

By: Perkins

To: Penitentiary

HOUSE BILL NO. 437

1 AN ACT TO AMEND SECTIONS 47-5-138 AND 47-7-3, MISSISSIPPI
 2 CODE OF 1972, TO PROVIDE THAT OFFENDERS CONVICTED OF NONVIOLENT
 3 CRIMES SHALL NOT BE SUBJECT TO THE MANDATORY EIGHTY-FIVE PERCENT
 4 SENTENCING PROVISION; TO DEFINE NONVIOLENT CRIMES; TO BRING
 5 FORWARD FOR PURPOSES OF AMENDMENT SECTIONS 47-7-17 AND 47-7-37,
 6 MISSISSIPPI CODE OF 1972, WHICH PROVIDE FOR ELIGIBILITY FOR PAROLE
 7 AND FOR PERIODS OF PROBATION; AND FOR RELATED PURPOSES.

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

9 SECTION 1. Section 47-5-138, Mississippi Code of 1972, is
 10 amended as follows:

11 47-5-138. (1) The department may promulgate rules and
 12 regulations to carry out an earned time allowance program based on
 13 the good conduct and performance of an inmate. An inmate is
 14 eligible to receive an earned time allowance of one-half (1/2) of
 15 the period of confinement imposed by the court except those
 16 inmates excluded by law. When an inmate is committed to the
 17 custody of the department, the department shall determine a
 18 conditional earned time release date by subtracting the earned
 19 time allowance from an inmate's term of sentence. This subsection
 20 does not apply to any sentence imposed after June 30, 1995;
 21 provided, however, from and after July 1, 2000, this subsection
 22 shall apply to sentences for any person convicted of a nonviolent
 23 crime. For the purposes of this section, "nonviolent crime" means

24 any crime which does not involve the use or attempted use of any
25 force, the use or attempted use of a deadly weapon or a crime
26 which does not involve injury, attempted injury or the killing or
27 attempted killing of a human being.

28 (2) An inmate may forfeit all or part of his earned time
29 allowance for a serious violation of rules. No forfeiture of the
30 earned time allowance shall be effective except upon approval of
31 the commissioner or his designee, and forfeited earned time may
32 not be restored.

33 (3) (a) For the purposes of this subsection, "final order"
34 means an order of a state or federal court that dismisses a
35 lawsuit brought by an inmate while the inmate was in the custody
36 of the Department of Corrections as frivolous, malicious or for
37 failure to state a claim upon which relief could be granted.

38 (b) On receipt of a final order, the department shall
39 forfeit:

40 (i) Sixty (60) days of an inmate's accrued earned
41 time if the department has received one (1) final order as defined
42 herein;

43 (ii) One hundred twenty (120) days of an inmate's
44 accrued earned time if the department has received two (2) final
45 orders as defined herein;

46 (iii) One hundred eighty (180) days of an inmate's
47 accrued earned time if the department has received three (3) or
48 more final orders as defined herein.

49 (c) The department may not restore earned time
50 forfeited under this subsection.

51 (4) An inmate who meets the good conduct and performance
52 requirements of the earned time allowance program may be released
53 on his conditional earned time release date.

54 (5) For any sentence imposed after June 30, 1995, an inmate

55 may receive an earned time allowance of four and one-half (4-1/2)
56 days for each thirty (30) days served if the department determines
57 that the inmate has complied with the good conduct and performance
58 requirements of the earned time allowance program. The earned
59 time allowance under this subsection shall not exceed fifteen
60 percent (15%) of an inmate's term of sentence, unless the inmate
61 is convicted and sentenced for a nonviolent crime.

62 (6) Any inmate, who is released before the expiration of his
63 term of sentence under this section, shall be placed under
64 earned-release supervision until the expiration of the term of
65 sentence. The inmate shall retain inmate status and remain under
66 the jurisdiction of the department. The period of earned-release
67 supervision shall be conducted in the same manner as a period of
68 supervised parole. The department shall develop rules, terms and
69 conditions for the earned-release supervision program. The
70 commissioner shall designate the appropriate classification
71 committee or other division within the department to conduct
72 revocation hearings for inmates violating the conditions of
73 earned-release supervision.

