

By: Senator(s) Smith (By Request)

To:

SENATE BILL NO. 3028

1 AN ACT TO AMEND SECTION 47-5-99, MISSISSIPPI CODE OF 1972, TO
2 ABOLISH CLASSIFICATION COMMITTEES AND TO CREATE CLASSIFICATION
3 HEARING OFFICERS AND DISCIPLINARY HEARING OFFICERS; TO AMEND
4 SECTIONS 47-5-101, 47-5-103, 47-5-104, 47-5-138, 47-5-138.1,
5 47-5-181, 47-5-401, 47-5-451, 47-5-1003, 47-7-3 AND 43-21-261,
6 MISSISSIPPI CODE OF 1972, TO CONFORM; AND FOR RELATED PURPOSES.

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

8 SECTION 1. Section 47-5-99, Mississippi Code of 1972, is
9 amended as follows:

10 47-5-99. There are hereby created classification hearing
11 officers and disciplinary hearing officers of the correctional
12 system to be appointed by the commissioner. * * *

13 SECTION 2. Section 47-5-101, Mississippi Code of 1972, is
14 amended as follows:

15 47-5-101. The classification and disciplinary hearing
16 officers shall maintain a record of all actions and orders by
17 minutes * * *. The hearing officers shall meet on a regular
18 basis * * *. * * *

19 SECTION 3. Section 47-5-103, Mississippi Code of 1972, is
20 amended as follows:

21 47-5-103. (1) The classification hearing officer shall be
22 responsible for assigning a classification to each offender within
23 forty (40) days after the offender's commitment to the custody of
24 the department. The classification shall determine the offender's
25 work duties, living quarters, educational, vocational or other
26 rehabilitation programs, and privileges to be accorded the
27 offender while in custody of the department. The classification
28 hearing officer, in assigning classifications, shall consider the

29 offender's age, offense and surrounding circumstances, the
30 complete record of the offender's criminal history including
31 records of law enforcement agencies or of a youth court regarding
32 that offender's juvenile criminal history, family background,
33 education, practical or employment experience, interests and
34 abilities as evidenced by mental and psychological examination and
35 knowledge obtained by the classification hearing officer in
36 personal interview with the offender. The classification hearing
37 officer shall use the above criteria to assign each offender a
38 classification which will serve and enhance the best interests and
39 general welfare of the offender. The classification hearing
40 officer shall provide the State Parole Board with a copy of the
41 classification assigned to each offender in the custody of the
42 department who is eligible for parole.

43 (2) * * * The classification board, consisting of the
44 commissioner, or his designee, deputy commissioner of institutions
45 and the director of offender services may change an action of the
46 classification or disciplinary hearing officer if the board makes
47 a determination that the action of the hearing officer was not
48 supported by sufficient factual information. The commissioner, in
49 emergency situations, may suspend the classification of an
50 offender or offenders for a period of not exceeding fifteen (15)
51 days to relieve the emergency situation. The classification of
52 each offender may be reviewed by a classification hearing officer
53 at least once each year. In no case shall an offender serve as a
54 servant in the home of any employee other than authorized by the
55 commissioner.

56 (3) The classification board shall establish substantive and
57 procedural rules and regulations governing the assignment and
58 alteration of inmate classifications, and shall make such rules
59 and regulations available to any offender upon request.

60 SECTION 4. Section 47-5-104, Mississippi Code of 1972, is
61 amended as follows:

62 47-5-104. * * * The commissioner shall designate a
63 disciplinary hearing officer to hear evidence and to make
64 decisions in all cases when an offender has been issued a rule
65 violation report and is subject to be demoted or having earned
66 time taken from him. All proceedings of a disciplinary hearing
67 officer shall be taped and retained for at least three (3) years.
68 The commissioner shall not attend any hearings whereby an offender
69 is subject to be demoted or having earned time taken away.

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

72 47-5-138. (1) The department may promulgate rules and
73 regulations to carry out an earned time allowance program based on
74 the good conduct and performance of an inmate. An inmate is
75 eligible to receive an earned time allowance of one-half (1/2) of
76 the period of confinement imposed by the court except those
77 inmates excluded by law. When an inmate is committed to the
78 custody of the department, the department shall determine a
79 conditional earned time release date by subtracting the earned
80 time allowance from an inmate's term of sentence. This subsection
81 does not apply to any sentence imposed after June 30, 1995.

82 (2) An inmate may forfeit all or part of his earned time
83 allowance for a serious violation of rules. No forfeiture of the
84 earned time allowance shall be effective except upon approval of
85 the commissioner or his designee, and forfeited earned time may
86 not be restored.

