

By: Guice

To: Penitentiary

## HOUSE BILL NO. 519

1 AN ACT TO AMEND SECTIONS 47-5-138 AND 47-7-3, MISSISSIPPI  
2 CODE OF 1972, TO PROVIDE THAT PERSONS CONVICTED OF NONVIOLENT  
3 CRIMES SHALL BE SUBJECT TO THE 50% SENTENCING PROVISION; TO ALLOW  
4 THE 50% SENTENCING PROVISION TO APPLY RETROACTIVELY TO NONVIOLENT  
5 OFFENDERS; TO DEFINE NONVIOLENT CRIME; TO PROVIDE THAT APPOINTED  
6 OR ELECTED OFFICIALS SHALL REMAIN UNDER THE 85% MANDATORY  
7 SENTENCING PROVISION; TO PROVIDE THAT PERSONS CONVICTED OF  
8 BURGLARY OF A DWELLING SHALL REMAIN UNDER THE 85% MANDATORY  
9 SENTENCING PROVISION; TO AMEND SECTION 47-7-17, MISSISSIPPI CODE  
10 OF 1972, IN CONFORMITY THERETO; AND FOR RELATED PURPOSES.

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

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

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

crime, except appointed or elected officials. For the purposes of  
this section "nonviolent crime" means any crime which does not  
involve the use or attempted use of any force, the use or  
attempted use of a deadly weapon or a crime which does not involve  
injury, attempted injury or the killing or attempted killing of a  
human being. The crime of burglary of a dwelling shall not be  
considered a nonviolent crime. Except as otherwise provided in  
this section, the provisions of this subsection shall apply  
retroactively to offenders who have been convicted of nonviolent  
crimes.

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

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

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

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

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

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

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

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

(5) For any sentence imposed after June 30, 1995, an inmate may receive an earned time allowance of four and one-half (4-1/2) days for each thirty (30) days served if the department determines that the inmate has complied with the good conduct and performance requirements of the earned time allowance program. The earned time allowance under this subsection shall not exceed fifteen percent (15%) of an inmate's term of sentence, unless the inmate is convicted and sentenced for a nonviolent crime.

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

(7) If the earned-release supervision is revoked, the inmate shall serve the remainder of the sentence and the time the inmate was on earned-release supervision, shall not be applied to and

85 shall not reduce his sentence.

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

88 47-7-3. (1) Every prisoner who has been convicted of any  
89 offense against the State of Mississippi, and is confined in the  
90 execution of a judgment of such conviction in the Mississippi  
91 State Penitentiary for a definite term or terms of one (1) year or  
92 over, or for the term of his or her natural life, whose record of  
93 conduct shows that such prisoner has observed the rules of the  
94 penitentiary, and who has served not less than one-fourth (1/4) of  
95 the total of such term or terms for which such prisoner was  
96 sentenced, or, if sentenced to serve a term or terms of thirty  
97 (30) years or more, or, if sentenced for the term of the natural  
98 life of such prisoner, has served not less than ten (10) years of  
99 such life sentence, may be released on parole as hereinafter  
100 provided, except that:

101 (a) No prisoner convicted as a confirmed and habitual  
102 criminal under the provisions of Sections 99-19-81 through  
103 99-19-87 shall be eligible for parole;

104 (b) Any person who shall have been convicted of a sex  
105 crime shall not be released on parole except for a person under  
106 the age of nineteen (19) who has been convicted under Section  
107 97-3-67;

108 (c) No one shall be eligible for parole until he shall  
109 have served one (1) year of his sentence, unless such person has  
110 accrued any meritorious earned time allowances, in which case he  
111 shall be eligible for parole if he has served (i) nine (9) months  
112 of his sentence or sentences, when his sentence or sentences is

two (2) years or less; (ii) ten (10) months of his sentence or sentences when his sentence or sentences is more than two (2) years but no more than five (5) years; and (iii) one (1) year of his sentence or sentences when his sentence or sentences is more than five (5) years;