74 (7) If the earned-release supervision is revoked, the inmate
75 shall serve the remainder of the sentence and the time the inmate
76 was on earned-release supervision, shall not be applied to and
77 shall not reduce his sentence.

78 SECTION 2. Section 47-7-3, Mississippi Code of 1972, is
79 amended as follows:

80 47-7-3. (1) Every prisoner who has been convicted of any
81 offense against the State of Mississippi, and is confined in the
82 execution of a judgment of such conviction in the Mississippi

83 State Penitentiary for a definite term or terms of one (1) year or
84 over, or for the term of his or her natural life, whose record of
85 conduct shows that such prisoner has observed the rules of the
86 penitentiary, and who has served not less than one-fourth (1/4) of
87 the total of such term or terms for which such prisoner was
88 sentenced, or, if sentenced to serve a term or terms of thirty
89 (30) years or more, or, if sentenced for the term of the natural
90 life of such prisoner, has served not less than ten (10) years of
91 such life sentence, may be released on parole as hereinafter
92 provided, except that:

93 (a) No prisoner convicted as a confirmed and habitual
94 criminal under the provisions of Sections 99-19-81 through
95 99-19-87 shall be eligible for parole;

96 (b) Any person who shall have been convicted of a sex
97 crime shall not be released on parole except for a person under
98 the age of nineteen (19) who has been convicted under Section
99 97-3-67;

100 (c) No one shall be eligible for parole until he shall
101 have served one (1) year of his sentence, unless such person has
102 accrued any meritorious earned time allowances, in which case he
103 shall be eligible for parole if he has served (i) nine (9) months
104 of his sentence or sentences, when his sentence or sentences is
105 two (2) years or less; (ii) ten (10) months of his sentence or
106 sentences when his sentence or sentences is more than two (2)
107 years but no more than five (5) years; and (iii) one (1) year of
108 his sentence or sentences when his sentence or sentences is more
109 than five (5) years;

110 (d) (i) No person shall be eligible for parole who

111 shall, on or after January 1, 1977, be convicted of robbery or
112 attempted robbery through the display of a firearm until he shall
113 have served ten (10) years if sentenced to a term or terms of more
114 than ten (10) years or if sentenced for the term of the natural
115 life of such person. If such person is sentenced to a term or
116 terms of ten (10) years or less, then such person shall not be
117 eligible for parole. The provisions of this paragraph (d) shall
118 also apply to any person who shall commit robbery or attempted
119 robbery on or after July 1, 1982, through the display of a deadly
120 weapon. This subparagraph (d)(i) shall not apply to persons
121 convicted after September 30, 1994;

122 (ii) No person shall be eligible for parole who
123 shall, on or after October 1, 1994, be convicted of robbery,
124 attempted robbery or carjacking as provided in Section 97-3-115 et
125 seq., through the display of a firearm or drive-by shooting as
126 provided in Section 97-3-109. The provisions of this subparagraph
127 (d)(ii) shall also apply to any person who shall commit robbery,
128 attempted robbery, carjacking or a drive-by shooting on or after
129 October 1, 1994, through the display of a deadly weapon;

130 (e) No person shall be eligible for parole who, on or
131 after July 1, 1994, is charged, tried, convicted and sentenced to
132 life imprisonment without eligibility for parole under the
133 provisions of Section 99-19-101;

134 (f) No person shall be eligible for parole who is
135 charged, tried, convicted and sentenced to life imprisonment under
136 the provisions of Section 99-19-101;

137 (g) No person shall be eligible for parole who is
138 convicted or whose suspended sentence is revoked after June 30,

139 1995; provided, however, persons convicted of a nonviolent crime
140 as defined in Section 47-5-138 shall be eligible for parole;

141 (h) An offender may be eligible for medical release
142 under Section 47-7-4.

143 (2) Notwithstanding any other provision of law, an inmate
144 shall not be eligible to receive earned time, good time or any
145 other administrative reduction of time which shall reduce the time
146 necessary to be served for parole eligibility as provided in
147 subsection (1) of this section; however, this subsection shall not
148 apply to the advancement of parole eligibility dates pursuant to
149 the Prison Overcrowding Emergency Powers Act. Moreover,
150 meritorious earned time allowances may be used to reduce the time
151 necessary to be served for parole eligibility as provided in
152 paragraph (c) of subsection (1) of this section.