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

92 (b) On receipt of a final order, the department shall
93 forfeit:

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

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

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

103 (c) The department may not restore earned time
104 forfeited under this subsection.

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

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

115 (6) Any inmate, who is released before the expiration of his
116 term of sentence under this section, shall be placed under
117 earned-release supervision until the expiration of the term of
118 sentence. The inmate shall retain inmate status and remain under
119 the jurisdiction of the department. The period of earned-release
120 supervision shall be conducted in the same manner as a period of
121 supervised parole. The department shall develop rules, terms and
122 conditions for the earned-release supervision program. The
123 commissioner shall designate the appropriate hearing officer
124 within the department to conduct revocation hearings for inmates
125 violating the conditions of earned-release supervision.

126 (7) If the earned-release supervision is revoked, the inmate
127 shall serve the remainder of the sentence and the time the inmate
128 was on earned-release supervision, shall not be applied to and
129 shall not reduce his sentence.

130 SECTION 6. Section 47-5-138.1, Mississippi Code of 1972, is
131 amended as follows:

132 47-5-138.1. In addition to any other administrative
133 reduction of sentence, an offender in trusty status as defined
134 by * * * the Department of Corrections may be awarded a trusty
135 time allowance of ten (10) days' reduction of sentence for each
136 thirty (30) days of participation in approved work programs while
137 in trusty status.

138 SECTION 7. Section 47-5-181, Mississippi Code of 1972, is
139 amended as follows:

140 47-5-181. (1) The Department of Corrections is authorized
141 to convert four (4) community work centers to pre-release centers.
142 The department shall convert the community work centers as
143 follows: one (1) center in the northern part of the state, two
144 (2) centers in the central part of the state, and one (1) center
145 in the southern part of the state.

146 (2) The department may place any inmate in a pre-release
147 center if: (a) the inmate is within one (1) year of his release
148 date, and (b) the inmate is approved for placement by the
149 classification hearing officer and the commissioner.

150 (3) The department shall notify, by certified mail, each
151 member of the board of supervisors of the county in which the
152 center is located of the department's intent to convert the
153 community work center to a pre-release center. The board of
154 supervisors shall have thirty (30) days after the date of the
155 mailing to disapprove the conversion of the center. If the board
156 of supervisors disapproves of the pre-release center, the
157 department shall not convert the community work center.

158 SECTION 8. Section 47-5-401, Mississippi Code of 1972, is
159 amended as follows:

160 47-5-401. (1) There is hereby authorized, in each county of
161 the state, a public service work program for state inmates in
162 custody of the county. Such a program may be established at the
163 option of the county in accordance with the provisions of Sections
164 47-5-401 through 47-5-421. The department shall also recommend
165 rules and regulations concerning the participation of state
166 inmates in the program.

167 (2) An inmate shall not be eligible to participate in a work
168 program established in accordance with the provisions of Sections
169 47-5-401 through 47-5-421 if he has been convicted of any crime of
170 violence, including but not limited to murder, aggravated assault,
171 rape, robbery or armed robbery.

172 (3) The inmates participating in the work program
173 established in accordance with the provisions of Sections 47-5-401
174 through 47-5-421 are restricted to the performance of public
175 service work for counties, municipalities, the state or nonprofit
176 charitable organizations, as defined by Section 501(c)(3) of the
177 Internal Revenue Code of 1986, except that * * * the Department of
178 Corrections must approve all requests by nonprofit charitable
179 organizations to use offenders to perform any public service work.
180 Upon request of the Board of Trustees of State Institutions of
181 Higher Learning, or the board of trustees of a county school
182 district, municipal school district or junior college district,
183 the inmates may be permitted to perform work for such boards.

184 SECTION 9. Section 47-5-451, Mississippi Code of 1972, is
185 amended as follows:

186 47-5-451. (1) There is hereby authorized, in each county of
187 the state, a public service work program for state inmates in
188 custody of the county. Such a program may be established at the
189 option of the county in accordance with the provisions of Sections
190 47-5-401 through 47-5-421. The department shall also recommend

191 rules and regulations concerning the participation of state
192 inmates in the program.

193 (2) An inmate shall not be eligible to participate in a work
194 program established in accordance with the provisions of Sections
195 47-5-401 through 47-5-421, if he has been convicted of any crime
196 of violence, including but not limited to murder, aggravated
197 assault, rape, robbery or armed robbery.

