

By: Representative Ford

To: Penitentiary

HOUSE BILL NO. 590
(As Sent to Governor)

1 AN ACT TO REENACT SECTIONS 47-5-701 THROUGH 47-5-729,
2 MISSISSIPPI CODE OF 1972, WHICH CREATE THE "PRISON OVERCROWDING
3 EMERGENCY POWERS ACT"; TO AMEND SECTION 47-5-731, MISSISSIPPI CODE
4 OF 1972, TO EXTEND THE REPEALER; AND FOR RELATED PURPOSES.

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

6 **SECTION 1.** Section 47-5-701, Mississippi Code of 1972, is
7 reenacted as follows:

8 47-5-701. Sections 47-5-701 through 47-5-729 shall be known
9 and may be cited as the "Prison Overcrowding Emergency Powers
10 Act."

11 **SECTION 2.** Section 47-5-703, Mississippi Code of 1972, is
12 reenacted as follows:

13 47-5-703. For the purposes of Sections 47-5-701 through
14 47-5-729 the following words shall have the meaning ascribed
15 herein unless the context shall otherwise require:

16 (a) "Inmate" means every person who at the time of the
17 declaration of a prison system overcrowding state of emergency, or
18 at any time during the continuation of a state of emergency, is
19 incarcerated by the Mississippi Department of Corrections as a
20 result of a commitment to the department, including persons
21 committed to the department and incarcerated in local or county
22 jails or other facilities authorized to house state inmates.

23 (b) "Operating capacity" means the total number of
24 state inmates which can be safely and reasonably housed in
25 facilities operated by the Department of Corrections and in local
26 or county jails or other facilities authorized to house state
27 inmates as certified by the department, subject to applicable
28 federal and state laws and rules and regulations.



29 (c) "Parole eligibility date" means the date on which
30 an inmate becomes eligible for release by parole under the
31 provisions of Section 47-7-3, Mississippi Code of 1972. For the
32 purposes of Sections 47-5-701 through 47-5-729, an inmate with a
33 sentence of one (1) year shall be deemed to have a parole
34 eligibility date which shall be the last day of his sentence.

35 (d) "Prison" means any correctional facility operated
36 by the Mississippi Department of Corrections.

37 (e) "Prison system" means the prisons operated by the
38 Mississippi Department of Corrections and those local or county
39 jails or other facilities authorized to house state inmates.

40 (f) "Prison system population" means the total number
41 of state inmates housed in the prisons operated by the Mississippi
42 Department of Corrections and in those local or county jails or
43 other facilities authorized to house state inmates.

44 (g) "Qualified inmate" means inmates who are not
45 incarcerated for convictions of murder, kidnapping, arson, armed
46 robbery, rape, sexual offenses or any offense involving the use of
47 a deadly weapon and who are within that number of days of their
48 parole eligibility date at the time of the declaration of the
49 state of emergency as is specified to be conditionally advanced
50 under the declaration of the state of emergency. An inmate
51 sentenced as an habitual offender shall not be considered a
52 "qualified inmate."

53 (h) "State of emergency" means a prison system
54 overcrowding state of emergency as provided in Section 47-5-711.

55 **SECTION 3.** Section 47-5-705, Mississippi Code of 1972, is
56 reenacted as follows:

57 47-5-705. The requirements for the declaration of a prison
58 system overcrowding state of emergency are as follows:

59 (a) Prison system population in excess of ninety-five
60 percent (95%) of the prison system operating capacity for at least



61 thirty (30) consecutive days immediately preceding the declaration
62 of a state of emergency;

63 (b) Full appropriate utilization by the Mississippi
64 Department of Corrections of powers which tend either to reduce
65 prison system population or expand operating capacity. Such
66 powers include but are not limited to earned time allowances as
67 specified in Sections 47-5-138 and 47-5-139, Mississippi Code of
68 1972, review of offenders for purposes of reclassification,
69 reevaluation of persons eligible for consideration for work
70 release, supervised earned release or other release programs
71 authorized by law and arrangements for housing inmates of the
72 Department of Corrections in local or county jails or other
73 facilities authorized to house state inmates; and

74 (c) Full appropriate utilization by the State Parole
75 Board of those powers which tend to reduce the prison system
76 population. Such powers include but are not limited to parole as
77 provided in Section 47-7-3, Mississippi Code of 1972, the review
78 of inmates who have had their parole revoked and the reevaluation
79 of inmates previously denied parole.

