

By: Representatives Ellis, Clarke, Coleman
(29th), Henderson, Huddleston, Middleton,
Thomas

To: Judiciary B;
Penitentiary

HOUSE BILL NO. 852

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; TO REQUIRE THE
5 MISSISSIPPI DEPARTMENT OF CORRECTIONS TO CREATE A REHABILITATIVE
6 PROGRAM FOR NONVIOLENT OFFENDERS WHO RECEIVE AN EARNED TIME
7 ALLOWANCE OF ONE-HALF OF THE PERIOD OF CONFINEMENT; AND FOR
8 RELATED PURPOSES.

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

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

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



30 (a) Burglary of a dwelling as defined in Section
31 97-17-19 through 97-17-27;

32 (b) Any felony conviction under Sections 97-17-1,
33 97-17-3, 97-17-5, 97-17-7, 97-17-9, 97-17-11 and 97-17-13;

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

36 (d) Any elected public official or any public official
37 appointed by an elected board or body.

38 (2) Nonviolent offenders who receive an earned time
39 allowance of one-half (½) of their period of confinement shall be
40 placed in a rehabilitative program to be created by the
41 Mississippi Department of Corrections for a period of not less
42 than three (3) months.

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

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

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

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

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



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

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

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

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

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

89 (8) If the earned-release supervision is revoked, the inmate
90 shall serve the remainder of the sentence and the time the inmate
91 was on earned-release supervision, shall not be applied to and
92 shall not reduce his sentence.



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

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

108 (a) No prisoner convicted as a confirmed and habitual
109 criminal under the provisions of Sections 99-19-81 through
110 99-19-87 shall be eligible for parole;

111 (b) Any person who shall have been convicted of a sex
112 crime shall not be released on parole except for a person under
113 the age of nineteen (19) who has been convicted under Section
114 97-3-67;

115 (c) No one shall be eligible for parole until he shall
116 have served one (1) year of his sentence, unless such person has
117 accrued any meritorious earned time allowances, in which case he
118 shall be eligible for parole if he has served (i) nine (9) months
119 of his sentence or sentences, when his sentence or sentences is
120 two (2) years or less; (ii) ten (10) months of his sentence or
121 sentences when his sentence or sentences is more than two (2)
122 years but no more than five (5) years; and (iii) one (1) year of
123 his sentence or sentences when his sentence or sentences is more
124 than five (5) years;



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

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

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

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

152 (g) No person shall be eligible for parole who is
153 convicted or whose suspended sentence is revoked after June 30,
154 1995; however, a person convicted of a nonviolent crime, as
155 defined in Section 47-5-138, shall be eligible for parole;

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



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

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

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

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