198 (3) The inmates participating in the work program
199 established in accordance with the provisions of Sections 47-5-401
200 through 47-5-421, are restricted to the performance of public
201 service work for counties, municipalities, the state or nonprofit
202 charitable organizations, as defined by Section 501(c)(3) of the
203 Internal Revenue Code of 1986, except that the * * * Department of
204 Corrections must approve all requests by nonprofit charitable
205 organizations to use offenders to perform any public service work.
206 Upon request of the Board of Trustees of State Institutions of
207 Higher Learning, or the board of trustees of a county school
208 district, municipal school district or junior college district,
209 the inmates may be permitted to perform work for such boards.

210 SECTION 10. Section 47-5-1003, Mississippi Code of 1972, is
211 amended as follows:

212 47-5-1003. (1) An intensive supervision program may be used
213 as an alternative to incarceration for offenders who are low risk
214 and nonviolent as selected by the department or court. Any
215 offender convicted of a sex crime or a felony for the sale or
216 manufacture of a controlled substance under the uniform controlled
217 substances law shall not be placed in the program.

218 (2) The court placing an offender in the intensive
219 supervision program may, acting upon the advice and consent of the
220 commissioner at the time of the initial sentencing only, and not
221 later than one (1) year after the defendant has been delivered to
222 the custody of the department, suspend the further execution of
223 the sentence and place the defendant on intensive supervision,

224 except when a death sentence or life imprisonment is the maximum
225 penalty which may be imposed or if the defendant has been confined
226 for the conviction of a felony on a previous occasion in any court
227 or courts of the United States and of any state or territories
228 thereof or has been convicted of a felony involving the use of a
229 deadly weapon.

230 (3) To protect and to ensure the safety of the state's
231 citizens, any offender who violates an order or condition of the
232 intensive supervision program shall be arrested by the
233 correctional field officer and placed in the actual custody of the
234 Department of Corrections. Such offender is under the full and
235 complete jurisdiction of the department and subject to removal
236 from the program by the classification hearing officer.

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

245 The courts may not require an offender to complete the
246 intensive supervision program as a condition of probation or
247 post-release supervision.

248 SECTION 11. Section 47-7-3, Mississippi Code of 1972, is
249 amended as follows:

250 47-7-3. (1) Every prisoner who has been convicted of any
251 offense against the State of Mississippi, and is confined in the
252 execution of a judgment of such conviction in the Mississippi
253 State Penitentiary for a definite term or terms of one (1) year or
254 over, or for the term of his or her natural life, whose record of
255 conduct shows that such prisoner has observed the rules of the
256 penitentiary, and who has served not less than one-fourth (1/4) of

257 the total of such term or terms for which such prisoner was
258 sentenced, or, if sentenced to serve a term or terms of thirty
259 (30) years or more, or, if sentenced for the term of the natural
260 life of such prisoner, has served not less than ten (10) years of
261 such life sentence, may be released on parole as hereinafter
262 provided, except that:

263 (a) No prisoner convicted as a confirmed and habitual
264 criminal under the provisions of Sections 99-19-81 through
265 99-19-87 shall be eligible for parole;

266 (b) Any person who shall have been convicted of a sex
267 crime shall not be released on parole except for a person under
268 the age of nineteen (19) who has been convicted under Section
269 97-3-67;

270 (c) No one shall be eligible for parole until he shall
271 have served one (1) year of his sentence, unless such person has
272 accrued any meritorious earned time allowances, in which case he
273 shall be eligible for parole if he has served (i) nine (9) months
274 of his sentence or sentences, when his sentence or sentences is
275 two (2) years or less; (ii) ten (10) months of his sentence or
276 sentences when his sentence or sentences is more than two (2)
277 years but no more than five (5) years; and (iii) one (1) year of
278 his sentence or sentences when his sentence or sentences is more
279 than five (5) years;

280 (d) (i) No person shall be eligible for parole who
281 shall, on or after January 1, 1977, be convicted of robbery or
282 attempted robbery through the display of a firearm until he shall
283 have served ten (10) years if sentenced to a term or terms of more
284 than ten (10) years or if sentenced for the term of the natural
285 life of such person. If such person is sentenced to a term or
286 terms of ten (10) years or less, then such person shall not be
287 eligible for parole. The provisions of this paragraph (d) shall
288 also apply to any person who shall commit robbery or attempted
289 robbery on or after July 1, 1982, through the display of a deadly

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

292 (ii) No person shall be eligible for parole who
293 shall, on or after October 1, 1994, be convicted of robbery,
294 attempted robbery or carjacking as provided in Section 97-3-115 et
295 seq., through the display of a firearm or drive-by shooting as
296 provided in Section 97-3-109. The provisions of this subparagraph
297 (d)(ii) shall also apply to any person who shall commit robbery,
298 attempted robbery, carjacking or a drive-by shooting on or after
299 October 1, 1994, through the display of a deadly weapon;

