

By: Representatives Wells-Smith, Moore

To: Judiciary B

HOUSE BILL NO. 924

1 AN ACT TO CREATE NEW SECTION 47-5-1017, MISSISSIPPI CODE OF
2 1972, TO PROVIDE FOR ELECTRONIC MONITORING OF SEX OFFENDERS UPON
3 WHOM A SPLIT SENTENCE IS IMPOSED; TO CREATE NEW SECTION 47-5-1019,
4 MISSISSIPPI CODE OF 1972, TO PROVIDE FOR PUNISHMENT FOR TAMPERING
5 WITH AN ELECTRONIC MONITORING DEVICE; TO CREATE NEW SECTION
6 47-7-32, MISSISSIPPI CODE OF 1972, TO REQUIRE THE DEPARTMENT OF
7 CORRECTIONS TO STUDY INSTANCES OF SEX OFFENDERS WHO ARE
8 SUBSEQUENTLY ARRESTED; TO AMEND SECTION 47-7-33, MISSISSIPPI CODE
9 OF 1972, TO REQUIRE ELECTRONIC MONITORING OF CERTAIN PAROLEES AND
10 PROBATIONERS; TO AMEND SECTION 47-7-34, MISSISSIPPI CODE OF 1972,
11 TO CONFORM TO SPLIT SENTENCING; TO AMEND SECTION 47-7-35,
12 MISSISSIPPI CODE OF 1972, TO MANDATE ELECTRONIC MONITORING UNDER
13 CERTAIN CIRCUMSTANCES; TO AMEND SECTION 99-19-84, MISSISSIPPI CODE
14 OF 1972, TO AUTHORIZE A SPLIT SENTENCE FOR SEX OFFENDERS; TO
15 CREATE NEW SECTION 99-19-205, MISSISSIPPI CODE OF 1972, TO MANDATE
16 ELECTRONIC SUPERVISION FOR CERTAIN SEX OFFENDERS UPON EXPIRATION
17 OF ANY TERM OF INCARCERATION; TO REQUIRE THE DEPARTMENT OF PUBLIC
18 SAFETY TO STUDY THE SEX OFFENDER REGISTRY SYSTEM AND THE PEER
19 COMMITTEE TO PERIODICALLY REVIEW THE SYSTEM; TO AMEND SECTION
20 45-33-31, MISSISSIPPI CODE OF 1972, TO REQUIRE THE DEPARTMENT OF
21 PUBLIC SAFETY TO DEVELOP AND IMPLEMENT A VERIFICATION SYSTEM FOR
22 THE REGISTRATION INFORMATION GIVEN BY SEX OFFENDERS; TO AMEND
23 SECTION 45-33-49, MISSISSIPPI CODE OF 1972, TO REQUIRE SHARING OF
24 INFORMATION BETWEEN LAW ENFORCEMENT AGENCIES; TO AMEND SECTION
25 97-5-23, MISSISSIPPI CODE OF 1972, TO IMPOSE A MORE SEVERE PENALTY
26 FOR FONDLING WHEN THE VICTIM IS BELOW A CERTAIN AGE; TO AMEND
27 SECTION 99-19-101, MISSISSIPPI CODE OF 1972, TO SPECIFY THAT
28 CERTAIN SEX OFFENSES ARE AN AGGRAVATING CIRCUMSTANCE IN SENTENCING
29 FOR A CAPITAL OFFENSE; TO AMEND SECTIONS 97-3-65 AND 97-3-101,
30 MISSISSIPPI CODE OF 1972, TO PROVIDE FOR THE DEATH PENALTY FOR
31 RAPE OR SEXUAL BATTERY OF A CHILD UNDER FOURTEEN YEARS OF AGE; AND
32 FOR RELATED PURPOSES.

