

By: Representative Scott (80th)

To: Penitentiary

HOUSE BILL NO. 1374

1 AN ACT TO PROVIDE THAT DRUG OFFENDERS PARTICIPATE IN DRUG
2 REHABILITATION PROGRAMS; TO REQUIRE THAT AN OFFENDER CONVICTED
3 UNDER THE CONTROLLED SUBSTANCES LAW, AND IN THE CUSTODY OF THE
4 DEPARTMENT OF CORRECTIONS, SUCCESSFULLY PASS A TEST TO DETECT THE
5 PRESENCE OF CONTROLLED SUBSTANCES BEFORE HE MAY BE ELIGIBLE FOR
6 PAROLE; TO AMEND SECTIONS 41-29-150, 47-5-603, 47-5-605, 47-7-3
7 AND 47-7-17, MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO; AND
8 FOR RELATED PURPOSES.

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

10 **SECTION 1.** Section 41-29-150, Mississippi Code of 1972, is
11 amended as follows:

12 41-29-150. (a) Any person convicted under Section 41-29-139
13 shall be required, * * * as a part of the sentence otherwise
14 imposed, or in lieu of imprisonment in cases of probation or
15 suspension of sentence, to attend a course of instruction
16 conducted by the bureau, the State Board of Health, or any similar
17 agency, on the effects, medically, psychologically and socially,
18 of the misuse of controlled substances. Said course may be
19 conducted at any correctional institution, detention center or
20 hospital, or at any rehabilitation center or treatment facility
21 established for the purpose of education and rehabilitation of
22 those persons committed because of abuse of controlled substances.

23 (b) Any person convicted under Section 41-29-139 who is
24 found to be dependent upon or addicted to any controlled substance
25 shall be required, as a part of the sentence otherwise imposed, or
26 in lieu of imprisonment in cases of parole, probation or
27 suspension of sentence, to receive medical treatment for such
28 dependency or addiction. The regimen of medical treatment may
29 include confinement in a medical facility of any correctional
30 institution, detention center or hospital, or at any



31 rehabilitation center or facility established for treatment of
32 those persons committed because of a dependence or addiction to
33 controlled substances.

34 (c) Those persons previously convicted of a felony under
35 Section 41-29-139 and who are now confined at the Mississippi
36 State Hospital at Whitfield, Mississippi, or at the East
37 Mississippi State Hospital at Meridian, Mississippi, for the term
38 of their sentence shall remain under the jurisdiction of the
39 Mississippi Department of Corrections and shall be required to
40 abide by all reasonable rules and regulations promulgated by the
41 director and staff of said institutions and of the Department of
42 Corrections. Any persons so confined who shall refuse to abide by
43 said rules or who attempt an escape or who shall escape shall be
44 transferred to the State Penitentiary or to a county jail, where
45 appropriate, to serve the remainder of the term of imprisonment;
46 this provision shall not preclude prosecution and conviction for
47 escape from said institutions.

48 (d) (1) If any person who has not previously been convicted
49 of violating Section 41-29-139, or the laws of the United States
50 or of another state relating to narcotic drugs, stimulant or
51 depressant substances, other controlled substances or marihuana is
52 found to be guilty of a violation of subsection (c) or (d) of
53 Section 41-29-139, after trial or upon a plea of guilty, the court
54 may, without entering a judgment of guilty and with the consent of
55 such person, defer further proceedings and place him on probation
56 upon such reasonable conditions as it may require and for such
57 period, not to exceed three (3) years, as the court may prescribe.
58 Upon violation of a condition of the probation, the court may
59 enter an adjudication of guilt and proceed as otherwise provided.
60 The court may, in its discretion, dismiss the proceedings against
61 such person and discharge him from probation before the expiration
62 of the maximum period prescribed for such person's probation. If
63 during the period of his probation such person does not violate



64 any of the conditions of the probation, then upon expiration of
65 such period the court shall discharge such person and dismiss the
66 proceedings against him. Discharge and dismissal under this
67 subsection shall be without court adjudication of guilt, but a
68 nonpublic record thereof shall be retained by the bureau solely
69 for the purpose of use by the courts in determining whether or
70 not, in subsequent proceedings, such person qualifies under this
71 subsection. Such discharge or dismissal shall not be deemed a
72 conviction for purposes of disqualifications or disabilities
73 imposed by law upon conviction of a crime, including the penalties
74 prescribed under this article for second or subsequent conviction,
75 or for any other purpose. Discharge and dismissal under this
76 subsection may occur only once with respect to any person; and

