

By: Representative Watson

To: Corrections

HOUSE BILL NO. 403

1 AN ACT TO REENACT SECTIONS 47-5-701 THROUGH 47-5-729,
 2 MISSISSIPPI CODE OF 1972, WHICH CREATE THE PRISON OVERCROWDING
 3 EMERGENCY POWERS ACT AND PROVIDE THE REQUIREMENTS FOR THE
 4 DECLARATION OF A PRISON SYSTEM OVERCROWDING STATE OF EMERGENCY AND
 5 THE ACTIONS THAT MAY BE TAKEN DURING A PRISON SYSTEM OVERCROWDING
 6 STATE OF EMERGENCY; TO AMEND SECTION 47-5-731, MISSISSIPPI CODE
 7 OF 1972, TO EXTEND THE REPEAL DATE ON THOSE REENACTED SECTIONS;
 8 AND FOR RELATED PURPOSES.

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

10 **SECTION 1.** Section 47-5-701, Mississippi Code of 1972, is
 11 reenacted as follows:

12 47-5-701. Sections 47-5-701 through 47-5-729 shall be known
 13 and may be cited as the "Prison Overcrowding Emergency Powers
 14 Act."

15 **SECTION 2.** Section 47-5-703, Mississippi Code of 1972, is
 16 reenacted as follows:

17 47-5-703. For the purposes of Sections 47-5-701 through
 18 47-5-729 the following words shall have the meaning ascribed
 19 herein unless the context shall otherwise require:

20 (a) "Inmate" means every person who at the time of the
 21 declaration of a prison system overcrowding state of emergency, or
 22 at any time during the continuation of a state of emergency, is
 23 incarcerated by the Mississippi Department of Corrections as a
 24 result of a commitment to the department, including persons
 25 committed to the department and incarcerated in local or county
 26 jails or other facilities authorized to house state inmates.

27 (b) "Operating capacity" means the total number of
 28 state inmates which can be safely and reasonably housed in
 29 facilities operated by the Department of Corrections and in local
 30 or county jails or other facilities authorized to house state



31 inmates as certified by the department, subject to applicable
32 federal and state laws and rules and regulations.

33 (c) "Parole eligibility date" means the date on which
34 an inmate becomes eligible for release by parole under the
35 provisions of Section 47-7-3, Mississippi Code of 1972. For the
36 purposes of Sections 47-5-701 through 47-5-729, an inmate with a
37 sentence of one (1) year shall be deemed to have a parole
38 eligibility date which shall be the last day of his sentence.

39 (d) "Prison" means any correctional facility operated
40 by the Mississippi Department of Corrections.

41 (e) "Prison system" means the prisons operated by the
42 Mississippi Department of Corrections and those local or county
43 jails or other facilities authorized to house state inmates.

44 (f) "Prison system population" means the total number
45 of state inmates housed in the prisons operated by the Mississippi
46 Department of Corrections and in those local or county jails or
47 other facilities authorized to house state inmates.

48 (g) "Qualified inmate" means inmates who are not
49 incarcerated for convictions of murder, kidnapping, arson, armed
50 robbery, rape, sexual offenses or any offense involving the use of
51 a deadly weapon and who are within that number of days of their
52 parole eligibility date at the time of the declaration of the
53 state of emergency as is specified to be conditionally advanced
54 under the declaration of the state of emergency. An inmate
55 sentenced as an habitual offender shall not be considered a
56 "qualified inmate."

57 (h) "State of emergency" means a prison system
58 overcrowding state of emergency as provided in Section 47-5-711.

59 **SECTION 3.** Section 47-5-705, Mississippi Code of 1972, is
60 reenacted as follows:

61 47-5-705. The requirements for the declaration of a prison
62 system overcrowding state of emergency are as follows:



63 (a) Prison system population in excess of ninety-five
64 percent (95%) of the prison system operating capacity for at least
65 thirty (30) consecutive days immediately preceding the declaration
66 of a state of emergency;

67 (b) Full appropriate utilization by the Mississippi
68 Department of Corrections of powers which tend either to reduce
69 prison system population or expand operating capacity. Such
70 powers include but are not limited to earned time allowances as
71 specified in Sections 47-5-138 and 47-5-139, Mississippi Code of
72 1972, review of offenders for purposes of reclassification,
73 reevaluation of persons eligible for consideration for work
74 release, supervised earned release or other release programs
75 authorized by law and arrangements for housing inmates of the
76 Department of Corrections in local or county jails or other
77 facilities authorized to house state inmates; and

78 (c) Full appropriate utilization by the State Parole
79 Board of those powers which tend to reduce the prison system
80 population. Such powers include but are not limited to parole as
81 provided in Section 47-7-3, Mississippi Code of 1972, the review
82 of inmates who have had their parole revoked and the reevaluation
83 of inmates previously denied parole.

