serve.

567 The arresting officer, except when a probation and parole
568 officer, shall be allowed the same fees as now provided by law for
569 arrest on warrant, and such fees shall be taxed against the
570 probationer and paid as now provided by law.

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

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

576 97-5-23. (1) Any person above the age of eighteen (18)
577 years, who, for the purpose of gratifying his or her lust, or
578 indulging his or her depraved licentious sexual desires, shall
579 handle, touch or rub with hands or any part of his or her body or
580 any member thereof, any child under the age of sixteen (16) years,
581 with or without the child's consent, or a mentally defective,
582 mentally incapacitated or physically helpless person as defined in
583 Section 97-3-97, shall be guilty of a felony and, upon conviction
584 thereof, shall be as follows: If the victim is over the age of
585 twelve (12) years but under the age of sixteen (16) years, the
586 offender shall be fined in a sum not less than One Thousand
587 Dollars (\$1,000.00) nor more than Five Thousand Dollars
588 (\$5,000.00), or be committed to the custody of the State
589 Department of Corrections not less than two (2) years nor more
590 than fifteen (15) years, or be punished by both such fine and
591 imprisonment, at the discretion of the court; if the victim is
592 under the age of twelve (12), the offender shall be committed to
593 the custody of the State Department of Corrections for life
594 without possibility of probation or parole.

595 (2) Any person above the age of eighteen (18) years, who,
596 for the purpose of gratifying his or her lust, or indulging his or
597 her depraved licentious sexual desires, shall handle, touch or rub
598 with hands or any part of his or her body or any member thereof,
599 any child younger than himself or herself who is at least sixteen
600 (16) years of age but under the age of eighteen (18) years who is
601 not such person's spouse, with or without the child's consent,
602 when the person occupies a position of trust or authority over the
603 child shall be guilty of a felony and, upon conviction thereof,

604 shall be fined in a sum not less than One Thousand Dollars
605 (\$1,000.00) nor more than Five Thousand Dollars (\$5,000.00), or be
606 committed to the custody of the State Department of Corrections
607 not less than two (2) years nor more than fifteen (15) years, or
608 be punished by both such fine and imprisonment, at the discretion
609 of the court. A person in a position of trust or authority over a
610 child includes without limitation a child's teacher, counselor,
611 physician, psychiatrist, psychologist, minister, priest, physical
612 therapist, chiropractor, legal guardian, parent, stepparent, aunt,
613 uncle, scout leader or coach.

614 (3) Upon a second conviction for an offense under this
615 section when the offense is subject to imprisonment of less than
616 life in prison without parole, the person so convicted shall be
617 punished by commitment to the State Department of Corrections for
618 a term not to exceed thirty (30) years, which sentence shall be
619 neither suspended nor reduced.

620 **SECTION 16.** The following shall be codified as Section
621 99-19-84, Mississippi Code of 1972:

622 99-19-84. Whenever punishment by imprisonment for a
623 misdemeanor or a felony, except for a capital felony, is
624 prescribed for an offense for which registration as a sex offender
625 is required under Title 45, Chapter 33, the court, in its
626 discretion at the time of sentencing, may impose a split sentence
627 whereby the defendant is to be placed on electronic monitoring
628 following release from incarceration for any term of years or for
629 life.

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

632 99-19-101. (1) Upon conviction or adjudication of guilt of
633 a defendant of capital murder or other capital offense, the court
634 shall conduct a separate sentencing proceeding to determine
635 whether the defendant should be sentenced to death, life
636 imprisonment without eligibility for parole, or life imprisonment.

637 The proceeding shall be conducted by the trial judge before the
638 trial jury as soon as practicable. If, through impossibility or
639 inability, the trial jury is unable to reconvene for a hearing on
640 the issue of penalty, having determined the guilt of the accused,
641 the trial judge may summon a jury to determine the issue of the
642 imposition of the penalty. If the trial jury has been waived, or
643 if the defendant pleaded guilty, the sentencing proceeding shall
644 be conducted before a jury impaneled for that purpose or may be
645 conducted before the trial judge sitting without a jury if both
646 the State of Mississippi and the defendant agree thereto in
647 writing. In the proceeding, evidence may be presented as to any
648 matter that the court deems relevant to sentence, and shall
649 include matters relating to any of the aggravating or mitigating
650 circumstances. However, this subsection shall not be construed to
651 authorize the introduction of any evidence secured in violation of
652 the Constitutions of the United States or of the State of
653 Mississippi. The state and the defendant and/or his counsel shall
654 be permitted to present arguments for or against the sentence of
655 death.

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

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

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

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

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

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

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

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

674 (c) That there are insufficient mitigating
675 circumstances, as enumerated in subsection (6), to outweigh the
676 aggravating circumstances.

677 In each case in which the jury imposes the death sentence,
678 the determination of the jury shall be supported by specific
679 written findings of fact based upon the circumstances in
680 subsections (5) and (6) of this section and upon the records of
681 the trial and the sentencing proceedings. If, after the trial of
682 the penalty phase, the jury does not make the findings requiring
683 the death sentence or life imprisonment without eligibility for
684 parole, or is unable to reach a decision, the court shall impose a
685 sentence of life imprisonment.

686 (4) The judgment of conviction and sentence of death shall
687 be subject to automatic review by the Supreme Court of Mississippi
688 within sixty (60) days after certification by the sentencing court
689 of entire record, unless the time is extended for an additional
690 period by the Supreme Court for good cause shown. Such review by
691 the Supreme Court shall have priority over all other cases and
692 shall be heard in accordance with rules promulgated by the Supreme
693 Court.

