

By: Senator(s) Horhn

To: Judiciary, Division B;  
Appropriations

SENATE BILL NO. 2860

1 AN ACT TO AMEND SECTION 97-5-23, MISSISSIPPI CODE OF 1972, TO  
 2 IMPOSE A MORE SEVERE PENALTY FOR FONDLING OF A CHILD WHO IS VERY  
 3 YOUNG; TO AMEND SECTION 99-19-83, MISSISSIPPI CODE OF 1972, TO  
 4 INCLUDE A SECOND SEX OFFENSE WHEN THE VICTIM OF THE SECOND OFFENSE  
 5 IS UNDER AGE 15 AS REQUIRING LIFE IMPRISONMENT; TO CREATE NEW  
 6 SECTION 99-19-84, MISSISSIPPI CODE OF 1972, TO AUTHORIZE A SPLIT  
 7 SENTENCE FOR SEX OFFENDERS; TO AMEND SECTION 99-19-101,  
 8 MISSISSIPPI CODE OF 1972, TO SPECIFY THAT CERTAIN SEX OFFENSES ARE  
 9 AN AGGRAVATING CIRCUMSTANCE IN SENTENCING FOR A CAPITAL OFFENSE;  
 10 TO CREATE NEW SECTION 99-19-205, MISSISSIPPI CODE OF 1972, TO  
 11 MANDATE GEOPOSITIONAL SUPERVISION FOR CERTAIN SEX OFFENDERS UPON  
 12 EXPIRATION OF TERM; TO CREATE NEW SECTION 47-5-1017, MISSISSIPPI  
 13 CODE OF 1972, TO PROVIDE FOR GEOPOSITIONAL MONITORING OF SEX  
 14 OFFENDERS SUBJECT TO A SPLIT SENTENCE; TO CREATE NEW SECTION  
 15 47-5-1019, MISSISSIPPI CODE OF 1972, TO IMPOSE PUNISHMENT FOR  
 16 TAMPERING WITH A GEOPOSITIONAL MONITORING DEVICE; AND FOR RELATED  
 17 PURPOSES.

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

19 **SECTION 1.** Section 97-5-23, Mississippi Code of 1972, is  
 20 amended as follows:

21 97-5-23. (1) Any person above the age of eighteen (18)  
 22 years, who, for the purpose of gratifying his or her lust, or  
 23 indulging his or her depraved licentious sexual desires, shall  
 24 handle, touch or rub with hands or any part of his or her body or  
 25 any member thereof, any child under the age of sixteen (16) years,  
 26 with or without the child's consent, or a mentally defective,  
 27 mentally incapacitated or physically helpless person as defined in  
 28 Section 97-3-97, shall be guilty of a felony and, upon conviction  
 29 thereof, shall be as follows: If the victim is over the age of  
 30 twelve (12) years but under the age of sixteen (16) years, the  
 31 offender shall be fined in a sum not less than One Thousand  
 32 Dollars (\$1,000.00) nor more than Five Thousand Dollars  
 33 (\$5,000.00), or be committed to the custody of the State  
 34 Department of Corrections not less than two (2) years nor more

35 than fifteen (15) years, or be punished by both such fine and  
36 imprisonment, at the discretion of the court; if the victim is  
37 under the age of twelve (12), the offender shall be committed to  
38 the custody of the State Department of Corrections for life  
39 without possibility of probation or parole.

40 (2) Any person above the age of eighteen (18) years, who,  
41 for the purpose of gratifying his or her lust, or indulging his or  
42 her depraved licentious sexual desires, shall handle, touch or rub  
43 with hands or any part of his or her body or any member thereof,  
44 any child younger than himself or herself who is at least sixteen  
45 (16) years of age but under the age of eighteen (18) years who is  
46 not such person's spouse, with or without the child's consent,  
47 when the person occupies a position of trust or authority over the  
48 child shall be guilty of a felony and, upon conviction thereof,  
49 shall be fined in a sum not less than One Thousand Dollars  
50 (\$1,000.00) nor more than Five Thousand Dollars (\$5,000.00), or be  
51 committed to the custody of the State Department of Corrections  
52 not less than two (2) years nor more than fifteen (15) years, or  
53 be punished by both such fine and imprisonment, at the discretion  
54 of the court. A person in a position of trust or authority over a  
55 child includes without limitation a child's teacher, counselor,  
56 physician, psychiatrist, psychologist, minister, priest, physical  
57 therapist, chiropractor, legal guardian, parent, stepparent, aunt,  
58 uncle, scout leader or coach.