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

34 **SECTION 1.** The following shall be codified as Section
35 47-5-1017, Mississippi Code of 1972:

36 47-5-1017. The department shall electronically monitor an
37 offender upon whom a split sentence is imposed pursuant to Section
38 99-19-84. The department, in carrying out a court order to
39 electronically monitor an offender, must use a system that
40 actively monitors and identifies the offender's location and
41 timely reports or records the offender's presence near or within a

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

44 **SECTION 2.** The following shall be codified as Section
45 47-5-1019, Mississippi Code of 1972:

46 47-5-1019. A person who intentionally alters, tampers with,
47 damages or destroys any electronic monitoring equipment, unless
48 the person is the owner of the equipment or an agent of the owner
49 performing ordinary maintenance and repairs, commits a felony
50 punishable by imprisonment not to exceed five (5) years in the
51 custody of the Department of Corrections.

52 **SECTION 3.** The following shall be codified as Section
53 47-7-32, Mississippi Code of 1972:

54 47-7-32. (1) The Department of Corrections shall review the
55 circumstances related to any offender placed on supervision who is
56 subject to registration as a sex offender under Title 45, Chapter
57 33, who is subsequently arrested.

58 (2) The department shall provide a statistical data summary
59 from these reviews to the Joint Committee on Performance
60 Evaluation and Expenditure Review which shall analyze this data
61 and file a written report with the Secretary of the Senate and the
62 Clerk of the House of Representatives by November 1, 2007. The
63 report must include, at a minimum, any identified systemic
64 deficiencies in managing high-risk offenders on supervision; any
65 patterns of noncompliance by probation and parole officers; and
66 recommendations for improving the department's supervision of
67 offenders.

68 **SECTION 4.** Section 47-7-33, Mississippi Code of 1972, is
69 amended as follows:

70 47-7-33. (1) When it appears to the satisfaction of any
71 circuit court or county court in the State of Mississippi having
72 original jurisdiction over criminal actions, or to the judge
73 thereof, that the ends of justice and the best interest of the
74 public, as well as the defendant, will be served thereby, such

75 court, in termtime or in vacation, shall have the power, after
76 conviction or a plea of guilty, except in a case where a death
77 sentence or life imprisonment is the maximum penalty which may be
78 imposed or where the defendant has been convicted of a felony on a
79 previous occasion in any court or courts of the United States and
80 of any state or territories thereof, to suspend the imposition or
81 execution of sentence, and place the defendant on probation as
82 herein provided, except that the court shall not suspend the
83 execution of a sentence of imprisonment after the defendant shall
84 have begun to serve such sentence. In placing any defendant on
85 probation, the court, or judge, shall direct that such defendant
86 be under the supervision of the Department of Corrections.

87 (2) When any circuit or county court places an offender on
88 probation, the court shall give notice to the Mississippi
89 Department of Corrections within fifteen (15) days of the court's
90 decision to place the offender on probation. Notice shall be
91 delivered to the central office of the Mississippi Department of
92 Corrections and to the regional office of the department which
93 will be providing supervision to the offender on probation.

94 (3) When any circuit court or county court places a person
95 on probation in accordance with the provisions of this section and
96 that person is ordered to make any payments to his family, if any
97 member of his family whom he is ordered to support is receiving
98 public assistance through the State Department of Public Welfare,
99 the court shall order him to make such payments to the county
100 welfare officer of the county rendering public assistance to his
101 family, for the sole use and benefit of said family.

102 (4) If probation or parole is revoked by the court and the
103 offender is designated as a sex offender for unlawful sexual
104 activity involving a victim under sixteen (16) years of age and
105 the offender is eighteen (18) years of age or older, and if the
106 court imposes a subsequent term of supervision following the
107 revocation of supervision, the court must order electronic

108 monitoring as a condition of any subsequent term of probation or
109 parole.

110 **SECTION 5.** Section 47-7-34, Mississippi Code of 1972, is
111 amended as follows:

112 47-7-34. (1) When a court imposes a sentence upon a
113 conviction for any felony committed after June 30, 1995, the
114 court, in addition to any other punishment imposed if the other
115 punishment includes a term of incarceration in a state or local
116 correctional facility, may impose a term of post-release
117 supervision. However, the total number of years of incarceration
118 plus the total number of years of post-release supervision shall
119 not exceed the maximum sentence authorized to be imposed by law
120 for the felony committed. The defendant shall be placed under
121 post-release supervision upon release from the term of
122 incarceration. The period of supervision shall be established by
123 the court.

