

By: Representative Scott (80th)

To: Penitentiary

HOUSE BILL NO. 1238

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 that a first offender convicted of a nonviolent crime  
215 after January 1, 2000, may be eligible for parole if the offender  
216 meets the requirements in subsection (1) and this paragraph. In  
217 addition to other requirements, if a first offender is convicted  
218 of a drug or driving under the influence felony, the offender must  
219 complete a drug and alcohol rehabilitation program prior to parole  
220 or the offender may be required to complete a post-release drug  
221 and alcohol program as a condition of parole. For purposes of  
222 this paragraph, "nonviolent crime" means a felony other than  
223 homicide, robbery, manslaughter, sex crimes, arson, burglary of an  
224 occupied dwelling, aggravated assault, kidnapping, felonious abuse  
225 of vulnerable adults, felonies with enhanced penalties, the sale  
226 or manufacture of a controlled substance under the Uniform  
227 Controlled Substances Law, and felony child abuse.



228           (h) No person convicted under Section 41-29-139 shall  
229 be eligible for parole, unless he has successfully passed a test  
230 to detect the presence of a controlled substance, administered by  
231 the department.

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

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

255           (4) Any inmate within twenty-four (24) months of his parole  
256 eligibility date and who meets the criteria established by the  
257 classification board shall receive priority for placement in any  
258 educational development and job training programs. Any inmate  
259 refusing to participate in an educational development or job  
260 training program may be ineligible for parole.





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

263           47-7-17. Within one (1) year after his admission and at such  
264 intervals thereafter as it may determine, the board shall secure  
265 and consider all pertinent information regarding each offender,  
266 except any under sentence of death or otherwise ineligible for  
267 parole, including the circumstances of his offense, his previous  
268 social history, his previous criminal record, including any  
269 records of law enforcement agencies or of a youth court regarding  
270 that offender's juvenile criminal history, his conduct, employment  
271 and attitude while in the custody of the department, and the  
272 reports of such physical and mental examinations as have been  
273 made. The board shall furnish at least three (3) months' written  
274 notice to each such offender of the date on which he is eligible  
275 for parole.

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



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

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

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



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

339           **SECTION 6.** This act shall take effect and be in force from  
340 and after July 1, 2003.