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

65 **SECTION 2.** Section 99-19-83, Mississippi Code of 1972, is  
66 amended as follows:

67           99-19-83. (1) Every person convicted in this state of a  
68 felony who shall have been convicted twice previously of any  
69 felony or federal crime upon charges separately brought and  
70 arising out of separate incidents at different times and who shall  
71 have been sentenced to and served separate terms of one (1) year  
72 or more in any state and/or federal penal institution, whether in  
73 this state or elsewhere, and where any one (1) of such felonies  
74 shall have been a crime of violence shall be sentenced to life  
75 imprisonment, and such sentence shall not be reduced or suspended  
76 nor shall such person be eligible for parole or probation.

77           (2) Every person convicted in this state of a felony sex  
78 offense in which the victim was not more than fourteen (14) years  
79 of age and who previously has been convicted of any felony sex  
80 offense, whether in this state or elsewhere, shall be sentenced to  
81 life imprisonment, and such sentence shall not be reduced or  
82 suspended nor shall such person be eligible for parole or  
83 probation. For the purposes of this subsection, the term "sex  
84 offense" shall have the meaning ascribed in Section 45-33-23.

85           **SECTION 3.** The following shall be codified as Section  
86 99-19-84, Mississippi Code of 1972:

87           99-19-84. Whenever punishment by imprisonment for a felony,  
88 except for a capital felony, is prescribed for an offense for  
89 which registration as a sex offender is required under Title 45,  
90 Chapter 33, if the victim was not more than fourteen (14) years  
91 old and the offender was at least twenty-one (21) years old at the  
92 time of the offense, the court shall impose a split sentence  
93 whereby the defendant is to be placed on geospatial monitoring  
94 following release from incarceration for the term of his natural  
95 life. The offender shall be required to pay the cost of the  
96 monitoring.

97           **SECTION 4.** Section 99-19-101, Mississippi Code of 1972, is  
98 amended as follows:

99           99-19-101. (1) Upon conviction or adjudication of guilt of  
100 a defendant of capital murder or other capital offense, the court  
101 shall conduct a separate sentencing proceeding to determine  
102 whether the defendant should be sentenced to death, life  
103 imprisonment without eligibility for parole, or life imprisonment.  
104 The proceeding shall be conducted by the trial judge before the  
105 trial jury as soon as practicable. If, through impossibility or  
106 inability, the trial jury is unable to reconvene for a hearing on  
107 the issue of penalty, having determined the guilt of the accused,  
108 the trial judge may summon a jury to determine the issue of the  
109 imposition of the penalty. If the trial jury has been waived, or  
110 if the defendant pleaded guilty, the sentencing proceeding shall  
111 be conducted before a jury impaneled for that purpose or may be  
112 conducted before the trial judge sitting without a jury if both  
113 the State of Mississippi and the defendant agree thereto in  
114 writing. In the proceeding, evidence may be presented as to any  
115 matter that the court deems relevant to sentence, and shall  
116 include matters relating to any of the aggravating or mitigating  
117 circumstances. However, this subsection shall not be construed to  
118 authorize the introduction of any evidence secured in violation of  
119 the Constitutions of the United States or of the State of  
120 Mississippi. The state and the defendant and/or his counsel shall  
121 be permitted to present arguments for or against the sentence of  
122 death.

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

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

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

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

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

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

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

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

141 (c) That there are insufficient mitigating  
142 circumstances, as enumerated in subsection (6), to outweigh the  
143 aggravating circumstances.

144 In each case in which the jury imposes the death sentence,  
145 the determination of the jury shall be supported by specific  
146 written findings of fact based upon the circumstances in  
147 subsections (5) and (6) of this section and upon the records of  
148 the trial and the sentencing proceedings. If, after the trial of  
149 the penalty phase, the jury does not make the findings requiring  
150 the death sentence or life imprisonment without eligibility for  
151 parole, or is unable to reach a decision, the court shall impose a  
152 sentence of life imprisonment.

