

By: Senator(s) Jackson, Harden, Jordan,
Frazier, Williamson, Walls, Horhn, Dawkins

To: Judiciary

SENATE BILL NO. 2569

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 85% SENTENCING PROVISIONS; TO AMEND
4 SECTION 47-7-3, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT A PERSON
5 CONVICTED OF A NONVIOLENT CRIME MAY BE ELIGIBLE FOR PAROLE; TO
6 AMEND SECTION 47-7-5, MISSISSIPPI CODE OF 1972, TO REMOVE THE
7 REPEALER ON THE STATE PAROLE BOARD; TO AMEND SECTION 47-7-53,
8 MISSISSIPPI CODE OF 1972, TO CONFORM; TO AMEND SECTION 47-5-1003,
9 MISSISSIPPI CODE OF 1972, TO REVISE ELIGIBILITY FOR HOUSE ARREST;
10 TO CREATE CODE SECTION 47-7-72, MISSISSIPPI CODE OF 1972, TO
11 PROHIBIT THE DEPARTMENT OF CORRECTIONS FROM ACCEPTING FOR
12 SUPERVISION AN OUT-OF-STATE PAROLEE WHO HAS THREE OR MORE VIOLENT
13 FELONY CONVICTIONS; AND FOR RELATED PURPOSES.

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

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

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

27 (b) A person sentenced for a nonviolent crime after
28 June 30, 2000, is eligible to receive the earned time allowance
29 provided in this subsection. A person is not eligible for the
30 earned time allowance under this subsection if he has been
31 convicted of a crime of violence.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

142 (g) No person shall be eligible for parole who is
143 convicted or whose suspended sentence is revoked after June 30,
144 1995; except a person who is convicted of a nonviolent crime and
145 who is eligible for the earned time allowance under Section
146 47-5-138(1) shall be eligible for parole;

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

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. Section 47-7-5, Mississippi Code of 1972, is
179 amended as follows:

180 47-7-5. (1) The State Parole Board, created under former
181 Section 47-7-5, is hereby created, continued and reconstituted and
182 shall be composed of five (5) members. The Governor shall appoint
183 the members with the advice and consent of the Senate. All terms
184 shall be at the will and pleasure of the Governor. Any vacancy
185 shall be filled by the Governor, with the advice and consent of
186 the Senate. The Governor shall appoint a chairman of the board.

187 (2) Any person who is appointed to serve on the board shall
188 possess at least a bachelor's degree or a high school diploma and
189 four (4) years' work experience. Each member shall devote his
190 full time to the duties of his office and shall not engage in any
191 other business or profession or hold any other public office. A
192 member shall not receive compensation or per diem in addition to
193 his salary as prohibited under Section 25-3-38. Each member shall
194 keep such hours and workdays as required of full-time state
195 employees under Section 25-1-98. Individuals shall be appointed
196 to serve on the board without reference to their political

197 affiliations. Each board member, including the chairman, may be
198 reimbursed for actual and necessary expenses as authorized by
199 Section 25-3-41; but a member shall not be reimbursed for travel
200 expenses from his residence to the nearest state penitentiary.

201 (3) The board shall have exclusive responsibility for the
202 granting of parole as provided by Sections 47-7-3 and 47-7-17 and
203 shall have exclusive authority for revocation of the same. The
204 board shall have exclusive responsibility for investigating
205 clemency recommendations upon request of the Governor.

206 (4) The board, its members and staff shall be immune from
207 civil liability for any official acts taken in good faith and in
208 exercise of the board's legitimate governmental authority.

209 (5) The budget of the board shall be funded through a
210 separate line item within the general appropriation bill for the
211 support and maintenance of the department. Employees of the
212 department which are employed by or assigned to the board shall
213 work under the guidance and supervision of the board. There shall
214 be an executive secretary to the board who shall be responsible
215 for all administrative and general accounting duties related to
216 the board. The executive secretary shall keep and preserve all
217 records and papers pertaining to board.

218 (6) The board shall have no authority or responsibility for
219 supervision of offenders granted a release for any reason,
220 including, but not limited to, probation, parole or executive
221 clemency or other offenders requiring the same through interstate
222 compact agreements. The supervision shall be provided exclusively
223 by the staff of the Division of Community Services of the
224 department.

225 (7) The State Parole Board, immediately after the effective
226 date of this act, shall review all cases where an offender was
227 denied parole and any eligibility for reconsideration for parole
228 for at least one (1) year after denial.

229 (8) The State Parole Board shall review and investigate all
230 cases where offenders have been diagnosed with a serious illness.
231 If the Medical Director of the Department of Corrections certifies
232 to the State Parole Board that an offender is suffering from a
233 terminal illness, the State Parole Board shall parole the offender
234 with the approval and consent of the Commissioner of the
235 Department of Corrections and the medical director.

236 * * *

237 SECTION 4. Section 47-7-53, Mississippi Code of 1972, is
238 amended as follows:

239 47-7-53. If the Parole Board is abolished, the Department of
240 Corrections shall assume and exercise all the duties, powers and
241 responsibilities of the State Parole Board. The
242 Commissioner * * * may assign to the appropriate officers and
243 divisions any powers and duties deemed appropriate to carry out
244 the duties and powers of the Parole Board. Wherever the terms
245 "State Parole Board" or "Parole Board" appear in any state law,
246 they shall mean the Department of Corrections.

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

249 47-5-1003. (1) An intensive supervision program may be used
250 as an alternative to incarceration for offenders who are low risk
251 and nonviolent as selected by the department or court. Any
252 offender convicted of a sex crime or a felony for the sale or
253 manufacture of a controlled substance under the uniform controlled
254 substances law shall not be placed in the program.

255 (2) The court placing an offender in the intensive
256 supervision program may, acting upon the advice and consent of the
257 commissioner at the time of the initial sentencing only, and not
258 later than one (1) year after the defendant has been delivered to
259 the custody of the department, suspend the further execution of
260 the sentence and place the defendant on intensive supervision,
261 except when a death sentence or life imprisonment is the maximum

262 penalty which may be imposed or if the defendant has been confined
263 for the conviction of a felony on a previous occasion in any court
264 or courts of the United States and of any state or territories
265 thereof or has been convicted of a felony involving the use of a
266 deadly weapon.

267 (3) To protect and to ensure the safety of the state's
268 citizens, any offender who violates an order or condition of the
269 intensive supervision program shall be arrested by the
270 correctional field officer and placed in the actual custody of the
271 Department of Corrections. Such offender is under the full and
272 complete jurisdiction of the department and subject to removal
273 from the program by the classification committee.

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

282 The courts may not require an offender to complete the
283 intensive supervision program as a condition of probation or
284 post-release supervision.

285 (5) Any offender serving a sentence for only nonviolent
286 crimes and who is within one (1) year of eligibility for parole or
287 release may be considered by the classification committee for
288 house arrest under the electronic home detention program. Any
289 offender who violates an order or condition of the program shall
290 be required to serve the full term to which sentenced, in the
291 discretion of the department, either under house arrest or while
292 incarcerated.

293 SECTION 6. The following provision shall be codified as
294 Section 47-7-72, Mississippi Code of 1972:

295 47-7-72. (1) The Department of Corrections shall not accept
296 any person convicted of three (3) or more violent felony offenses
297 placed on probation or released on parole under the Uniform Act
298 for Out-of-State Parolee Suspension.

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

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

308 SECTION 7. This act shall take effect and be in force from
309 and after July 1, 2001.