80 **SECTION 4.** Section 47-5-707, Mississippi Code of 1972, is
81 reenacted as follows:

82 47-5-707. Whenever the prison system population exceeds
83 ninety-five percent (95%) of operating capacity, the Commissioner
84 of Corrections shall immediately notify the Governor and the State
85 Parole Board of this fact. The notice shall include the current
86 prison system population and the prison system operating capacity.
87 A report must be made within ten (10) days after the thirtieth day
88 of operating in excess of ninety-five percent (95%) of operating
89 capacity. The report shall include the prison system operating
90 capacity, the prison system population during the relevant time
91 period, and may include a recommended specific term of advancement
92 of the parole eligibility dates.



93 **SECTION 5.** Section 47-5-709, Mississippi Code of 1972, is
94 reenacted as follows:

95 47-5-709. If the prison system population exceeds
96 ninety-five percent (95%) of operating capacity for thirty (30)
97 consecutive days, the State Parole Board shall meet to determine
98 whether there has been full appropriate exercise of the powers of
99 the State Parole Board which tend to reduce the prison system
100 population. The State Parole Board shall report its findings to
101 the Governor within ten (10) days after the thirtieth day of
102 operating in excess of ninety-five percent (95%) of prison
103 operating capacity. The report shall include the determination of
104 the State Parole Board regarding its utilization of powers
105 described in paragraph (c) of Section 47-5-705.

106 **SECTION 6.** Section 47-5-711, Mississippi Code of 1972, is
107 reenacted as follows:

108 47-5-711. Upon receipt of the report from the Commissioner
109 of Corrections and the report of the State Parole Board, the
110 Governor has the power to:

111 (a) Determine to be in error the determination that
112 there had been full appropriate exercise of powers which tends to
113 reduce prison population, in which case no state of emergency
114 shall commence;

115 (b) Determine that commencement of a state of emergency
116 would be injurious to the public good, or raises the potential of
117 threatening the safety of the public in the state as a whole or in
118 a particular community, in which case no state of emergency shall
119 commence; or

120 (c) Determine that the reports establish the existence
121 of the conditions for a declaration of a prison system
122 overcrowding state of emergency as described in Section 47-5-705
123 and declare a state of emergency, specifying an amount of
124 advancement of parole eligibility dates from thirty (30) to ninety
125 (90) days.



126 If fourteen (14) days after the receipt of the reports to the
127 Governor pursuant to Sections 47-5-707 and 47-5-709 the Governor
128 has not exercised any of the powers specified in paragraphs (a),
129 (b) and (c) of this section, action under Sections 47-5-701
130 through 47-5-729 is considered terminated.

131 If the Governor exercises a power under paragraphs (a) or (b)
132 of this section, he shall state the reasons for the exercise of
133 such power in the notification of his action to the Commissioner
134 of Corrections and the State Parole Board.

135 **SECTION 7.** Section 47-5-713, Mississippi Code of 1972, is
136 reenacted as follows:

137 47-5-713. Upon the declaration of a state of emergency, the
138 parole eligibility dates of qualified inmates shall be
139 conditionally advanced. The amount of advancement of parole
140 eligibility dates must be specified in the declaration by the
141 Governor. When the state of emergency has been terminated, the
142 parole eligibility dates which were conditionally advanced shall
143 be reset to the parole eligibility date set prior to the emergency
144 for those inmates who were not released on parole under the
145 provisions of Sections 47-5-701 through 47-5-729.

146 **SECTION 8.** Section 47-5-715, Mississippi Code of 1972, is
147 reenacted as follows:

148 47-5-715. During the continuation of a state of emergency,
149 the Commissioner of the Department of Corrections shall weekly
150 certify to the Governor the prison system population for each day
151 of the preceding week. The Governor shall declare the state of
152 emergency terminated upon notification that the prison system
153 population has been at or below ninety-five percent (95%) of
154 operating capacity for seven (7) consecutive days.

155 If no declaration of termination is issued within seven (7)
156 days after the certification of conditions for termination of the
157 state of emergency, the state of emergency is considered
158 terminated as of the seventh day after the certification.



159 **SECTION 9.** Section 47-5-717, Mississippi Code of 1972, is
160 reenacted as follows:

161 47-5-717. If sixty (60) days after the declaration of a
162 prison system overcrowding state of emergency or of an additional
163 advancement of the parole eligibility dates the prison system
164 population continues to be in excess of ninety-five percent (95%)
165 of operating capacity, the Commissioner of Corrections shall
166 report to the Governor indicating whether an additional
167 advancement of the parole eligibility dates is necessary in order
168 to reduce the prison system population to ninety-five percent
169 (95%) of operating capacity and indicating the amount of any
170 recommended additional advancement of the parole eligibility
171 dates. The recommended amount must be no less than thirty (30)
172 days nor more than ninety (90) days. The report shall include
173 those factors which would tend to indicate that the prison system
174 population is likely to increase above operating capacity within
175 ninety (90) days. The report shall discuss the availability of
176 field supervisors, the currently existing supervision case loads,
177 and the measures that could be taken and the resources that would
178 be needed to provide appropriate supervision of persons released
179 early as a result of an additional advancement of the parole
180 eligibility dates.