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

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

307 (g) No person shall be eligible for parole who is
308 convicted or whose suspended sentence is revoked after June 30,
309 1995;

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

312 (2) Notwithstanding any other provision of law, an inmate
313 shall not be eligible to receive earned time, good time or any
314 other administrative reduction of time which shall reduce the time
315 necessary to be served for parole eligibility as provided in
316 subsection (1) of this section; however, this subsection shall not
317 apply to the advancement of parole eligibility dates pursuant to
318 the Prison Overcrowding Emergency Powers Act. Moreover,
319 meritorious earned time allowances may be used to reduce the time
320 necessary to be served for parole eligibility as provided in
321 paragraph (c) of subsection (1) of this section.

322 (3) The State Parole Board shall by rules and regulations
323 establish a method of determining a tentative parole hearing date
324 for each eligible offender taken into the custody of the
325 Department of Corrections. The tentative parole hearing date
326 shall be determined within ninety (90) days after the department
327 has assumed custody of the offender. Such tentative parole
328 hearing date shall be calculated by a formula taking into account
329 the offender's age upon first commitment, number of prior
330 incarcerations, prior probation or parole failures, the severity
331 and the violence of the offense committed, employment history and
332 other criteria which in the opinion of the board tend to validly
333 and reliably predict the length of incarceration necessary before
334 the offender can be successfully paroled.

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

341 SECTION 12. Section 43-21-261, Mississippi Code of 1972, is
342 amended as follows:

343 43-21-261. (1) Except as otherwise provided in this
344 section, records involving children shall not be disclosed, other
345 than to necessary staff of the youth court, except pursuant to an
346 order of the youth court specifying the person or persons to whom
347 the records may be disclosed, the extent of the records which may
348 be disclosed and the purpose of the disclosure. Such court orders
349 for disclosure shall be limited to those instances in which the
350 youth court concludes, in its discretion, that disclosure is
351 required for the best interests of the child, the public safety or
352 the functioning of the youth court and then only to the following
353 persons:

354 (a) The judge of another youth court or member of
355 another youth court staff;

356 (b) The court of the parties in a child custody or
357 adoption cause in another court;

358 (c) A judge of any other court or members of another
359 court staff;

360 (d) Representatives of a public or private agency
361 providing supervision or having custody of the child under order
362 of the youth court;

363 (e) Any person engaged in a bona fide research purpose,
364 provided that no information identifying the subject of the
365 records shall be made available to the researcher unless it is
366 absolutely essential to the research purpose and the judge gives
367 prior written approval, and the child, through his or her
368 representative, gives permission to release the information;

369 (f) The Mississippi Employment Security Commission, or
370 its duly authorized representatives, for the purpose of a child's
371 enrollment into the Job Corps Training Program as authorized by
372 Title IV of the Comprehensive Employment Training Act of 1973 (29
373 USCS Section 923 et seq.). However, no records, reports,
374 investigations or information derived therefrom pertaining to
375 child abuse or neglect shall be disclosed; and

376 (g) To any person pursuant to a finding by a judge of
377 the youth court of compelling circumstances affecting the health
378 or safety of a child and that such disclosure is in the best
379 interests of the child.

380 Law enforcement agencies may disclose information to the
381 public concerning the taking of a child into custody for the
382 commission of a delinquent act without the necessity of an order
383 from the youth court. The information released shall not identify
384 the child or his address unless the information involves a child
385 convicted as an adult.

386 (2) Any records involving children which are disclosed under
387 an order of the youth court and the contents thereof shall be kept
388 confidential by the person or agency to whom the record is
389 disclosed except as provided in the order. Any further disclosure
390 of any records involving children shall be made only under an
391 order of the youth court as provided in this section.

392 (3) Upon request, the parent, guardian or custodian of the
393 child who is the subject of a youth court cause or any attorney
394 for such parent, guardian or custodian, shall have the right to
395 inspect any record, report or investigation which is to be
396 considered by the youth court at a hearing, except that the
397 identity of the reporter shall not be released, nor the name of
398 any other person where the person or agency making the information
399 available finds that disclosure of the information would be likely
400 to endanger the life or safety of such person.

401 (4) Upon request, the child who is the subject of a youth
402 court cause shall have the right to have his counsel inspect and
403 copy any record, report or investigation which is filed with the
404 youth court.

405 (5) (a) The youth court prosecutor or prosecutors, the
406 county attorney, the district attorney, the youth court defender
407 or defenders, or any attorney representing a child shall have the
408 right to inspect any law enforcement record involving children.