124 (2) The period of post-release supervision shall be
125 conducted in the same manner as a like period of supervised
126 probation, including a requirement that the defendant shall abide
127 by any terms and conditions as the court may establish. Failure
128 to successfully abide by the terms and conditions shall be grounds
129 to terminate the period of post-release supervision and to
130 recommit the defendant to the correctional facility from which he
131 was previously released. Procedures for termination and
132 recommitment shall be conducted in the same manner as procedures
133 for the revocation of probation and imposition of a suspended
134 sentence.

135 (3) Post-release supervision programs shall be operated
136 through the probation and parole unit of the Division of Community
137 Corrections of the department. The maximum amount of time that
138 the Mississippi Department of Corrections may supervise an
139 offender on the post-release supervision program is five (5)
140 years.

141 (4) The provisions of this section shall not affect the
142 ability of a court to impose a split sentence pursuant to Section
143 99-19-84.

144 **SECTION 6.** Section 99-19-84, Mississippi Code of 1972, is
145 amended as follows:

146 99-19-84. (1) Whenever probation is a part of a sentence
147 prescribed for an offense for which registration as a sex offender
148 is required under Title 45, Chapter 33, the court may include as a
149 condition of probation that the sex offender be placed on
150 electronic monitoring. The Department of Corrections shall
151 promulgate rules and regulations for the implementation of
152 electronic monitoring of sex offenders on probation.

153 (2) Whenever punishment by imprisonment for a misdemeanor or
154 a felony, except for a capital felony, is prescribed for an
155 offense for which registration as a sex offender is required under
156 Title 45, Chapter 33, the court, in its discretion at the time of
157 sentencing, may impose a split sentence whereby the defendant is
158 to be placed on electronic monitoring following release from
159 incarceration for any term of years or for life.

160 **SECTION 7.** The following shall be codified as Section
161 99-19-205, Mississippi Code of 1972:

162 99-19-205. Any person who is convicted of a sex offense on
163 or after July 1, 2006, and who is sentenced to any state or local
164 correctional facility, placed on probation, given a suspended
165 sentence or other disposition, and the unlawful activity involved
166 a victim who was under sixteen (16) years of age and the offender
167 was eighteen (18) years of age or older, or the offender is
168 subject to lifetime registration under Section 45-33-47(2), shall
169 be sentenced by the court to mandatory electronic monitoring for
170 life subsequent to the offender's release from incarceration.

171 **SECTION 8.** (1) The Department of Public Safety shall
172 examine the collection and dissemination of offender information
173 within the criminal justice system and community and recommend

174 strategies and actions that may be implemented to enhance
175 coordination and cooperation among the various entities within the
176 criminal justice system with a common goal of public safety. The
177 department shall study:

178 (a) The collection and dissemination of offender
179 information, including criminal history and any other pertinent
180 matters, to the court, the prosecuting attorney and defense
181 counsel at first appearance hearings.

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

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

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

192 (2) The department shall submit its findings and
193 recommendations to the Governor, the President of the Senate, and
194 the Speaker of the House of Representatives by November 1, 2007.
195 The final report shall be filed with the Governor, the President
196 of the Senate, and the Speaker of the House of Representatives.
197 In addition to the findings and recommendations included in the
198 final report, the report must include a draft of proposed rules
199 and proposed legislation for any recommendations requiring
200 proposed rules and proposed legislation.

