

By: Representative Scott (80th)

To: Penitentiary

HOUSE BILL NO. 1237

1 AN ACT TO AMEND SECTION 47-5-138, MISSISSIPPI CODE OF 1972,
2 TO PROVIDE THAT PERSONS CONVICTED OF NONVIOLENT CRIMES MAY BE
3 ELIGIBLE FOR AN EARNED-TIME ALLOWANCE OF MORE THAN FIFTEEN PERCENT
4 OF THE TERM OF SENTENCE; TO REQUIRE THE MISSISSIPPI DEPARTMENT OF
5 CORRECTIONS TO CREATE A REHABILITATIVE PROGRAM FOR NONVIOLENT
6 OFFENDERS WHO RECEIVE AN EARNED-TIME ALLOWANCE OF ONE-HALF OF THE
7 PERIOD OF CONFINEMENT; TO AMEND SECTION 47-7-3, MISSISSIPPI CODE
8 OF 1972, TO REVISE THE DEFINITION OF NONVIOLENT CRIME FOR PURPOSES
9 OF THE PAROLE OF OFFENDERS; AND FOR RELATED PURPOSES.

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

11 **SECTION 1.** Section 47-5-138, Mississippi Code of 1972, is
12 amended as follows:

13 47-5-138. (1) The department may promulgate rules and
14 regulations to carry out an earned time allowance program based on
15 the good conduct and performance of an inmate. An inmate is
16 eligible to receive an earned time allowance of one-half (1/2) of
17 the period of confinement imposed by the court except those
18 inmates excluded by law. When an inmate is committed to the
19 custody of the department, the department shall determine a
20 conditional earned time release date by subtracting the earned
21 time allowance from an inmate's term of sentence. This subsection
22 does not apply to any sentence imposed after June 30, 1995;
23 however, from and after July 1, 2003, this subsection shall apply
24 to sentences for any person convicted of a nonviolent crime. For
25 the purposes of this section, "nonviolent crime" means any felony
26 which does not involve the use or attempted use of any force, the
27 use or attempted use of a deadly weapon or a felony which does not
28 involve injury, attempted injury or the killing or attempted
29 killing of a human being.



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

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

40 (b) On receipt of a final order, the department shall
41 forfeit:

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

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

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

51 (c) The department may not restore earned time
52 forfeited under this subsection.

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

56 (5) Except as otherwise provided herein, for any sentence
57 imposed after June 30, 1995, an inmate may receive an earned time
58 allowance of four and one-half (4-1/2) days for each thirty (30)
59 days served if the department determines that the inmate has
60 complied with the good conduct and performance requirements of the
61 earned time allowance program. For any sentence imposed after
62 July 1, 2003, for conviction of a nonviolent crime, the



63 earned-time allowance of one-half (1/2) of the period of
64 confinement imposed by the court. The earned time allowance under
65 this subsection shall not exceed fifteen percent (15%) of an
66 inmate's term of sentence, unless the inmate is convicted and
67 sentenced for a nonviolent crime.

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

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

83 (8) Nonviolent offenders who receive an earned-time
84 allowance of one-half (1/2) of their period of confinement shall
85 be placed in a rehabilitative program to be created by the
86 Mississippi Department of Corrections for a period of not less
87 than three (3) months. The rehabilitative program shall be
88 designed to address the individual need of the nonviolent offender
89 in relation to the type of crime he has committed. A mental
90 assessment shall be made on each offender placed in the program.

91 **SECTION 2.** Section 47-7-3, Mississippi Code of 1972, is
92 amended as follows:

93 47-7-3. (1) Every prisoner who has been convicted of any
94 offense against the State of Mississippi, and is confined in the
95 execution of a judgment of such conviction in the Mississippi



96 State Penitentiary for a definite term or terms of one (1) year or
97 over, or for the term of his or her natural life, whose record of
98 conduct shows that such prisoner has observed the rules of the
99 penitentiary, and who has served not less than one-fourth (1/4) of
100 the total of such term or terms for which such prisoner was
101 sentenced, or, if sentenced to serve a term or terms of thirty
102 (30) years or more, or, if sentenced for the term of the natural
103 life of such prisoner, has served not less than ten (10) years of
104 such life sentence, may be released on parole as hereinafter
105 provided, except that:

106 (a) No prisoner convicted as a confirmed and habitual
107 criminal under the provisions of Sections 99-19-81 through
108 99-19-87 shall be eligible for parole;