153 (3) The State Parole Board shall by rules and regulations
154 establish a method of determining a tentative parole hearing date
155 for each eligible offender taken into the custody of the
156 Department of Corrections. The tentative parole hearing date
157 shall be determined within ninety (90) days after the department
158 has assumed custody of the offender. Such tentative parole
159 hearing date shall be calculated by a formula taking into account
160 the offender's age upon first commitment, number of prior
161 incarcerations, prior probation or parole failures, the severity
162 and the violence of the offense committed, employment history and
163 other criteria which in the opinion of the board tend to validly
164 and reliably predict the length of incarceration necessary before
165 the offender can be successfully paroled.

166 (4) Any inmate within twenty-four (24) months of his parole

167 eligibility date and who meets the criteria established by the
168 classification committee shall receive priority for placement in
169 any educational development and job training programs. Any inmate
170 refusing to participate in an educational development or job
171 training program may be ineligible for parole.

172 SECTION 3. Section 47-7-17, Mississippi Code of 1972, is
173 brought forward as follows:

174 47-7-17. Within one (1) year after his admission and at such
175 intervals thereafter as it may determine, the board shall secure
176 and consider all pertinent information regarding each offender,
177 except any under sentence of death or otherwise ineligible for
178 parole, including the circumstances of his offense, his previous
179 social history, his previous criminal record, including any
180 records of law enforcement agencies or of a youth court regarding
181 that offender's juvenile criminal history, his conduct, employment
182 and attitude while in the custody of the department, and the
183 reports of such physical and mental examinations as have been
184 made. The board shall furnish at least three (3) months' written
185 notice to each such offender of the date on which he is eligible
186 for parole.

187 Before ruling on the application for parole of any offender,
188 the board may have the offender appear before it and interview
189 him. The hearing shall be held two (2) months prior to the month
190 of eligibility in order for the department to address any special
191 conditions required by the board. No application for parole of a
192 person convicted of a capital offense shall be considered by the
193 board unless and until notice of the filing of such application
194 shall have been published at least once a week for two (2) weeks

195 in a newspaper published in or having general circulation in the
196 county in which the crime was committed. The board shall also
197 give notice of the filing of the application for parole to the
198 victim of the offense for which the prisoner is incarcerated and
199 being considered for parole or, in case the offense be homicide, a
200 designee of the immediate family of the victim, provided the
201 victim or designated family member has furnished in writing a
202 current address to the board for such purpose. A parole shall be
203 ordered only for the best interest of society, not as an award of
204 clemency; it shall not be considered to be a reduction of sentence
205 or pardon. An offender shall be placed on parole only when
206 arrangements have been made for his proper employment or for his
207 maintenance and care, and when the board believes that he is able
208 and willing to fulfill the obligations of a law-abiding citizen.
209 Within forty-eight (48) hours prior to the release of an offender
210 on parole, the Director of Records of the department shall give
211 the written notice which is required pursuant to Section 47-5-177.
212 Every offender while on parole shall remain in the legal custody
213 of the department from which he was released and shall be amenable
214 to the orders of the board. The board, upon rejecting the
215 application for parole of any offender, shall within thirty (30)
216 days following such rejection furnish that offender in general
217 terms the reasons therefor in writing. Upon determination by the
218 board that an offender is eligible for release by parole, notice
219 shall also be given by the board to the victim of the offense or
220 the victim's family member, as indicated above, regarding the date
221 when the offender's release shall occur, provided a current
222 address of the victim or the victim's family member has been

223 furnished in writing to the board for such purpose.

224 Failure to provide notice to the victim or the victim's
225 family member of the filing of the application for parole or of
226 any decision made by the board regarding parole shall not
227 constitute grounds for vacating an otherwise lawful parole
228 determination nor shall it create any right or liability, civilly
229 or criminally, against the board or any member thereof.