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

203 **SECTION 9.** The Joint Committee on Performance Evaluation and
204 Expenditure Review, every three (3) years, shall perform a study
205 of the effectiveness of Mississippi's sex offender registration
206 process and community and public notification provisions. As part

207 of determining the effectiveness of the registration process, PEER
208 shall examine the current practices of: the Department of
209 Corrections, county probation offices, clerk of courts, court
210 administrators, county jails and booking facilities, Department of
211 Children and Family Services, judges, district attorneys' offices,
212 Department of Public Safety, and local law enforcement agencies as
213 they relate to: sharing of offender information regarding
214 registered sex offenders for purposes of fulfilling the
215 requirements set forth in the registration laws; ensuring the most
216 accurate, current and comprehensive information is provided in a
217 timely manner to the registry; ensuring the effective supervision
218 and subsequent monitoring of sex offenders; and ensuring informed
219 decisions are made at each point of the criminal justice and
220 registration process. In addition to determining the
221 effectiveness of the registration process, the report shall focus
222 on the question of whether the notification provisions in statute
223 are sufficient to apprise communities of the presence of sex
224 offenders. The report shall examine how local law enforcement
225 agencies collect and disseminate information in an effort to
226 notify the public and communities of the presence of sex
227 offenders. If the report finds deficiencies in the registration
228 process, the notification provisions, or both, the report shall
229 provide options for correcting those deficiencies and shall
230 include the projected cost of implementing those options. In
231 conducting the study, PEER shall consult with interested entities
232 that may offer experiences and perspectives unique to this area of
233 research. The report shall be submitted to the President of the
234 Senate and the Speaker of the House of Representatives.

235 **SECTION 10.** Section 45-33-31, Mississippi Code of 1972, is
236 amended as follows:

237 45-33-31. (1) All registrants are required to personally
238 appear at a Department of Public Safety Driver's License Station
239 to reregister every ninety (90) days. Reregistration includes the

240 submission of current information to the department and the
241 verification of registration information, including the street
242 address and telephone number of the registrant; name, street
243 address and telephone number of the registrant's employment along
244 with any other registration information that may need to be
245 verified and the payment of any required fees. A person who fails
246 to reregister as required by this section commits a violation of
247 this chapter.

248 (2) The department shall implement a system for verifying
249 the addresses of registrants. The system must be consistent with
250 the provisions of the federal Jacob Wetterling Act, as amended,
251 and any other federal standards applicable to such verification or
252 required to be met as a condition for the receipt of federal funds
253 by the state. County and local law enforcement agencies, in
254 conjunction with the department, shall verify the addresses of
255 registrants who are not under the care, custody, control or
256 supervision of the Department of Corrections.

257 **SECTION 11.** Section 45-33-49, Mississippi Code of 1972, is
258 amended as follows:

259 45-33-49. (1) Records maintained pursuant to this chapter
260 shall be open to law enforcement agencies which shall be
261 authorized to release relevant and necessary information regarding
262 sex offenders to the public.

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

265 (3) A sheriff shall maintain records for registrants of the
266 county and shall make available to any person upon request the
267 name, address, place of employment, crime for which convicted,
268 date and place of conviction of any registrant, and any other
269 information deemed necessary for the protection of the public.
270 The sheriffs shall be responsible for verifying their respective
271 registries annually against the department's records to ensure
272 current information is available at both levels.

273 (4) Upon written request, the department may also provide to
274 any person the name, address, photograph, if available, date of
275 photograph, place of employment, crime for which convicted, date
276 and place of conviction of any registrant, hair, eye color,
277 height, race, sex and date of birth of any registrant, and any
278 other information deemed necessary for the protection of the
279 public. Additionally, the department may utilize an Internet
280 website or other electronic means to release the information.

281 (5) The Department of Education, the Mississippi Private
282 School Association and the Department of Health shall notify all
283 schools and licensed day care centers annually regarding the
284 availability upon request of this information.

285 (6) Nothing in this section shall be construed to prevent
286 law enforcement officers from notifying members of the public
287 exposed to danger of any circumstances or individuals that pose a
288 danger under circumstances that are not enumerated in this
289 section.

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

294 (8) The Department of Public Safety shall share sex offender
295 information with local law enforcement agencies in an effort to
296 ensure that sex offenders who fail to respond to address
297 verification attempts or who otherwise abscond from registration
298 are located in a timely manner. The department shall use
299 analytical resources to assist local law enforcement agencies to
300 determine the potential whereabouts of any sex offender who fails
301 to respond to address verification attempts or who otherwise
302 absconds from registration. The department shall review and
303 analyze all available information concerning any such offender who
304 fails to respond to address verification attempts or who otherwise
305 absconds from registration and provide the information to local

306 law enforcement agencies in order to assist the agencies in
307 locating and apprehending the sex offender.

