

By: Representative Scott (80th)

To: Penitentiary

HOUSE BILL NO. 1298

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

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

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

11 47-5-138. (1) The department may promulgate rules and  
12 regulations to carry out an earned time allowance program based on  
13 the good conduct and performance of an inmate. An inmate is  
14 eligible to receive an earned time allowance of one-half (1/2) of  
15 the period of confinement imposed by the court except those  
16 inmates excluded by law. When an inmate is committed to the  
17 custody of the department, the department shall determine a  
18 conditional earned time release date by subtracting the earned  
19 time allowance from an inmate's term of sentence. This subsection  
20 does not apply to any sentence imposed after June 30, 1995;  
21 however, from and after July 1, 2001, this subsection shall apply  
22 to sentences for any person convicted of a nonviolent crime. For  
23 the purposes of this section "nonviolent crime" means any crime  
24 which does not involve the use or attempted use of any force, the  
25 use or attempted use of a deadly weapon or a crime which does not  
26 involve injury, attempted injury or the killing or attempted  
27 killing of a human being.

28 (2) Nonviolent offenders who receive an earned-time  
29 allowance of one-half (1/2) of their period of confinement shall be



30 placed in a rehabilitation program to be created by the  
31 Mississippi Department of Corrections for a period of not less  
32 than three (3) months. The rehabilitation program shall be  
33 designed to address the individual need of the nonviolent offender  
34 in relation to the type of crime he has committed. A mental  
35 assessment shall be made on each offender placed in the program.

36 (3) An inmate may forfeit all or part of his earned time  
37 allowance for a serious violation of rules. No forfeiture of the  
38 earned time allowance shall be effective except upon approval of  
39 the commissioner or his designee, and forfeited earned time may  
40 not be restored.

41 (4) (a) For the purposes of this subsection, "final order"  
42 means an order of a state or federal court that dismisses a  
43 lawsuit brought by an inmate while the inmate was in the custody  
44 of the Department of Corrections as frivolous, malicious or for  
45 failure to state a claim upon which relief could be granted.

46 (b) On receipt of a final order, the department shall  
47 forfeit:

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

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

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

57 (c) The department may not restore earned time  
58 forfeited under this subsection.

59 (5) An inmate who meets the good conduct and performance  
60 requirements of the earned time allowance program may be released  
61 on his conditional earned time release date.



62       (6) For any sentence imposed after June 30, 1995, an inmate  
63 may receive an earned time allowance of four and one-half (4-1/2)  
64 days for each thirty (30) days served if the department determines  
65 that the inmate has complied with the good conduct and performance  
66 requirements of the earned time allowance program. The earned  
67 time allowance under this subsection shall not exceed fifteen  
68 percent (15%) of an inmate's term of sentence, unless the inmate  
69 is convicted and sentenced for a nonviolent crime.

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

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

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

87       47-7-3. (1) Every prisoner who has been convicted of any  
88 offense against the State of Mississippi, and is confined in the  
89 execution of a judgment of such conviction in the Mississippi  
90 State Penitentiary for a definite term or terms of one (1) year or  
91 over, or for the term of his or her natural life, whose record of  
92 conduct shows that such prisoner has observed the rules of the  
93 penitentiary, and who has served not less than one-fourth (1/4) of  
94 the total of such term or terms for which such prisoner was



95 sentenced, or, if sentenced to serve a term or terms of thirty  
96 (30) years or more, or, if sentenced for the term of the natural  
97 life of such prisoner, has served not less than ten (10) years of  
98 such life sentence, may be released on parole as hereinafter  
99 provided, except that:

100 (a) No prisoner convicted as a confirmed and habitual  
101 criminal under the provisions of Sections 99-19-81 through  
102 99-19-87 shall be eligible for parole;

103 (b) Any person who shall have been convicted of a sex  
104 crime shall not be released on parole except for a person under  
105 the age of nineteen (19) who has been convicted under Section  
106 97-3-67;

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

117 (d) (i) No person shall be eligible for parole who  
118 shall, on or after January 1, 1977, be convicted of robbery or  
119 attempted robbery through the display of a firearm until he shall  
120 have served ten (10) years if sentenced to a term or terms of more  
121 than ten (10) years or if sentenced for the term of the natural  
122 life of such person. If such person is sentenced to a term or  
123 terms of ten (10) years or less, then such person shall not be  
124 eligible for parole. The provisions of this paragraph (d) shall  
125 also apply to any person who shall commit robbery or attempted  
126 robbery on or after July 1, 1982, through the display of a deadly



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

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

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

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

144 (g) No person shall be eligible for parole who is  
145 convicted or whose suspended sentence is revoked after June 30,  
146 1995; however, a person convicted of a nonviolent crime, as  
147 defined in Section 47-5-138, shall be eligible for parole.

148 (2) Notwithstanding any other provision of law, an inmate  
149 shall not be eligible to receive earned time, good time or any  
150 other administrative reduction of time which shall reduce the time  
151 necessary to be served for parole eligibility as provided in  
152 subsection (1) of this section; however, this subsection shall not  
153 apply to the advancement of parole eligibility dates pursuant to  
154 the Prison Overcrowding Emergency Powers Act. Moreover,  
155 meritorious earned time allowances may be used to reduce the time  
156 necessary to be served for parole eligibility as provided in  
157 paragraph (c) of subsection (1) of this section.

158 (3) The State Parole Board shall by rules and regulations  
159 establish a method of determining a tentative parole hearing date



160 for each eligible offender taken into the custody of the  
161 Department of Corrections. The tentative parole hearing date  
162 shall be determined within ninety (90) days after the department  
163 has assumed custody of the offender. Such tentative parole  
164 hearing date shall be calculated by a formula taking into account  
165 the offender's age upon first commitment, number of prior  
166 incarcerations, prior probation or parole failures, the severity  
167 and the violence of the offense committed, employment history and  
168 other criteria which in the opinion of the board tend to validly  
169 and reliably predict the length of incarceration necessary before  
170 the offender can be successfully paroled.

171 (4) Any inmate within twenty-four (24) months of his parole  
172 eligibility date and who meets the criteria established by the  
173 classification board shall receive priority for placement in any  
174 educational development and job training programs. Any inmate  
175 refusing to participate in an educational development or job  
176 training program may be ineligible for parole.

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