153 (4) The judgment of conviction and sentence of death shall  
154 be subject to automatic review by the Supreme Court of Mississippi  
155 within sixty (60) days after certification by the sentencing court  
156 of entire record, unless the time is extended for an additional  
157 period by the Supreme Court for good cause shown. Such review by  
158 the Supreme Court shall have priority over all other cases and  
159 shall be heard in accordance with rules promulgated by the Supreme  
160 Court.

161 (5) Aggravating circumstances shall be limited to the  
162 following:

163 (a) The capital offense was committed by a person under  
164 sentence of imprisonment.

165           (b) The defendant was previously convicted of another  
166 capital offense or of a felony involving the use or threat of  
167 violence to the person.

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

170           (d) The capital offense was committed while the  
171 defendant was engaged, or was an accomplice, in the commission of,  
172 or an attempt to commit, or flight after committing or attempting  
173 to commit, any robbery, rape, arson, burglary, kidnapping,  
174 aircraft piracy, sexual battery, unnatural intercourse with any  
175 child under the age of twelve (12), or nonconsensual unnatural  
176 intercourse with mankind, or felonious abuse and/or battery of a  
177 child in violation of subsection (2) of Section 97-5-39,  
178 Mississippi Code of 1972, or the unlawful use or detonation of a  
179 bomb or explosive device.

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

183           (f) The capital offense was committed for pecuniary  
184 gain.

185           (g) The capital offense was committed to disrupt or  
186 hinder the lawful exercise of any governmental function or the  
187 enforcement of laws.

188           (h) The capital offense was especially heinous,  
189 atrocious or cruel.

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

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

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

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

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

197 relating to the exploitation of children;

198                   (v) Section 97-5-41 relating to the carnal  
199 knowledge of a stepchild, adopted child or child of a cohabiting  
200 partner; or

201                   (vi) Any conviction for violation of a similar law  
202 of another jurisdiction or designation as a sexual predator in  
203 another jurisdiction.

204           (6) Mitigating circumstances shall be the following:

205                   (a) The defendant has no significant history of prior  
206 criminal activity.

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

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

211                   (d) The defendant was an accomplice in the capital  
212 offense committed by another person and his participation was  
213 relatively minor.

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

216                   (f) The capacity of the defendant to appreciate the  
217 criminality of his conduct or to conform his conduct to the  
218 requirements of law was substantially impaired.

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

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

222                   (a) The defendant actually killed;

223                   (b) The defendant attempted to kill;

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

225                   (d) The defendant contemplated that lethal force would  
226 be employed.

227           **SECTION 5.** The following shall be codified as Section  
228 99-19-205, Mississippi Code of 1972:

229           99-19-205. Any person who is convicted of a sex offense on  
230 or after July 1, 2006, and who is sentenced to any state or local

231 correctional facility, placed on probation, given a suspended  
232 sentence or other disposition, and the unlawful activity involved  
233 a victim who was under fifteen (15) years of age and the offender  
234 was over the age of twenty-one (21) years, or the offender is  
235 subject to lifetime registration under Section 45-33-47(2), shall  
236 be sentenced by the court to mandatory geositional monitoring  
237 for life subsequent to any release of the offender from  
238 incarceration.

239       **SECTION 6.** The following shall be codified as Section  
240 47-5-1017, Mississippi Code of 1972:

241       47-5-1017. The department shall geositionally monitor an  
242 offender upon whom a split sentence is imposed pursuant to Section  
243 99-19-84. The department, in carrying out a court order to  
244 geositionally monitor an offender, must use a system that  
245 actively monitors and identifies the offender's location and  
246 timely reports or records the offender's presence near or within a  
247 crime scene or in prohibited areas or the offender's departure  
248 from specified geographic limitations. The offender shall pay the  
249 cost of the monitoring.

250       **SECTION 7.** The following shall be codified as Section  
251 47-5-1019, Mississippi Code of 1972:

252       47-5-1019. A person who intentionally alters, tampers with,  
253 damages or destroys any geositional monitoring equipment, unless  
254 the person is the owner of the equipment or an agent of the owner  
255 performing ordinary maintenance and repairs, commits a felony  
256 punishable by imprisonment not to exceed five (5) years in the  
257 custody of the Department of Corrections.

258       **SECTION 8.** This act shall take effect and be in force from  
259 and after July 1, 2006.