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

312 **SECTION 12.** Section 97-5-23, Mississippi Code of 1972, is
313 amended as follows:

314 97-5-23. (1) Any person above the age of eighteen (18)
315 years, who, for the purpose of gratifying his or her lust, or
316 indulging his or her depraved licentious sexual desires, shall
317 handle, touch or rub with hands or any part of his or her body or
318 any member thereof, any child under the age of sixteen (16) years,
319 with or without the child's consent, or a mentally defective,
320 mentally incapacitated or physically helpless person as defined in
321 Section 97-3-97, shall be guilty of a felony and, upon conviction
322 thereof, shall be as follows: If the victim is over the age of
323 twelve (12) years but under the age of sixteen (16) years, the
324 offender shall be fined in a sum not less than One Thousand
325 Dollars (\$1,000.00) nor more than Five Thousand Dollars
326 (\$5,000.00), or be committed to the custody of the State
327 Department of Corrections not less than two (2) years nor more
328 than fifteen (15) years, or be punished by both such fine and
329 imprisonment, at the discretion of the court; if the victim is
330 under the age of twelve (12), the offender shall be committed to
331 the custody of the State Department of Corrections for life
332 without possibility of probation or parole.

333 (2) Any person above the age of eighteen (18) years, who,
334 for the purpose of gratifying his or her lust, or indulging his or
335 her depraved licentious sexual desires, shall handle, touch or rub
336 with hands or any part of his or her body or any member thereof,
337 any child younger than himself or herself who is at least sixteen
338 (16) years of age but under the age of eighteen (18) years who is

339 not such person's spouse, with or without the child's consent,
340 when the person occupies a position of trust or authority over the
341 child shall be guilty of a felony and, upon conviction thereof,
342 shall be fined in a sum not less than One Thousand Dollars
343 (\$1,000.00) nor more than Five Thousand Dollars (\$5,000.00), or be
344 committed to the custody of the State Department of Corrections
345 not less than two (2) years nor more than fifteen (15) years, or
346 be punished by both such fine and imprisonment, at the discretion
347 of the court. A person in a position of trust or authority over a
348 child includes without limitation a child's teacher, counselor,
349 physician, psychiatrist, psychologist, minister, priest, physical
350 therapist, chiropractor, legal guardian, parent, stepparent, aunt,
351 uncle, scout leader or coach.

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

358 **SECTION 13.** Section 99-19-101, Mississippi Code of 1972, is
359 amended as follows:

360 99-19-101. (1) Upon conviction or adjudication of guilt of
361 a defendant of capital murder or other capital offense, the court
362 shall conduct a separate sentencing proceeding to determine
363 whether the defendant should be sentenced to death, life
364 imprisonment without eligibility for parole, or life imprisonment.
365 The proceeding shall be conducted by the trial judge before the
366 trial jury as soon as practicable. If, through impossibility or
367 inability, the trial jury is unable to reconvene for a hearing on
368 the issue of penalty, having determined the guilt of the accused,
369 the trial judge may summon a jury to determine the issue of the
370 imposition of the penalty. If the trial jury has been waived, or
371 if the defendant pleaded guilty, the sentencing proceeding shall

372 be conducted before a jury impaneled for that purpose or may be
373 conducted before the trial judge sitting without a jury if both
374 the State of Mississippi and the defendant agree thereto in
375 writing. In the proceeding, evidence may be presented as to any
376 matter that the court deems relevant to sentence, and shall
377 include matters relating to any of the aggravating or mitigating
378 circumstances. However, this subsection shall not be construed to
379 authorize the introduction of any evidence secured in violation of
380 the Constitution of the United States or of the State of
381 Mississippi. The state and the defendant and/or his counsel shall
382 be permitted to present arguments for or against the sentence of
383 death.

