

By: Representative Ishee

To: Corrections

HOUSE BILL NO. 28

1 AN ACT TO AMEND SECTION 47-7-3, MISSISSIPPI CODE OF 1972, TO
2 PROVIDE THAT FIRST-TIME NONVIOLENT OFFENDERS CONVICTED AFTER JUNE
3 30, 1995, MAY BECOME ELIGIBLE FOR PAROLE; TO BRING FORWARD SECTION
4 47-5-138, MISSISSIPPI CODE OF 1972, WHICH AUTHORIZES THE
5 DEPARTMENT OF CORRECTIONS TO GRANT MERITORIOUS EARNED-TIME
6 ALLOWANCES; AND FOR RELATED PURPOSES.

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

8 **SECTION 1.** Section 47-7-3, Mississippi Code of 1972, is
9 amended as follows:

10 47-7-3. (1) Every prisoner who has been convicted of any
11 offense against the State of Mississippi, and is confined in the
12 execution of a judgment of such conviction in the Mississippi
13 State Penitentiary for a definite term or terms of one (1) year or
14 over, or for the term of his or her natural life, whose record of
15 conduct shows that such prisoner has observed the rules of the
16 penitentiary, and who has served not less than one-fourth (1/4) of
17 the total of such term or terms for which such prisoner was
18 sentenced, or, if sentenced to serve a term or terms of thirty
19 (30) years or more, or, if sentenced for the term of the natural
20 life of such prisoner, has served not less than ten (10) years of
21 such life sentence, may be released on parole as hereinafter
22 provided, except that:

23 (a) No prisoner convicted as a confirmed and habitual
24 criminal under the provisions of Sections 99-19-81 through
25 99-19-87 shall be eligible for parole;

26 (b) Any person who shall have been convicted of a sex
27 crime shall not be released on parole except for a person under
28 the age of nineteen (19) who has been convicted under Section
29 97-3-67;

30 (c) No one shall be eligible for parole until he shall
31 have served one (1) year of his sentence, unless such person has
32 accrued any meritorious earned time allowances, in which case he
33 shall be eligible for parole if he has served (i) nine (9) months
34 of his sentence or sentences, when his sentence or sentences is
35 two (2) years or less; (ii) ten (10) months of his sentence or
36 sentences when his sentence or sentences is more than two (2)
37 years but no more than five (5) years; and (iii) one (1) year of
38 his sentence or sentences when his sentence or sentences is more
39 than five (5) years;

40 (d) (i) No person shall be eligible for parole who
41 shall, on or after January 1, 1977, be convicted of robbery or
42 attempted robbery through the display of a firearm until he shall
43 have served ten (10) years if sentenced to a term or terms of more
44 than ten (10) years or if sentenced for the term of the natural
45 life of such person. If such person is sentenced to a term or
46 terms of ten (10) years or less, then such person shall not be
47 eligible for parole. The provisions of this paragraph (d) shall
48 also apply to any person who shall commit robbery or attempted
49 robbery on or after July 1, 1982, through the display of a deadly
50 weapon. This subparagraph (d)(i) shall not apply to persons
51 convicted after September 30, 1994;

52 (ii) No person shall be eligible for parole who
53 shall, on or after October 1, 1994, be convicted of robbery,
54 attempted robbery or carjacking as provided in Section 97-3-115 et
55 seq., through the display of a firearm or drive-by shooting as
56 provided in Section 97-3-109. The provisions of this subparagraph
57 (d)(ii) shall also apply to any person who shall commit robbery,
58 attempted robbery, carjacking or a drive-by shooting on or after
59 October 1, 1994, through the display of a deadly weapon;

60 (e) No person shall be eligible for parole who, on or
61 after July 1, 1994, is charged, tried, convicted and sentenced to

62 life imprisonment without eligibility for parole under the
63 provisions of Section 99-19-101;

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

67 (g) No person shall be eligible for parole who is
68 convicted or whose suspended sentence is revoked after June 30,
69 1995, except that a first offender convicted of a nonviolent crime
70 after June 30, 1995, may be eligible for parole if the offender
71 meets the requirements in subsection (1) and this paragraph. In
72 addition to other requirements, if a first offender is convicted
73 of a drug or driving under the influence felony, the offender must
74 complete a drug and alcohol rehabilitation program prior to parole
75 or the offender may be required to complete a post-release drug
76 and alcohol program as a condition of parole. For purposes of
77 this paragraph, "nonviolent crime" means a felony other than
78 homicide, robbery, manslaughter, sex crimes, arson, burglary of an
79 occupied dwelling, aggravated assault, kidnapping, felonious abuse
80 of vulnerable adults, felonies with enhanced penalties, the sale
81 or manufacture of a controlled substance under the Uniform
82 Controlled Substances Law, felony child abuse and a violation of
83 63-11-30 (5) resulting in death, or serious bodily injury
84 resulting in the loss of a limb or dismemberment, loss of
85 eyesight, a coma, permanent dysfunction of any vital organ,
86 paralysis or resulting in an individual's permanent bedridden
87 state. For purposes of this paragraph, "first offender" means a
88 person who at the time of sentencing has not been convicted of a
89 felony on a previous occasion in any court or courts of the United
90 States or in any state or territory thereof.

