

REPORT OF CONFERENCE COMMITTEE

MR. PRESIDENT AND MR. SPEAKER:

We, the undersigned conferees, have had under consideration the amendments to the following entitled BILL:

S. B. No. 2800: Corrections; exclude nonviolent offenders from mandatory 85% sentence.

We, therefore, respectfully submit the following report and recommendation:

1. That the Senate concur in House Amendment No. 1 with the following exception(s):

AMEND by striking lines 9 through 178 and inserting in lieu thereof the following:

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

47-5-138. (1) (a) The department may promulgate rules and regulations to carry out an earned time allowance program based on the good conduct and performance of an inmate. An inmate is eligible to receive an earned time allowance of one-half (1/2) of the period of confinement imposed by the court except those inmates excluded by law. When an inmate is committed to the custody of the department, the department shall determine a conditional earned time release date by subtracting the earned time allowance from an inmate's term of sentence. This paragraph does not apply to any sentence imposed after June 30, 1995.

(b) From and after July 1, 2000, any inmate classified as a nonviolent offender by the Department of Corrections who, after July 1, 2000, participates in an approved work activity or educational activity without any disciplinary problems shall be eligible to receive a conditional earned-time allowance of one (1) day for each day after July 1, 2000, that he participates in such approved work activity or educational activity without any disciplinary problems. The department shall submit any inmate who

meets the good conduct and performance requirement of the conditional earned-time allowance program before the inmate's conditional earned-time release date. The Parole Board shall review the inmate's record and, upon approval by the Parole Board, the inmate may be released on his conditional earned-time release date. Any nonviolent offender who has a medical or physical impairment which prevents him from participating in a work or educational program and who has no disciplinary problems may be eligible to have time subtracted from his total sentence in such an amount as the Mississippi Department of Corrections by rule and regulation deems appropriate. "Nonviolent" means a person convicted of a felony other than: sex crimes, murder, robbery, manslaughter, burglary under Section 97-17-23, felony drug offenses under Section 41-29-139, first degree arson or aggravated assault.

(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 classified as a nonviolent offender as provided in subsection (1) of this section.

(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 shall not reduce his sentence.

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

47-7-3. (1) Every prisoner who has been convicted of any offense against the State of Mississippi, and is confined in the execution of a judgment of such conviction in the Mississippi State Penitentiary for a definite term or terms of one (1) year or over, or for the term of his or her natural life, whose record of conduct shows that such prisoner has observed the rules of the

penitentiary, and who has served not less than one-fourth (1/4) of the total of such term or terms for which such prisoner was sentenced, or, if sentenced to serve a term or terms of thirty (30) years or more, or, if sentenced for the term of the natural life of such prisoner, has served not less than ten (10) years of such life sentence, may be released on parole as hereinafter provided, except that:

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

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

(c) No one shall be eligible for parole until he shall have served one (1) year of his sentence, unless such person has accrued any meritorious earned time allowances, in which case he shall be eligible for parole if he has served (i) nine (9) months 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 provided 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 incarcerations, prior probation or parole failures, the severity and the violence of the offense committed, employment history and other criteria which in the opinion of the board tend to validly and reliably predict the length of incarceration necessary before the offender can be successfully paroled.

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

SECTION 3. Section 47-5-1003, Mississippi Code of 1972, is amended as follows:

47-5-1003. (1) An intensive supervision program may be used as an alternative to incarceration for offenders who are low risk and nonviolent as selected by the department or court. Any offender convicted of a sex crime or a felony for the sale or manufacture of a controlled substance under the Uniform Controlled Substances Law shall not be placed in the program.

(2) The court placing an offender in the intensive supervision program may, acting upon the advice and consent of the commissioner at the time of the initial sentencing only, and not later than one (1) year after the defendant has been delivered to the custody of the department, suspend the further execution of the sentence and place the defendant on intensive supervision, except when a death sentence or life imprisonment is the maximum penalty which may be imposed or if the defendant has been confined for the conviction of a felony on a previous occasion in any court or courts of the United States and of any state or territories thereof or has been convicted of a felony involving the use of a deadly weapon.

(3) To protect and to ensure the safety of the state's citizens, any offender who violates an order or condition of the intensive supervision program shall be arrested by the correctional field officer and placed in the actual custody of the Department of Corrections. Such offender is under the full and

complete jurisdiction of the department and subject to removal from the program by the classification committee.

(4) From and after July 1, 2001, all persons who have served at least six (6) months in the custody of the Department of Corrections and who are within eighteen (18) months of eligibility for parole or release shall be eligible for house arrest under the electronic home detention program or for assignment to a residential community work center described in Section 47-5-401. Any offender who violates an order or condition of the program shall be required to serve as much as the full term to which sentenced either under house arrest or while incarcerated, in the discretion of the Parole Board.

(5) When any circuit or county court places an offender in an intensive supervision program, the court shall give notice to the Mississippi Department of Corrections within fifteen (15) days of the court's decision to place the offender in an intensive supervision program. Notice shall be delivered to the central office of the Mississippi Department of Corrections and to the regional office of the department which will be providing supervision to the offender in an intensive supervision program.

SECTION 4. The following shall be codified as Section 47-7-72, Mississippi Code of 1972:

47-7-72. (1) The Department of Corrections shall not accept any person convicted of three (3) or more violent felony offenses placed on probation or released on parole under the Uniform Act for Out-of-State Parolee Suspension.

(2) The Department of Corrections shall not consent to any person convicted of three (3) or more violent felony offenses being sent to reside in Mississippi under Section 47-7-71.

(3) The Department of Corrections shall immediately notify any state having an out-of-state parolee agreement with Mississippi of this condition and take immediate action to modify such agreements, or to renounce such agreement if a contracting state refuses to agree with the restrictions placed on such agreements with the Department of Corrections under this section.

SECTION 5. This act shall take effect and be in force from and after July 2, 2000.

FURTHER AMEND the title by inserting after the semicolon on line 7 the following:

TO AMEND SECTION 47-5-1003, MISSISSIPPI CODE OF 1972, TO REVISE ELIGIBILITY FOR HOUSE ARREST AND TO REQUIRE COURTS PLACING AN OFFENDER IN AN INTENSIVE SUPERVISION PROGRAM TO GIVE NOTICE; TO CREATE SECTION 47-7-72, MISSISSIPPI CODE OF 1972, TO PROHIBIT ACCEPTANCE OF AN OUT-OF-STATE PAROLEE WHO HAS THREE OR MORE VIOLENT FELONY CONVICTIONS;

2. That the House concur in the above exception(s).

CONFEREES FOR THE SENATE

CONFEREES FOR THE HOUSE

X _____

Bennie L. Turner

X _____

Edward Blackmon, Jr.

X _____

Travis L. Little

X _____

Warner F. McBride

X _____

Hob Bryan

X _____

Bennett Malone