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

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

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

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

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

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

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

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

402 (c) That there are insufficient mitigating
403 circumstances, as enumerated in subsection (6), to outweigh the
404 aggravating circumstances.

405 In each case in which the jury imposes the death sentence,
406 the determination of the jury shall be supported by specific
407 written findings of fact based upon the circumstances in
408 subsections (5) and (6) of this section and upon the records of
409 the trial and the sentencing proceedings. If, after the trial of
410 the penalty phase, the jury does not make the findings requiring
411 the death sentence or life imprisonment without eligibility for
412 parole, or is unable to reach a decision, the court shall impose a
413 sentence of life imprisonment.

414 (4) The judgment of conviction and sentence of death shall
415 be subject to automatic review by the Supreme Court of Mississippi
416 within sixty (60) days after certification by the sentencing court
417 of entire record, unless the time is extended for an additional
418 period by the Supreme Court for good cause shown. Such review by
419 the Supreme Court shall have priority over all other cases and
420 shall be heard in accordance with rules promulgated by the Supreme
421 Court.

422 (5) Aggravating circumstances shall be limited to the
423 following:

424 (a) The capital offense was committed by a person under
425 sentence of imprisonment.

426 (b) The defendant was previously convicted of another
427 capital offense or of a felony involving the use or threat of
428 violence to the person.

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

431 (d) The capital offense was committed while the
432 defendant was engaged, or was an accomplice, in the commission of,
433 or an attempt to commit, or flight after committing or attempting
434 to commit, any robbery, rape, arson, burglary, kidnapping,
435 aircraft piracy, sexual battery, unnatural intercourse with any
436 child under the age of twelve (12), or nonconsensual unnatural
437 intercourse with mankind, or felonious abuse and/or battery of a

438 child in violation of subsection (2) of Section 97-5-39,
439 Mississippi Code of 1972, or the unlawful use or detonation of a
440 bomb or explosive device.

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

444 (f) The capital offense was committed for pecuniary
445 gain.

446 (g) The capital offense was committed to disrupt or
447 hinder the lawful exercise of any governmental function or the
448 enforcement of laws.

449 (h) The capital offense was especially heinous,
450 atrocious or cruel.

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

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

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

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

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

459 (v) Section 97-5-41 relating to the carnal
460 knowledge of a stepchild, adopted child or child of a cohabiting
461 partner; or

462 (vi) Any conviction for violation of a similar law
463 of another jurisdiction or designation as a sexual predator in
464 another jurisdiction.

465 (6) Mitigating circumstances shall be the following:

466 (a) The defendant has no significant history of prior
467 criminal activity.

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

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

472 (d) The defendant was an accomplice in the capital
473 offense committed by another person and his participation was
474 relatively minor.

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

477 (f) The capacity of the defendant to appreciate the
478 criminality of his conduct or to conform his conduct to the
479 requirements of law was substantially impaired.

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

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

483 (a) The defendant actually killed;

484 (b) The defendant attempted to kill;

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

486 (d) The defendant contemplated that lethal force would
487 be employed.

488 **SECTION 14.** Section 97-3-65, Mississippi Code of 1972, is
489 amended as follows:

490 97-3-65. (1) The crime of statutory rape is committed when:

491 (a) Any person seventeen (17) years of age or older has
492 sexual intercourse with a child who:

493 (i) Is at least fourteen (14) but under sixteen
494 (16) years of age;

495 (ii) Is thirty-six (36) or more months younger
496 than the person; and

497 (iii) Is not the person's spouse; or

498 (b) A person of any age has sexual intercourse with a
499 child who:

500 (i) Is under the age of fourteen (14) years;

501 (ii) Is twenty-four (24) or more months younger
502 than the person; and

503 (iii) Is not the person's spouse.

504 (2) Neither the victim's consent nor the victim's lack of
505 chastity is a defense to a charge of statutory rape.