84 **SECTION 4.** Section 47-5-707, Mississippi Code of 1972, is
85 reenacted as follows:

86 47-5-707. Whenever the prison system population exceeds
87 ninety-five percent (95%) of operating capacity, the Commissioner
88 of Corrections shall immediately notify the Governor and the State
89 Parole Board of this fact. The notice shall include the current
90 prison system population and the prison system operating capacity.
91 A report must be made within ten (10) days after the thirtieth day
92 of operating in excess of ninety-five percent (95%) of operating
93 capacity. The report shall include the prison system operating
94 capacity, the prison system population during the relevant time



95 period, and may include a recommended specific term of advancement
96 of the parole eligibility dates.

97 **SECTION 5.** Section 47-5-709, Mississippi Code of 1972, is
98 reenacted as follows:

99 47-5-709. If the prison system population exceeds
100 ninety-five percent (95%) of operating capacity for thirty (30)
101 consecutive days, the State Parole Board shall meet to determine
102 whether there has been full appropriate exercise of the powers of
103 the State Parole Board which tend to reduce the prison system
104 population. The State Parole Board shall report its findings to
105 the Governor within ten (10) days after the thirtieth day of
106 operating in excess of ninety-five percent (95%) of prison
107 operating capacity. The report shall include the determination of
108 the State Parole Board regarding its utilization of powers
109 described in paragraph (c) of Section 47-5-705.

110 **SECTION 6.** Section 47-5-711, Mississippi Code of 1972, is
111 reenacted as follows:

112 47-5-711. Upon receipt of the report from the Commissioner
113 of Corrections and the report of the State Parole Board, the
114 Governor has the power to:

115 (a) Determine to be in error the determination that
116 there had been full appropriate exercise of powers which tends to
117 reduce prison population, in which case no state of emergency
118 shall commence;

119 (b) Determine that commencement of a state of emergency
120 would be injurious to the public good, or raises the potential of
121 threatening the safety of the public in the state as a whole or in
122 a particular community, in which case no state of emergency shall
123 commence; or

124 (c) Determine that the reports establish the existence
125 of the conditions for a declaration of a prison system
126 overcrowding state of emergency as described in Section 47-5-705
127 and declare a state of emergency, specifying an amount of



128 advancement of parole eligibility dates from thirty (30) to ninety
129 (90) days.

130 If fourteen (14) days after the receipt of the reports to the
131 Governor pursuant to Sections 47-5-707 and 47-5-709 the Governor
132 has not exercised any of the powers specified in paragraphs (a),
133 (b) and (c) of this section, action under Sections 47-5-701
134 through 47-5-729 is considered terminated.

135 If the Governor exercises a power under paragraphs (a) or (b)
136 of this section, he shall state the reasons for the exercise of
137 such power in the notification of his action to the Commissioner
138 of Corrections and the State Parole Board.

139 **SECTION 7.** Section 47-5-713, Mississippi Code of 1972, is
140 reenacted as follows:

141 47-5-713. Upon the declaration of a state of emergency, the
142 parole eligibility dates of qualified inmates shall be
143 conditionally advanced. The amount of advancement of parole
144 eligibility dates must be specified in the declaration by the
145 Governor. When the state of emergency has been terminated, the
146 parole eligibility dates which were conditionally advanced shall
147 be reset to the parole eligibility date set prior to the emergency
148 for those inmates who were not released on parole under the
149 provisions of Sections 47-5-701 through 47-5-729.

150 **SECTION 8.** Section 47-5-715, Mississippi Code of 1972, is
151 reenacted as follows:

152 47-5-715. During the continuation of a state of emergency,
153 the Commissioner of the Department of Corrections shall weekly
154 certify to the Governor the prison system population for each day
155 of the preceding week. The Governor shall declare the state of
156 emergency terminated upon notification that the prison system
157 population has been at or below ninety-five percent (95%) of
158 operating capacity for seven (7) consecutive days.

159 If no declaration of termination is issued within seven (7)
160 days after the certification of conditions for termination of the



161 state of emergency, the state of emergency is considered
162 terminated as of the seventh day after the certification.

163 **SECTION 9.** Section 47-5-717, Mississippi Code of 1972, is
164 reenacted as follows:

165 47-5-717. If sixty (60) days after the declaration of a
166 prison system overcrowding state of emergency or of an additional
167 advancement of the parole eligibility dates the prison system
168 population continues to be in excess of ninety-five percent (95%)
169 of operating capacity, the Commissioner of Corrections shall
170 report to the Governor indicating whether an additional
171 advancement of the parole eligibility dates is necessary in order
172 to reduce the prison system population to ninety-five percent
173 (95%) of operating capacity and indicating the amount of any
174 recommended additional advancement of the parole eligibility
175 dates. The recommended amount must be no less than thirty (30)
176 days nor more than ninety (90) days. The report shall include
177 those factors which would tend to indicate that the prison system
178 population is likely to increase above operating capacity within
179 ninety (90) days. The report shall discuss the availability of
180 field supervisors, the currently existing supervision case loads,
181 and the measures that could be taken and the resources that would
182 be needed to provide appropriate supervision of persons released
183 early as a result of an additional advancement of the parole
184 eligibility dates.