77 (2) Upon the dismissal of such person and discharge of
78 proceedings against him under paragraph (1) of this subsection, or
79 with respect to a person who has been convicted and adjudged
80 guilty of an offense under subsection (c) or (d) of Section
81 41-29-139, or for possession of narcotics, stimulants,
82 depressants, hallucinogens, marihuana, other controlled substances
83 or paraphernalia under prior laws of this state, such person, if
84 he had not reached his twenty-sixth birthday at the time of the
85 offense, may apply to the court for an order to expunge from all
86 official records, other than the nonpublic records to be retained
87 by the bureau under paragraph (1) of this subsection, all
88 recordation relating to his arrest, indictment, trial, finding of
89 guilty, and dismissal and discharge pursuant to this section. If
90 the court determines, after hearing, that such person was
91 dismissed and the proceedings against him discharged and that he
92 had not reached his twenty-sixth birthday at the time of the
93 offense, or that such person had satisfactorily served his
94 sentence or period of probation and parole, and that he had not
95 reached his twenty-sixth birthday at the time of the offense, it
96 shall enter such order. The effect of such order shall be to



97 restore such person, in the contemplation of the law, to the
98 status he occupied before such arrest or indictment. No person as
99 to whom such order has been entered shall be held thereafter under
100 any provision of any law to be guilty of perjury or otherwise
101 giving a false statement by reason of his failures to recite or
102 acknowledge such arrest, or indictment or trial in response to any
103 inquiry made of him for any purpose.

104 (e) Every person who has been or may hereafter be convicted
105 of a felony offense under Section 41-29-139 and sentenced under
106 Section 41-29-150(c) shall be under the jurisdiction of the
107 Mississippi Department of Corrections.

108 (f) It shall be unlawful for any person confined under the
109 provisions of subsection (b) or (c) of this section to escape or
110 attempt to escape from said institution, and upon conviction said
111 person shall be guilty of a felony and shall be imprisoned for a
112 term not to exceed two (2) years.

113 (g) It is the intent and purpose of the Legislature to
114 promote the rehabilitation of persons convicted of offenses under
115 the Uniform Controlled Substances Law.

116 **SECTION 2.** Section 47-5-603, Mississippi Code of 1972, is
117 amended as follows:

118 47-5-603. Any offender on probation or released from a
119 facility of the Department of Corrections on parole or earned
120 probation who remains under the supervision of the Department of
121 Corrections or any offender who is incarcerated in a state
122 correctional facility may be required to participate in the
123 Mississippi Department of Corrections drug identification program.
124 Participation by an offender would consist of submission by the
125 offender, from time to time and upon the request of a parole or
126 probation supervisor, or authorized personnel of the department to
127 any type of breath, saliva or urine chemical analysis test, the
128 purpose of which is to detect the possible presence of alcohol or



129 a substance prohibited or controlled by any law of the State of
130 Mississippi or the United States.

131 Any offender who is in the custody of the department pursuant
132 to a conviction under Section 41-29-139 shall be required to
133 participate in the program and submit to a test to detect the
134 presence of a controlled substance, before he may be released on
135 parole.

136 **SECTION 3.** Section 47-5-605, Mississippi Code of 1972, is
137 amended as follows:

138 47-5-605. Each time the results of such a chemical analysis
139 test indicate the unauthorized presence of alcohol or a controlled
140 substance in the parolee or probationer, he or she shall be
141 required to pay a fee of Ten Dollars (\$10.00) to the Mississippi
142 Department of Corrections drug identification program, which fee
143 shall be used to pay for the cost of administering that particular
144 test. All other costs of the program, including the costs of
145 administering such tests in cases in which the presence of alcohol
146 or a controlled substance is not found, will be paid by
147 expenditures from the Community Service Revolving Fund as
148 described in Section 47-7-49.

149 Each time such a test is administered to an offender in
150 connection with his application for parole, the cost of
151 administering the test will be paid by expenditures from the
152 community service revolving fund.