506 (3) Upon conviction for statutory rape, the defendant shall
507 be sentenced as follows:

508 (a) If eighteen (18) years of age or older, but under
509 twenty-one (21) years of age, and convicted under subsection
510 (1)(a) of this section, to imprisonment for not more than five (5)
511 years in the State Penitentiary or a fine of not more than Five
512 Thousand Dollars (\$5,000.00), or both;

513 (b) If twenty-one (21) years of age or older and
514 convicted under subsection (1)(a) of this section, to imprisonment
515 of not more than thirty (30) years in the State Penitentiary or a
516 fine of not more than Ten Thousand Dollars (\$10,000.00), or both,
517 for the first offense, and not more than forty (40) years in the
518 State Penitentiary for each subsequent offense;

519 (c) If eighteen (18) years of age or older and
520 convicted under subsection (1)(b) of this section, to death or
521 imprisonment for life in the State Penitentiary if the jury cannot
522 unanimously agree on a penalty of death;

523 (d) If thirteen (13) years of age or older but under
524 eighteen (18) years of age and convicted under subsection (1)(a)
525 or (1)(b) of this section, such imprisonment, fine or other
526 sentence as the court, in its discretion, may determine.

527 (4) (a) Every person who shall have forcible sexual
528 intercourse with any person, or who shall have sexual intercourse
529 not constituting forcible sexual intercourse or statutory rape
530 with any person without that person's consent by administering to
531 such person any substance or liquid which shall produce such
532 stupor or such imbecility of mind or weakness of body as to
533 prevent effectual resistance, upon conviction, shall be imprisoned
534 for life in the State Penitentiary if the jury by its verdict so
535 prescribes; and in cases where the jury fails to fix the penalty

536 at life imprisonment, the court shall fix the penalty at
537 imprisonment in the State Penitentiary for any term as the court,
538 in its discretion, may determine, but not less than twenty (20)
539 years.

540 (b) This subsection (4) shall apply whether the
541 perpetrator is married to the victim or not.

542 (5) In all cases where a victim is under the age of sixteen
543 (16) years, it shall not be necessary to prove penetration where
544 it is shown the genitals, anus or perineum of the child have been
545 lacerated or torn in the attempt to have sexual intercourse with
546 the child.

547 (6) For the purposes of this section, "sexual intercourse"
548 shall mean a joining of the sexual organs of a male and female
549 human being in which the penis of the male is inserted into the
550 vagina of the female.

551 **SECTION 15.** Section 97-3-101, Mississippi Code of 1972, is
552 amended as follows:

553 97-3-101. (1) Every person who shall be convicted of sexual
554 battery under Section 97-3-95(1)(a), (b) or (2) shall be
555 imprisoned in the State Penitentiary for a period of not more than
556 thirty (30) years, and for a second or subsequent such offense
557 shall be imprisoned in the Penitentiary for not more than forty
558 (40) years.

559 (2) (a) Every person who shall be convicted of sexual
560 battery under Section 97-3-95(1)(c) who is at least eighteen (18)
561 but under twenty-one (21) years of age shall be imprisoned for not
562 more than five (5) years in the State Penitentiary or fined not
563 more than Five Thousand Dollars (\$5,000.00), or both;

564 (b) Every person who shall be convicted of sexual
565 battery under Section 97-3-95(1)(c) who is twenty-one (21) years
566 of age or older shall be imprisoned not more than thirty (30)
567 years in the State Penitentiary or fined not more than Ten
568 Thousand Dollars (\$10,000.00), or both, for the first offense, and

569 not more than forty (40) years in the State Penitentiary for each
570 subsequent offense.

571 (3) Every person who shall be convicted of sexual battery
572 under Section 97-3-95(1)(d) who is eighteen (18) years of age or
573 older shall be sentenced to death or shall be imprisoned for life
574 in the State Penitentiary if the jury cannot unanimously agree on
575 a penalty of death.

576 (4) Every person who shall be convicted of sexual battery
577 who is thirteen (13) years of age or older but under eighteen (18)
578 years of age shall be sentenced to such imprisonment, fine or
579 other sentence as the court, in its discretion, may determine.

580 **SECTION 16.** This act shall take effect and be in force from
581 and after July 1, 2007.