

By: Huggins

To: Judiciary

## SENATE BILL NO. 2946

1 AN ACT TO AMEND SECTION 47-5-138, MISSISSIPPI CODE OF 1972,  
2 TO PROVIDE THAT PERSONS CONVICTED OF NONVIOLENT CRIMES SHALL NOT  
3 BE SUBJECT TO THE MANDATORY EIGHTY-FIVE PERCENT SENTENCING  
4 PROVISIONS; TO DEFINE "CRIME OF VIOLENCE"; TO AMEND SECTION  
5 47-7-3, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT A PERSON  
6 CONVICTED OF A NONVIOLENT CRIME MAY BE ELIGIBLE FOR PAROLE; AND  
7 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) (a) 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 (b) A person sentenced for a nonviolent crime after  
22 June 30, 2000, is eligible to receive the earned time allowance  
23 provided in this subsection. A person is not eligible for the  
24 earned time allowance under this subsection if he has been  
25 convicted of a crime of violence. For purposes of this section  
26 "crime of violence" includes burglary of an occupied dwelling  
27 house and a felony for the sale or manufacture of a controlled  
28 substance under the Uniform Controlled Substances Law.

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

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

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

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

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

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

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

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

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

62 does not apply to any inmate who is eligible for the earned time  
63 allowance in subsection (1).

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

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

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

82 47-7-3. (1) Every prisoner who has been convicted of any  
83 offense against the State of Mississippi, and is confined in the  
84 execution of a judgment of such conviction in the Mississippi  
85 State Penitentiary for a definite term or terms of one (1) year or  
86 over, or for the term of his or her natural life, whose record of  
87 conduct shows that such prisoner has observed the rules of the  
88 penitentiary, and who has served not less than one-fourth (1/4) of  
89 the total of such term or terms for which such prisoner was  
90 sentenced, or, if sentenced to serve a term or terms of thirty  
91 (30) years or more, or, if sentenced for the term of the natural  
92 life of such prisoner, has served not less than ten (10) years of  
93 such life sentence, may be released on parole as hereinafter  
94 provided, except that:

95           (a) No prisoner convicted as a confirmed and habitual  
96 criminal under the provisions of Sections 99-19-81 through  
97 99-19-87 shall be eligible for parole;

98           (b) Any person who shall have been convicted of a sex  
99 crime shall not be released on parole except for a person under  
100 the age of nineteen (19) who has been convicted under Section  
101 97-3-67;

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

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

124           (ii) No person shall be eligible for parole who  
125 shall, on or after October 1, 1994, be convicted of robbery,  
126 attempted robbery or carjacking as provided in Section 97-3-115 et  
127 seq., through the display of a firearm or drive-by shooting as

128 provided in Section 97-3-109. The provisions of this subparagraph  
129 (d)(ii) shall also apply to any person who shall commit robbery,  
130 attempted robbery, carjacking or a drive-by shooting on or after  
131 October 1, 1994, through the display of a deadly weapon;

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

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

139 (g) No person shall be eligible for parole who is  
140 convicted or whose suspended sentence is revoked after June 30,  
141 1995; except a person who is convicted of a nonviolent crime and  
142 who is eligible for the earned time allowance under Section  
143 47-5-138(1) shall be eligible for parole;

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

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

156 (3) The State Parole Board shall by rules and regulations  
157 establish a method of determining a tentative parole hearing date  
158 for each eligible offender taken into the custody of the  
159 Department of Corrections. The tentative parole hearing date  
160 shall be determined within ninety (90) days after the department

161 has assumed custody of the offender. Such tentative parole  
162 hearing date shall be calculated by a formula taking into account  
163 the offender's age upon first commitment, number of prior  
164 incarcerations, prior probation or parole failures, the severity  
165 and the violence of the offense committed, employment history and  
166 other criteria which in the opinion of the board tend to validly  
167 and reliably predict the length of incarceration necessary before  
168 the offender can be successfully paroled.

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

175 SECTION 3. This act shall take effect and be in force from  
176 and after July 1, 2000.