

By: Representatives Flaggs, Mayo

To: Judiciary B;
Penitentiary

HOUSE BILL NO. 167

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 NOT BE SUBJECT TO THE MANDATORY EIGHTY-FIVE PERCENT
4 SENTENCING PROVISIONS; TO DEFINE NONVIOLENT CRIME; AND FOR RELATED
5 PURPOSES.

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

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

9 47-5-138. (1) The department may promulgate rules and
10 regulations to carry out an earned time allowance program based on
11 the good conduct and performance of an inmate. An inmate is
12 eligible to receive an earned time allowance of one-half (1/2) of
13 the period of confinement imposed by the court except those
14 inmates excluded by law. When an inmate is committed to the
15 custody of the department, the department shall determine a
16 conditional earned time release date by subtracting the earned
17 time allowance from an inmate's term of sentence. This subsection
18 does not apply to any sentence imposed after June 30, 1995;
19 however, from and after July 1, 2001, this subsection shall apply
20 to sentences for any person convicted of a nonviolent crime. For
21 the purposes of this section "nonviolent crime" means any crime
22 which does not involve the use or attempted use of any force, the
23 use or attempted use of a deadly weapon or a crime which does not
24 involve injury, attempted injury or the killing or attempted
25 killing of a human being. The term "nonviolent crime" does not
26 include:

27 (a) Burglary of a dwelling as defined in Section
28 97-17-19 through 97-17-27;



29 (b) Any felony conviction under Sections 97-17-1,
30 97-17-3, 97-17-5, 97-17-7, 97-17-9, 97-17-11 and 97-17-13;

31 (c) Any felony conviction under Section 41-29-139
32 relating to controlled substances or counterfeit substances; or

33 (d) Any elected public official or any public official
34 appointed by an elected board or body.

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

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

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

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

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

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

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

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



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

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

81 (7) If the earned-release supervision is revoked, the inmate
82 shall serve the remainder of the sentence and the time the inmate
83 was on earned-release supervision, shall not be applied to and
84 shall not reduce his sentence.

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

87 47-7-3. (1) Every prisoner who has been convicted of any
88 offense against the State of Mississippi, and is confined in the
89 execution of a judgment of such conviction in the Mississippi
90 State Penitentiary for a definite term or terms of one (1) year or
91 over, or for the term of his or her natural life, whose record of
92 conduct shows that such prisoner has observed the rules of the
93 penitentiary, and who has served not less than one-fourth (1/4) of



94 the total of such term or terms for which such prisoner was
95 sentenced, or, if sentenced to serve a term or terms of thirty
96 (30) years or more, or, if sentenced for the term of the natural
97 life of such prisoner, has served not less than ten (10) years of
98 such life sentence, may be released on parole as hereinafter
99 provided, except that:

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

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

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

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



127 weapon. This subparagraph (d)(i) shall not apply to persons
128 convicted after September 30, 1994;

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

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

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

144 (g) No person shall be eligible for parole who is
145 convicted or whose suspended sentence is revoked after June 30,
146 1995; however, a person convicted of a nonviolent crime, as
147 defined in Section 47-5-138, shall be eligible for parole.

148 * * *

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



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

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

178 SECTION 3. This act shall take effect and be in force from
179 and after July 1, 2001.