230 A letter of protest against granting an offender parole shall
231 not be treated as the conclusive and only reason for not granting
232 parole.

233 The board may adopt such other rules not inconsistent with
234 law as it may deem proper or necessary with respect to the
235 eligibility of offenders for parole, the conduct of parole
236 hearings, or conditions to be imposed upon parolees, including a
237 condition that the parolee submit, as provided in Section 47-5-601
238 to any type of breath, saliva or urine chemical analysis test, the
239 purpose of which is to detect the possible presence of alcohol or
240 a substance prohibited or controlled by any law of the State of
241 Mississippi or the United States. The board shall have the
242 authority to adopt rules permitting certain offenders to be placed
243 on unsupervised parole. However, in no case shall an offender be
244 placed on unsupervised parole before he has served a minimum of
245 three (3) years of supervised parole.

246 SECTION 4. Section 47-7-37, Mississippi Code of 1972, is
247 brought forward as follows:

248 47-7-37. The period of probation shall be fixed by the
249 court, and may at any time be extended or terminated by the court,
250 or judge in vacation. Such period with any extension thereof

251 shall not exceed five (5) years, except that in cases of desertion
252 and/or failure to support minor children, the period of probation
253 may be fixed and/or extended by the court for so long as the duty
254 to support such minor children exists.

255 At any time during the period of probation the court, or
256 judge in vacation, may issue a warrant for violating any of the
257 conditions of probation or suspension of sentence and cause the
258 probationer to be arrested. Any probation and parole officer may
259 arrest a probationer without a warrant, or may deputize any other
260 officer with power of arrest to do so by giving him a written
261 statement setting forth that the probationer has, in the judgment
262 of the probation and parole officer, violated the conditions of
263 probation. Such written statement delivered with the probationer
264 by the arresting officer to the official in charge of a county
265 jail or other place of detention shall be sufficient warrant for
266 the detention of the probationer.

267 The probation and parole officer after making an arrest shall
268 present to the detaining authorities a similar statement of the
269 circumstances of violation. The probation and parole officer
270 shall at once notify the court of the arrest and detention of the
271 probationer and shall submit a report in writing showing in what
272 manner the probationer has violated the conditions of probation.
273 Thereupon, or upon an arrest by warrant as herein provided, the
274 court, in termtime or vacation, shall cause the probationer to be
275 brought before it and may continue or revoke all or any part of
276 the probation or the suspension of sentence, and may cause the
277 sentence imposed to be executed or may impose any part of the
278 sentence which might have been imposed at the time of conviction.

279 If the probationer is arrested in a circuit court district in
280 the State of Mississippi other than that in which he was
281 convicted, the probation and parole officer, upon the written
282 request of the sentencing judge, shall furnish to the circuit
283 court or the county court of the county in which the arrest is
284 made, or to the judge of such court, a report concerning the
285 probationer, and such court or the judge in vacation shall have
286 authority, after a hearing, to continue or revoke all or any part
287 of probation or all or any part of the suspension of sentence, and
288 may in case of revocation proceed to deal with the case as if
289 there had been no probation. In such case, the clerk of the court
290 in which the order of revocation is issued shall forward a
291 transcript of such order to the clerk of the court of original
292 jurisdiction, and the clerk of that court shall proceed as if the
293 order of revocation had been issued by the court of original
294 jurisdiction. Upon the revocation of probation or suspension of
295 sentence of any offender, such offender shall be placed in the
296 legal custody of the State Department of Corrections and shall be
297 subject to the requirements thereof.

298 Any probationer who removes himself from the State of
299 Mississippi without permission of the court placing him on
300 probation, or the court to which jurisdiction has been
301 transferred, shall be deemed and considered a fugitive from
302 justice and shall be subject to extradition as now provided by
303 law. No part of the time that one is on probation shall be
304 considered as any part of the time that he shall be sentenced to
305 serve.

306 The arresting officer, except when a probation and parole

307 officer, shall be allowed the same fees as now provided by law for
308 arrest on warrant, and such fees shall be taxed against the
309 probationer and paid as now provided by law.

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

313 SECTION 5. This act shall take effect and be in force from
314 and after July 1, 2000.