109 (b) Any person who shall have been convicted of a sex
110 crime shall not be released on parole except for a person under
111 the age of nineteen (19) who has been convicted under Section
112 97-3-67;

113 (c) No one shall be eligible for parole until he shall
114 have served one (1) year of his sentence, unless such person has
115 accrued any meritorious earned time allowances, in which case he
116 shall be eligible for parole if he has served (i) nine (9) months
117 of his sentence or sentences, when his sentence or sentences is
118 two (2) years or less; (ii) ten (10) months of his sentence or
119 sentences when his sentence or sentences is more than two (2)
120 years but no more than five (5) years; and (iii) one (1) year of
121 his sentence or sentences when his sentence or sentences is more
122 than five (5) years;

123 (d) (i) No person shall be eligible for parole who
124 shall, on or after January 1, 1977, be convicted of robbery or
125 attempted robbery through the display of a firearm until he shall
126 have served ten (10) years if sentenced to a term or terms of more
127 than ten (10) years or if sentenced for the term of the natural
128 life of such person. If such person is sentenced to a term or



129 terms of ten (10) years or less, then such person shall not be
130 eligible for parole. The provisions of this paragraph (d) shall
131 also apply to any person who shall commit robbery or attempted
132 robbery on or after July 1, 1982, through the display of a deadly
133 weapon. This subparagraph (d)(i) shall not apply to persons
134 convicted after September 30, 1994;

135 (ii) No person shall be eligible for parole who
136 shall, on or after October 1, 1994, be convicted of robbery,
137 attempted robbery or carjacking as provided in Section 97-3-115 et
138 seq., through the display of a firearm or drive-by shooting as
139 provided in Section 97-3-109. The provisions of this subparagraph
140 (d)(ii) shall also apply to any person who shall commit robbery,
141 attempted robbery, carjacking or a drive-by shooting on or after
142 October 1, 1994, through the display of a deadly weapon;

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

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

150 (g) No person shall be eligible for parole who is
151 convicted or whose suspended sentence is revoked after June 30,
152 1995, except that a first offender convicted of a nonviolent crime
153 after January 1, 2000, may be eligible for parole if the offender
154 meets the requirements in subsection (1) and this paragraph. In
155 addition to other requirements, if a first offender is convicted
156 of a drug or driving under the influence felony, the offender must
157 complete a drug and alcohol rehabilitation program prior to parole
158 or the offender may be required to complete a post-release drug
159 and alcohol program as a condition of parole. For purposes of
160 this paragraph, "nonviolent crime" means a felony which does not
161 involve the use or attempted use of any force, the use or



162 attempted use of a deadly weapon or a felony which does not
163 involve injury, attempted injury or the killing or attempted
164 killing of a human being.

165 (2) Notwithstanding any other provision of law, an inmate
166 shall not be eligible to receive earned time, good time or any
167 other administrative reduction of time which shall reduce the time
168 necessary to be served for parole eligibility as provided in
169 subsection (1) of this section; however, this subsection shall not
170 apply to the advancement of parole eligibility dates pursuant to
171 the Prison Overcrowding Emergency Powers Act. Moreover,
172 meritorious earned time allowances may be used to reduce the time
173 necessary to be served for parole eligibility as provided in
174 paragraph (c) of subsection (1) of this section.

175 (3) The State Parole Board shall by rules and regulations
176 establish a method of determining a tentative parole hearing date
177 for each eligible offender taken into the custody of the
178 Department of Corrections. The tentative parole hearing date
179 shall be determined within ninety (90) days after the department
180 has assumed custody of the offender. Such tentative parole
181 hearing date shall be calculated by a formula taking into account
182 the offender's age upon first commitment, number of prior
183 incarcerations, prior probation or parole failures, the severity
184 and the violence of the offense committed, employment history and
185 other criteria which in the opinion of the board tend to validly
186 and reliably predict the length of incarceration necessary before
187 the offender can be successfully paroled.

188 (4) Any inmate within twenty-four (24) months of his parole
189 eligibility date and who meets the criteria established by the
190 classification board shall receive priority for placement in any
191 educational development and job training programs. Any inmate
192 refusing to participate in an educational development or job
193 training program may be ineligible for parole.



194 **SECTION 3.** This act shall take effect and be in force from
195 and after July 1, 2003.