153 **SECTION 4.** Section 47-7-3, Mississippi Code of 1972, is
154 amended as follows:

155 47-7-3. (1) Every prisoner who has been convicted of any
156 offense against the State of Mississippi, and is confined in the
157 execution of a judgment of such conviction in the Mississippi
158 State Penitentiary for a definite term or terms of one (1) year or
159 over, or for the term of his or her natural life, whose record of
160 conduct shows that such prisoner has observed the rules of the
161 penitentiary, and who has served not less than one-fourth (1/4) of



162 the total of such term or terms for which such prisoner was
163 sentenced, or, if sentenced to serve a term or terms of thirty
164 (30) years or more, or, if sentenced for the term of the natural
165 life of such prisoner, has served not less than ten (10) years of
166 such life sentence, may be released on parole as hereinafter
167 provided, except that:

168 (a) No prisoner convicted as a confirmed and habitual
169 criminal under the provisions of Sections 99-19-81 through
170 99-19-87 shall be eligible for parole;

171 (b) Any person who shall have been convicted of a sex
172 crime shall not be released on parole except for a person under
173 the age of nineteen (19) who has been convicted under Section
174 97-3-67;

175 (c) No one shall be eligible for parole until he shall
176 have served one (1) year of his sentence, unless such person has
177 accrued any meritorious earned time allowances, in which case he
178 shall be eligible for parole if he has served (i) nine (9) months
179 of his sentence or sentences, when his sentence or sentences is
180 two (2) years or less; (ii) ten (10) months of his sentence or
181 sentences when his sentence or sentences is more than two (2)
182 years but no more than five (5) years; and (iii) one (1) year of
183 his sentence or sentences when his sentence or sentences is more
184 than five (5) years;

185 (d) (i) No person shall be eligible for parole who
186 shall, on or after January 1, 1977, be convicted of robbery or
187 attempted robbery through the display of a firearm until he shall
188 have served ten (10) years if sentenced to a term or terms of more
189 than ten (10) years or if sentenced for the term of the natural
190 life of such person. If such person is sentenced to a term or
191 terms of ten (10) years or less, then such person shall not be
192 eligible for parole. The provisions of this paragraph (d) shall
193 also apply to any person who shall commit robbery or attempted
194 robbery on or after July 1, 1982, through the display of a deadly



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

197 (ii) No person shall be eligible for parole who
198 shall, on or after October 1, 1994, be convicted of robbery,
199 attempted robbery or carjacking as provided in Section 97-3-115 et
200 seq., through the display of a firearm or drive-by shooting as
201 provided in Section 97-3-109. The provisions of this subparagraph
202 (d)(ii) shall also apply to any person who shall commit robbery,
203 attempted robbery, carjacking or a drive-by shooting on or after
204 October 1, 1994, through the display of a deadly weapon;

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

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

212 (g) No person shall be eligible for parole who is
213 convicted or whose suspended sentence is revoked after June 30,
214 1995, except as provided in paragraph (i);

215 (h) No person convicted under Section 41-29-139 shall
216 be eligible for parole, unless he has successfully passed a test
217 to detect the presence of a controlled substance, administered by
218 the department;

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



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

233 (2) Notwithstanding any other provision of law, an inmate
234 shall not be eligible to receive earned time, good time or any
235 other administrative reduction of time which shall reduce the time
236 necessary to be served for parole eligibility as provided in
237 subsection (1) of this section; however, this subsection shall not
238 apply to the advancement of parole eligibility dates pursuant to
239 the Prison Overcrowding Emergency Powers Act. Moreover,
240 meritorious earned time allowances may be used to reduce the time
241 necessary to be served for parole eligibility as provided in
242 paragraph (c) of subsection (1) of this section.

243 (3) The State Parole Board shall by rules and regulations
244 establish a method of determining a tentative parole hearing date
245 for each eligible offender taken into the custody of the
246 Department of Corrections. The tentative parole hearing date
247 shall be determined within ninety (90) days after the department
248 has assumed custody of the offender. Such tentative parole
249 hearing date shall be calculated by a formula taking into account
250 the offender's age upon first commitment, number of prior
251 incarcerations, prior probation or parole failures, the severity
252 and the violence of the offense committed, employment history and
253 other criteria which in the opinion of the board tend to validly
254 and reliably predict the length of incarceration necessary before
255 the offender can be successfully paroled.

