HOUSE BILL NO. 1298

AN ACT TO AMEND SECTIONS 47-5-138 AND 47-7-3, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT PERSONS CONVICTED OF NONVIOLENT CRIMES SHALL NOT BE SUBJECT TO THE MANDATORY EIGHTY-FIVE PERCENT SENTENCING PROVISIONS; TO REQUIRE THE MISSISSIPPI DEPARTMENT OF CORRECTIONS TO CREATE A REHABILITATION PROGRAM FOR NONVIOLENT OFFENDERS WHO RECEIVE AN EARNED-TIME ALLOWANCE OF ONE-HALF OF THE PERIOD OF CONFINEMENT; AND FOR RELATED PURPOSES.

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

SECTION 1. 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; however, from and after July 1, 2001, this subsection shall apply to sentences for any person convicted of a nonviolent crime. For the purposes of this section "nonviolent crime" means any crime which does not involve the use or attempted use of any force, the use or attempted use of a deadly weapon or a crime which does not involve injury, attempted injury or the killing or attempted killing of a human being.

(2) Nonviolent offenders who receive an earned-time allowance of one-half (½) of their period of confinement shall be...
placed in a rehabilitation program to be created by the
Mississippi Department of Corrections for a period of not less
than three (3) months. The rehabilitation program shall be
designed to address the individual need of the nonviolent offender
in relation to the type of crime he has committed. A mental
assessment shall be made on each offender placed in the program.

(3) 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.

(4) (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.

(5) 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.
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, unless the inmate is convicted and sentenced for a nonviolent crime.

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.

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 2. 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 conduct 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; however, a person convicted of a nonviolent crime, as defined in Section 47-5-138, shall be eligible for parole.

(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 3. This act shall take effect and be in force from and after July 1, 2003.