185 **SECTION 10.** Section 47-5-719, Mississippi Code of 1972, is
186 reenacted as follows:

187 47-5-719. Upon receipt of the report from the Commissioner
188 of Corrections as provided in Section 47-5-717, the Governor has
189 the power to:

190 (a) Determine to be in error any conclusion of the
191 Commissioner of Corrections that an additional advancement of the
192 parole eligibility dates is necessary in order for the prison
193 system population to be reduced to ninety-five percent (95%) of



194 operating capacity, in which case no additional advancements of
195 the parole eligibility dates shall occur;

196 (b) Determine that the ordering of additional
197 advancements of the parole eligibility dates would be injurious to
198 the public good or raises the potential of threatening the safety
199 of the public in the state as a whole or in a particular
200 community, in which case no additional advancement of parole
201 eligibility dates shall occur; or

202 (c) Determine that an additional advancement of the
203 parole eligibility dates is necessary in order for the prison
204 system population to be reduced to ninety-five percent (95%) of
205 operating capacity and order additional advancements specifying
206 the amount of additional advancements, which shall be at least
207 thirty (30) and not more than ninety (90) days.

208 If fourteen (14) days after the receipt of the report to the
209 Governor pursuant to Section 47-5-717 including a determination of
210 the Commissioner of Corrections that an additional advancement of
211 the parole eligibility dates is not necessary in order for the
212 prison system population to be reduced to ninety-five percent
213 (95%) of operating capacity the Governor has not exercised the
214 power provided in paragraph (c) of this section, action initiated
215 under Section 47-5-717 is considered terminated.

216 If the Governor exercises a power provided under paragraphs
217 (a) or (b) of this section he shall state the reasons for the
218 exercise of such power in the notification of his action to the
219 Commissioner of Corrections and the State Parole Board.

220 If the Governor orders additional advancements of the parole
221 eligibility dates under this section, the amount of advancement of
222 the parole eligibility dates must be as ordered by the Governor.

223 **SECTION 11.** Section 47-5-721, Mississippi Code of 1972, is
224 reenacted as follows:

225 47-5-721. If at any time during a state of emergency the
226 Governor determines that the continuation of the state of



227 emergency is injurious to the public good or raises the potential
228 of threatening the safety of the public in the state as a whole or
229 in a particular community, he may order the state of emergency
230 terminated.

231 **SECTION 12.** Section 47-5-723, Mississippi Code of 1972, is
232 reenacted as follows:

233 47-5-723. Revocation of the conditional advancement of the
234 parole eligibility date is a permissible prison disciplinary
235 action according to the same procedures governing the forfeiture
236 of earned time allowances as a prison disciplinary action.

237 **SECTION 13.** Section 47-5-725, Mississippi Code of 1972, is
238 reenacted as follows:

239 47-5-725. The State Parole Board shall prescribe conditions
240 of advancement of the parole eligibility date applicable prior to
241 an inmate's release. The State Parole Board shall prescribe
242 conditions of supervision consistent with existing regulations
243 applicable after release on parole. When an inmate is released
244 under the provisions of Sections 47-5-701 through 47-5-729 he
245 shall be considered to be in the legal custody of the Department
246 of Corrections.

247 **SECTION 14.** Section 47-5-727, Mississippi Code of 1972, is
248 reenacted as follows:

249 47-5-727. Advancement of parole eligibility dates under
250 Sections 47-5-701 through 47-5-729 shall occur independently of
251 all other adjustments of the parole eligibility date, such as
252 advancing the parole eligibility dates as a result of receiving
253 earned time allowances.

254 **SECTION 15.** Section 47-5-729, Mississippi Code of 1972, is
255 reenacted as follows:

256 47-5-729. The Commissioner of Corrections shall within
257 thirty (30) days after April 10, 1985, establish the operating
258 capacities of the prison system, and shall at least quarterly



259 certify existing operating capacities or establish changed or new
260 operating capacities.

261 **SECTION 16.** Section 47-5-731, Mississippi Code of 1972, is
262 amended as follows:

263 47-5-731. Sections 47-5-701 through 47-5-729, Mississippi
264 Code of 1972, which create the Prison Overcrowding Emergency
265 Powers Act, shall stand repealed from and after July 1, 2006.

266 **SECTION 17.** This act shall take effect and be in force from
267 and after July 1, 2004.