(d) (i) No person shall be eligible for parole who shall, on or after January 1, 1977, be convicted of robbery or attempted robbery through the display of a firearm until he shall have served ten (10) years if sentenced to a term or terms of more than ten (10) years or if sentenced for the term of the natural life of such person. If such person is sentenced to a term or terms of ten (10) years or less, then such person shall not be eligible for parole. The provisions of this paragraph (d) shall also apply to any person who shall commit robbery or attempted robbery on or after July 1, 1982, through the display of a deadly weapon. This subparagraph (d)(i) shall not apply to persons convicted after September 30, 1994;

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

(e) No person shall be eligible for parole who, on or after July 1, 1994, is charged, tried, convicted and sentenced to life imprisonment without eligibility for parole under the

provisions of Section 99-19-101;

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

(g) No person shall be eligible for parole who is convicted or whose suspended sentence is revoked after June 30, 1995; provided, however, persons convicted of a nonviolent crime as defined in Section 47-5-138 shall be eligible for parole;

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

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

(3) The State Parole Board shall by rules and regulations establish a method of determining a tentative parole hearing date for each eligible offender taken into the custody of the Department of Corrections. The tentative parole hearing date shall be determined within ninety (90) days after the department has assumed custody of the offender. Such tentative parole hearing date shall be calculated by a formula taking into account the offender's age upon first commitment, number of prior

169 incarceration, prior probation or parole failures, the severity  
170 and the violence of the offense committed, employment history and  
171 other criteria which in the opinion of the board tend to validly  
172 and reliably predict the length of incarceration necessary before  
173 the offender can be successfully paroled.

174 (4) Any inmate within twenty-four (24) months of his parole  
175 eligibility date and who meets the criteria established by the  
176 classification committee shall receive priority for placement in  
177 any educational development and job training programs. Any inmate  
178 refusing to participate in an educational development or job  
179 training program may be ineligible for parole.

180 SECTION 3. Section 47-7-17, Mississippi Code of 1972, is  
181 amended as follows:

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

195 Before ruling on the application for parole of any offender,  
196 the board may have the offender appear before it and interview

197 him. The hearing shall be held two (2) months prior to the month  
198 of eligibility in order for the department to address any special  
199 conditions required by the board. No application for parole of a  
200 person convicted of a capital offense shall be considered by the  
201 board unless and until notice of the filing of such application  
202 shall have been published at least once a week for two (2) weeks  
203 in a newspaper published in or having general circulation in the  
204 county in which the crime was committed. The board shall also  
205 give notice of the filing of the application for parole to the  
206 victim of the offense for which the prisoner is incarcerated and  
207 being considered for parole or, in case the offense be homicide, a  
208 designee of the immediate family of the victim, provided the  
209 victim or designated family member has furnished in writing a  
210 current address to the board for such purpose. A parole shall be  
211 ordered only for the best interest of society, not as an award of  
212 clemency; it shall not be considered to be a reduction of sentence  
213 or pardon. An offender shall be placed on parole only when  
214 arrangements have been made for his proper employment or for his  
215 maintenance and care, and when the board believes that he is able  
216 and willing to fulfill the obligations of a law-abiding citizen.  
217 Within forty-eight (48) hours prior to the release of an offender  
218 on parole, the Director of Records of the department shall give  
219 the written notice which is required pursuant to Section 47-5-177.  
220 Every offender while on parole shall remain in the legal custody  
221 of the department from which he was released and shall be amenable  
222 to the orders of the board. The board, upon rejecting the  
223 application for parole of any offender, shall within thirty (30)  
224 days following such rejection furnish that offender in general

terms the reasons therefor in writing. Upon determination by the board that an offender is eligible for release by parole, notice shall also be given by the board to the victim of the offense or the victim's family member, as indicated above, regarding the date when the offender's release shall occur, provided a current address of the victim or the victim's family member has been furnished in writing to the board for such purpose.

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

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

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

253 years of supervised parole, except as otherwise provided in  
254 Section 47-5-138.

255 SECTION 4. This act shall take effect and be in force from  
256 and after July 1, 2000.