694 (5) Aggravating circumstances shall be limited to the
695 following:

696 (a) The capital offense was committed by a person under
697 sentence of imprisonment.

698 (b) The defendant was previously convicted of another
699 capital offense or of a felony involving the use or threat of
700 violence to the person.

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

703 (d) The capital offense was committed while the
704 defendant was engaged, or was an accomplice, in the commission of,
705 or an attempt to commit, or flight after committing or attempting
706 to commit, any robbery, rape, arson, burglary, kidnapping,
707 aircraft piracy, sexual battery, unnatural intercourse with any
708 child under the age of twelve (12), or nonconsensual unnatural
709 intercourse with mankind, or felonious abuse and/or battery of a
710 child in violation of subsection (2) of Section 97-5-39,
711 Mississippi Code of 1972, or the unlawful use or detonation of a
712 bomb or explosive device.

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

716 (f) The capital offense was committed for pecuniary
717 gain.

718 (g) The capital offense was committed to disrupt or
719 hinder the lawful exercise of any governmental function or the
720 enforcement of laws.

721 (h) The capital offense was especially heinous,
722 atrocious or cruel.

723 (i) The capital offense was committed by a person
724 previously convicted of one (1) or more of the following offenses:

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

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

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

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

731 (v) Section 97-5-41 relating to the carnal
732 knowledge of a stepchild, adopted child or child of a cohabiting
733 partner; or

734 (vi) Any conviction for violation of a similar law
735 of another jurisdiction or designation as a sexual predator in
736 another jurisdiction.

737 (6) Mitigating circumstances shall be the following:

738 (a) The defendant has no significant history of prior
739 criminal activity.

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

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

744 (d) The defendant was an accomplice in the capital
745 offense committed by another person and his participation was
746 relatively minor.

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

749 (f) The capacity of the defendant to appreciate the
750 criminality of his conduct or to conform his conduct to the
751 requirements of law was substantially impaired.

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

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

755 (a) The defendant actually killed;

756 (b) The defendant attempted to kill;

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

758 (d) The defendant contemplated that lethal force would
759 be employed.

760 **SECTION 18.** The following shall be codified as Section
761 99-19-205, Mississippi Code of 1972:

762 99-19-205. Any person who is convicted of a sex offense on
763 or after July 1, 2006, and who is sentenced to any state or local
764 correctional facility, placed on probation, given a suspended
765 sentence or other disposition, and the unlawful activity involved
766 a victim who was under sixteen (16) years of age and the offender

767 was eighteen (18) years of age or older, or the offender is
768 subject to lifetime registration under Section 45-33-47(2), shall
769 be sentenced by the court to mandatory electronic monitoring for
770 life subsequent to the offender's release from incarceration.

771 **SECTION 19.** (1) The Department of Public Safety shall
772 examine the collection and dissemination of offender information
773 within the criminal justice system and community and recommend
774 strategies and actions that may be implemented to enhance
775 coordination and cooperation among the various entities within the
776 criminal justice system with a common goal of public safety. The
777 department shall study:

778 (a) The collection and dissemination of offender
779 information, including criminal history and any other pertinent
780 matters, to the court, the prosecuting attorney and defense
781 counsel at first appearance hearings.

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

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

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

792 (2) The department shall submit its findings and
793 recommendations to the Governor, the President of the Senate, and
794 the Speaker of the House of Representatives by November 1, 2007.
795 The final report shall be filed with the Governor, the President
796 of the Senate, and the Speaker of the House of Representatives.
797 In addition to the findings and recommendations included in the
798 final report, the report must include a draft of proposed rules

799 and proposed legislation for any recommendations requiring
800 proposed rules and proposed legislation.

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

803 **SECTION 20.** The Joint Committee on Performance Evaluation
804 and Expenditure Review, every three (3) years, shall perform a
805 study of the effectiveness of Mississippi's sex offender
806 registration process and community and public notification
807 provisions. As part of determining the effectiveness of the
808 registration process, PEER shall examine the current practices of:
809 the Department of Corrections, county probation offices, clerk of
810 courts, court administrators, county jails and booking facilities,
811 Department of Children and Family Services, judges, district
812 attorneys' offices, Department of Public Safety, and local law
813 enforcement agencies as they relate to: sharing of offender
814 information regarding registered sex offenders for purposes of
815 fulfilling the requirements set forth in the registration laws;
816 ensuring the most accurate, current and comprehensive information
817 is provided in a timely manner to the registry; ensuring the
818 effective supervision and subsequent monitoring of sex offenders;
819 and ensuring informed decisions are made at each point of the
820 criminal justice and registration process. In addition to
821 determining the effectiveness of the registration process, the
822 report shall focus on the question of whether the notification
823 provisions in statute are sufficient to apprise communities of the
824 presence of sex offenders. The report shall examine how local law
825 enforcement agencies collect and disseminate information in an
826 effort to notify the public and communities of the presence of sex
827 offenders. If the report finds deficiencies in the registration
828 process, the notification provisions, or both, the report shall
829 provide options for correcting those deficiencies and shall
830 include the projected cost of implementing those options. In
831 conducting the study, PEER shall consult with interested entities

832 that may offer experiences and perspectives unique to this area of
833 research. The report shall be submitted to the President of the
834 Senate and the Speaker of the House of Representatives.

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