MISSISSIPPI LEGISLATURE
By: Senator(s) Smith (By Request)

REGULAR SESSION 2001
To: Corrections

SENATE BILL NO. 3028
(As Passed the Senate)

AN ACT TO AMEND SECTION 47-5-99, MISSISSIPPI CODE OF 1972, TO ABOLISH CLASSIFICATION COMMITTEES AND TO CREATE CLASSIFICATION HEARING OFFICERS AND DISCIPLINARY HEARING OFFICERS; TO AMEND SECTIONS 47-5-101, 47-5-103, 47-5-104, 47-5-138, 47-5-138.1, 47-5-181, 47-5-401, 47-5-451, 47-5-1003, 47-7-3 AND 43-21-261, MISSISSIPPI CODE OF 1972, TO CONFORM; FURTHER AMEND SECTION 47-7-3, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT CERTAIN NONVIOLENT FIRST OFFENDERS MAY BE CONSIDERED FOR PAROLE; AND FOR RELATED PURPOSES.

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

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

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

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

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

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

47-5-103. (1) The classification hearing officer shall be responsible for assigning a classification to each offender within forty (40) days after the offender's commitment to the custody of the department. The classification shall determine the offender's work duties, living quarters, educational, vocational or other rehabilitation programs, and privileges to be accorded the
offender while in custody of the department. The classification hearing officer, in assigning classifications, shall consider the offender's age, offense and surrounding circumstances, the complete record of the offender's criminal history including records of law enforcement agencies or of a youth court regarding that offender's juvenile criminal history, family background, education, practical or employment experience, interests and abilities as evidenced by mental and psychological examination and knowledge obtained by the classification hearing officer in personal interview with the offender. The classification hearing officer shall use the above criteria to assign each offender a classification which will serve and enhance the best interests and general welfare of the offender. The director or assistant director of offender services shall approve or disapprove each classification. The classification hearing officer shall provide the State Parole Board with a copy of the classification assigned to each offender in the custody of the department who is eligible for parole.

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

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

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

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

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

47-5-138. (1) 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 subsection 
does not apply to any sentence imposed after June 30, 1995.

(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.

(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 hearing officer 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 6. Section 47-5-138.1, Mississippi Code of 1972, is amended as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 10. 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,
extcept 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 hearing officer.

(4) 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.
The courts may not require an offender to complete the
intensive supervision program as a condition of probation or
post-release supervision.

SECTION 11. 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
conducted 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, except as provided in paragraph (i);

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

(i) A first offender convicted of a nonviolent crime
after January 1, 2000, may be eligible for parole if the offender
meets the requirements in subsection (1) and this paragraph. In
addition to other requirements, if a first offender is convicted
of a drug or driving under the influence felony, the offender must
complete a drug and alcohol rehabilitation program prior to parole
or the offender may be required to complete a post-release drug
and alcohol program as a condition of parole. For purposes of
this paragraph, "nonviolent crime" means a felony other than

homicide, robbery, manslaughter, sex crimes, arson, burglary of an
occupied dwelling, aggravated assault, kidnapping, felonious abuse
of vulnerable adults, felonies with enhanced penalties, and the
sale or manufacture of a controlled substance under the Uniform
Controlled Substances Law.

(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 board 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 12. Section 43-21-261, Mississippi Code of 1972, is amended as follows:

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

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

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

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

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

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

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

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

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

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

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

(4) Upon request, the child who is the subject of a youth court cause shall have the right to have his counsel inspect and copy any record, report or investigation which is filed with the youth court.
(5) (a) The youth court prosecutor or prosecutors, the county attorney, the district attorney, the youth court defender or defenders, or any attorney representing a child shall have the right to inspect any law enforcement record involving children.

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

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

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

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

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

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

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

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

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

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

(14) The Administrative Office of Courts shall have the right to inspect any youth court records in order that the number of youthful offenders, abused, neglected, truant and dependent children, as well as children in need of special care and children in need of supervision, may be tracked with specificity through the youth court and adult justice system, and to utilize tracking forms for such purpose.
(15) Upon a request by a youth court, the Administrative Office of Courts shall disclose all information at its disposal concerning any previous youth court intakes alleging that a child was a delinquent child, child in need of supervision, child in need of special care, truant child, abused child or neglected child, as well as any previous youth court adjudications for the same and all dispositional information concerning a child who at the time of such request comes under the jurisdiction of the youth court making such request.

(16) In every case where an abuse or neglect allegation has been made, the confidentiality provisions of this section shall not apply to prohibit access to a child's records by any state regulatory agency, any state or local prosecutorial agency or law enforcement agency; provided, however, that no identifying information concerning the child in question may be released to the public by such agency except as otherwise provided herein.

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

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

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

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