409 (b) The Department of Human Services shall disclose to
410 a county prosecuting attorney or district attorney any and all
411 records resulting from an investigation into suspected child abuse
412 or neglect when the case has been referred by the Department of
413 Human Services to the county prosecuting attorney or district
414 attorney for criminal prosecution.

415 (c) Agency records made confidential under the
416 provisions of this section may be disclosed to a court of
417 competent jurisdiction.

418 (6) Information concerning an investigation into a report of
419 child abuse or child neglect may be disclosed by the Department of
420 Human Services without order of the youth court to any attorney,
421 physician, dentist, intern, resident, nurse, psychologist, social
422 worker, child care giver, minister, law enforcement officer,
423 public or private school employee making that report pursuant to
424 Section 43-21-353(1) if the reporter has a continuing professional
425 relationship with the child and a need for such information in
426 order to protect or treat the child.

427 (7) Information concerning an investigation into a report of
428 child abuse or child neglect may be disclosed without further
429 order of the youth court to any interagency child abuse task force
430 established in any county or municipality by order of the youth
431 court of that county or municipality.

432 (8) Names and addresses of juveniles twice adjudicated as
433 delinquent for an act which would be a felony if committed by an
434 adult or for the unlawful possession of a firearm shall not be
435 held confidential and shall be made available to the public.

436 (9) Names and addresses of juveniles adjudicated as
437 delinquent for murder, manslaughter, burglary, arson, armed
438 robbery, aggravated assault, any sex offense as defined in Section
439 45-33-23, for any violation of Section 41-29-139(a)(1) or for any
440 violation of Section 63-11-30, shall not be held confidential and
441 shall be made available to the public.

442 (10) The judges of the circuit and county courts, and
443 presentence investigators for the circuit courts, as provided in
444 Section 47-7-9, shall have the right to inspect any youth court
445 records of a person convicted of a crime for sentencing purposes
446 only.

447 (11) The victim of an offense committed by a child who is
448 the subject of a youth court cause shall have the right to be
449 informed of the child's disposition by the youth court.

450 (12) A classification hearing officer of the State
451 Department of Corrections, as provided in Section 47-5-103, shall
452 have the right to inspect any youth court records, excluding abuse
453 and neglect records, of any offender in the custody of the
454 department who as a child or minor was a juvenile offender or was
455 the subject of a youth court cause of action, and the State Parole
456 Board, as provided in Section 47-7-17, shall have the right to
457 inspect such records when said offender becomes eligible for
458 parole.

459 (13) The youth court shall notify the Department of Public
460 Safety of the name, and any other identifying information such
461 department may require, of any child who is adjudicated delinquent
462 as a result of a violation of the Uniform Controlled Substances
463 Law.

464 (14) The Administrative Office of Courts shall have the
465 right to inspect any youth court records in order that the number
466 of youthful offenders, abused, neglected, truant and dependent
467 children, as well as children in need of special care and children
468 in need of supervision, may be tracked with specificity through
469 the youth court and adult justice system, and to utilize tracking
470 forms for such purpose.

471 (15) Upon a request by a youth court, the Administrative
472 Office of Courts shall disclose all information at its disposal
473 concerning any previous youth court intakes alleging that a child
474 was a delinquent child, child in need of supervision, child in
475 need of special care, truant child, abused child or neglected
476 child, as well as any previous youth court adjudications for the
477 same and all dispositional information concerning a child who at
478 the time of such request comes under the jurisdiction of the youth
479 court making such request.

480 (16) In every case where an abuse or neglect allegation has
481 been made, the confidentiality provisions of this section shall
482 not apply to prohibit access to a child's records by any state

483 regulatory agency, any state or local prosecutorial agency or law
484 enforcement agency; provided, however, that no identifying
485 information concerning the child in question may be released to
486 the public by such agency except as otherwise provided herein.

487 (17) In every case where there is any indication or
488 suggestion of either abuse or neglect and a child's physical
489 condition is medically labeled as medically "serious" or
490 "critical" or a child dies, the confidentiality provisions of this
491 section shall not apply.

492 (18) Any member of a foster care review board designated by
493 the Department of Human Services shall have the right to inspect
494 youth court records relating to the abuse, neglect or child in
495 need of supervision cases assigned to such member for review.

496 (19) Information concerning an investigation into a report
497 of child abuse or child neglect may be disclosed without further
498 order of the youth court in any administrative or due process
499 hearing held, pursuant to Section 43-21-257, by the Department of
500 Human Services for individuals whose names will be placed on the
501 central registry as substantiated perpetrators.

502 SECTION 13. This act shall take effect and be in force from
503 and after July 1, 2001.