181 **SECTION 10.** Section 47-5-719, Mississippi Code of 1972, is
182 reenacted as follows:

183 47-5-719. Upon receipt of the report from the Commissioner
184 of Corrections as provided in Section 47-5-717, the Governor has
185 the power to:

186 (a) Determine to be in error any conclusion of the
187 Commissioner of Corrections that an additional advancement of the
188 parole eligibility dates is necessary in order for the prison
189 system population to be reduced to ninety-five percent (95%) of
190 operating capacity, in which case no additional advancements of
191 the parole eligibility dates shall occur;



192 (b) Determine that the ordering of additional
193 advancements of the parole eligibility dates would be injurious to
194 the public good or raises the potential of threatening the safety
195 of the public in the state as a whole or in a particular
196 community, in which case no additional advancement of parole
197 eligibility dates shall occur; or

198 (c) Determine that an additional advancement of the
199 parole eligibility dates is necessary in order for the prison
200 system population to be reduced to ninety-five percent (95%) of
201 operating capacity and order additional advancements specifying
202 the amount of additional advancements, which shall be at least
203 thirty (30) and not more than ninety (90) days.

204 If fourteen (14) days after the receipt of the report to the
205 Governor pursuant to Section 47-5-717 including a determination of
206 the Commissioner of Corrections that an additional advancement of
207 the parole eligibility dates is not necessary in order for the
208 prison system population to be reduced to ninety-five percent
209 (95%) of operating capacity the Governor has not exercised the
210 power provided in paragraph (c) of this section, action initiated
211 under Section 47-5-717 is considered terminated.

212 If the Governor exercises a power provided under paragraphs
213 (a) or (b) of this section he shall state the reasons for the
214 exercise of such power in the notification of his action to the
215 Commissioner of Corrections and the State Parole Board.

216 If the Governor orders additional advancements of the parole
217 eligibility dates under this section, the amount of advancement of
218 the parole eligibility dates must be as ordered by the Governor.

219 **SECTION 11.** Section 47-5-721, Mississippi Code of 1972, is
220 reenacted as follows:

221 47-5-721. If at any time during a state of emergency the
222 Governor determines that the continuation of the state of
223 emergency is injurious to the public good or raises the potential
224 of threatening the safety of the public in the state as a whole or



225 in a particular community, he may order the state of emergency
226 terminated.

227 **SECTION 12.** Section 47-5-723, Mississippi Code of 1972, is
228 reenacted as follows:

229 47-5-723. Revocation of the conditional advancement of the
230 parole eligibility date is a permissible prison disciplinary
231 action according to the same procedures governing the forfeiture
232 of earned time allowances as a prison disciplinary action.

233 **SECTION 13.** Section 47-5-725, Mississippi Code of 1972, is
234 reenacted as follows:

235 47-5-725. The State Parole Board shall prescribe conditions
236 of advancement of the parole eligibility date applicable prior to
237 an inmate's release. The State Parole Board shall prescribe
238 conditions of supervision consistent with existing regulations
239 applicable after release on parole. When an inmate is released
240 under the provisions of Sections 47-5-701 through 47-5-729 he
241 shall be considered to be in the legal custody of the Department
242 of Corrections.

243 **SECTION 14.** Section 47-5-727, Mississippi Code of 1972, is
244 reenacted as follows:

245 47-5-727. Advancement of parole eligibility dates under
246 Sections 47-5-701 through 47-5-729 shall occur independently of
247 all other adjustments of the parole eligibility date, such as
248 advancing the parole eligibility dates as a result of receiving
249 earned time allowances.

250 **SECTION 15.** Section 47-5-729, Mississippi Code of 1972, is
251 reenacted as follows:

252 47-5-729. The Commissioner of Corrections shall within
253 thirty (30) days after April 10, 1985, establish the operating
254 capacities of the prison system, and shall at least quarterly
255 certify existing operating capacities or establish changed or new
256 operating capacities.



257 **SECTION 16.** Section 47-5-731, Mississippi Code of 1972, is
258 amended as follows:

259 47-5-731. Sections 47-5-701 through 47-5-729, Mississippi
260 Code of 1972, which create the Prison Overcrowding Emergency
261 Powers Act, shall stand repealed from and after July 1, 2004.

262 **SECTION 17.** This act shall take effect and be in force from
263 and after July 1, 2002.