256 (4) Any inmate within twenty-four (24) months of his parole
257 eligibility date and who meets the criteria established by the
258 classification board shall receive priority for placement in any
259 educational development and job training programs. Any inmate



260 refusing to participate in an educational development or job
261 training program may be ineligible for parole.

262 **SECTION 5.** Section 47-7-17, Mississippi Code of 1972, is
263 amended as follows:

264 47-7-17. Within one (1) year after his admission and at such
265 intervals thereafter as it may determine, the board shall secure
266 and consider all pertinent information regarding each offender,
267 except any under sentence of death or otherwise ineligible for
268 parole, including the circumstances of his offense, his previous
269 social history, his previous criminal record, including any
270 records of law enforcement agencies or of a youth court regarding
271 that offender's juvenile criminal history, his conduct, employment
272 and attitude while in the custody of the department, and the
273 reports of such physical and mental examinations as have been
274 made. The board shall furnish at least three (3) months' written
275 notice to each such offender of the date on which he is eligible
276 for parole.

277 Before ruling on the application for parole of any offender,
278 the board may have the offender appear before it and interview
279 him. The hearing shall be held two (2) months prior to the month
280 of eligibility in order for the department to address any special
281 conditions required by the board. No application for parole of a
282 person convicted under Section 41-29-139 shall be considered
283 without the offender having successfully passed a test to detect
284 the presence of a controlled substance. No application for parole
285 of a person convicted of a capital offense shall be considered by
286 the board unless and until notice of the filing of such
287 application shall have been published at least once a week for two
288 (2) weeks in a newspaper published in or having general
289 circulation in the county in which the crime was committed. The
290 board shall also give notice of the filing of the application for
291 parole to the victim of the offense for which the prisoner is
292 incarcerated and being considered for parole or, in case the



293 offense be homicide, a designee of the immediate family of the
294 victim, provided the victim or designated family member has
295 furnished in writing a current address to the board for such
296 purpose. A parole shall be ordered only for the best interest of
297 society, not as an award of clemency; it shall not be considered
298 to be a reduction of sentence or pardon. An offender shall be
299 placed on parole only when arrangements have been made for his
300 proper employment or for his maintenance and care, and when the
301 board believes that he is able and willing to fulfill the
302 obligations of a law-abiding citizen. Within forty-eight (48)
303 hours prior to the release of an offender on parole, the Director
304 of Records of the department shall give the written notice which
305 is required pursuant to Section 47-5-177. Every offender while on
306 parole shall remain in the legal custody of the department from
307 which he was released and shall be amenable to the orders of the
308 board. The board, upon rejecting the application for parole of
309 any offender, shall within thirty (30) days following such
310 rejection furnish that offender in general terms the reasons
311 therefor in writing. Upon determination by the board that an
312 offender is eligible for release by parole, notice shall also be
313 given by the board to the victim of the offense or the victim's
314 family member, as indicated above, regarding the date when the
315 offender's release shall occur, provided a current address of the
316 victim or the victim's family member has been furnished in writing
317 to the board for such purpose.

318 Failure to provide notice to the victim or the victim's
319 family member of the filing of the application for parole or of
320 any decision made by the board regarding parole shall not
321 constitute grounds for vacating an otherwise lawful parole
322 determination nor shall it create any right or liability, civilly
323 or criminally, against the board or any member thereof.



324 A letter of protest against granting an offender parole shall
325 not be treated as the conclusive and only reason for not granting
326 parole.

327 The board may adopt such other rules not inconsistent with
328 law as it may deem proper or necessary with respect to the
329 eligibility of offenders for parole, the conduct of parole
330 hearings, or conditions to be imposed upon parolees, including a
331 condition that the parolee submit, as provided in Section 47-5-601
332 to any type of breath, saliva or urine chemical analysis test, the
333 purpose of which is to detect the possible presence of alcohol or
334 a substance prohibited or controlled by any law of the State of
335 Mississippi or the United States. The board shall have the
336 authority to adopt rules permitting certain offenders to be placed
337 on unsupervised parole. However, in no case shall an offender be
338 placed on unsupervised parole before he has served a minimum of
339 three (3) years of supervised parole.

340 **SECTION 6.** This act shall take effect and be in force from
341 and after July 1, 2002.

