

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.