91 (2) Notwithstanding any other provision of law, an inmate
92 shall not be eligible to receive earned time, good time or any
93 other administrative reduction of time which shall reduce the time
94 necessary to be served for parole eligibility as provided in

95 subsection (1) of this section; however, this subsection shall not
96 apply to the advancement of parole eligibility dates pursuant to
97 the Prison Overcrowding Emergency Powers Act. Moreover,
98 meritorious earned time allowances may be used to reduce the time
99 necessary to be served for parole eligibility as provided in
100 paragraph (c) of subsection (1) of this section.

101 (3) (a) The State Parole Board shall by rules and
102 regulations establish a method of determining a tentative parole
103 hearing date for each eligible offender taken into the custody of
104 the Department of Corrections. The tentative parole hearing date
105 shall be determined within ninety (90) days after the department
106 has assumed custody of the offender. Such tentative parole
107 hearing date shall be calculated by a formula taking into account
108 the offender's age upon first commitment, number of prior
109 incarcerations, prior probation or parole failures, the severity
110 and the violence of the offense committed, employment history and
111 other criteria which in the opinion of the board tend to validly
112 and reliably predict the length of incarceration necessary before
113 the offender can be successfully paroled.

114 (b) If an application for parole from an eligible
115 offender is rejected, the Parole Board shall reconsider the
116 application from that offender no later than one (1) year after
117 the initial application for parole is rejected, unless the crime
118 for which the offender was convicted is defined as a violent crime
119 under subsection (2)(g) of this section.

120 This paragraph shall stand repealed on July 1, 2006.

121 (4) Any inmate within twenty-four (24) months of his parole
122 eligibility date and who meets the criteria established by the
123 classification board shall receive priority for placement in any
124 educational development and job training programs. Any inmate
125 refusing to participate in an educational development or job
126 training program may be ineligible for parole.

127 **SECTION 2.** Section 47-5-138, Mississippi Code of 1972, is
128 brought forward as follows:

129 47-5-138. (1) The department may promulgate rules and
130 regulations to carry out an earned time allowance program based on
131 the good conduct and performance of an inmate. An inmate is
132 eligible to receive an earned time allowance of one-half (1/2) of
133 the period of confinement imposed by the court except those
134 inmates excluded by law. When an inmate is committed to the
135 custody of the department, the department shall determine a
136 conditional earned time release date by subtracting the earned
137 time allowance from an inmate's term of sentence. This subsection
138 does not apply to any sentence imposed after June 30, 1995.

139 (2) An inmate may forfeit all or part of his earned time
140 allowance for a serious violation of rules. No forfeiture of the
141 earned time allowance shall be effective except upon approval of
142 the commissioner or his designee, and forfeited earned time may
143 not be restored.

144 (3) (a) For the purposes of this subsection, "final order"
145 means an order of a state or federal court that dismisses a
146 lawsuit brought by an inmate while the inmate was in the custody
147 of the Department of Corrections as frivolous, malicious or for
148 failure to state a claim upon which relief could be granted.

149 (b) On receipt of a final order, the department shall
150 forfeit:

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

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

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

160 (c) The department may not restore earned time
161 forfeited under this subsection.

162 (4) An inmate who meets the good conduct and performance
163 requirements of the earned time allowance program may be released
164 on his conditional earned time release date.

165 (5) For any sentence imposed after June 30, 1995, an inmate
166 may receive an earned time allowance of four and one-half (4-1/2)
167 days for each thirty (30) days served if the department determines
168 that the inmate has complied with the good conduct and performance
169 requirements of the earned time allowance program. The earned
170 time allowance under this subsection shall not exceed fifteen
171 percent (15%) of an inmate's term of sentence.

172 (6) Any inmate, who is released before the expiration of his
173 term of sentence under this section, shall be placed under
174 earned-release supervision until the expiration of the term of
175 sentence. The inmate shall retain inmate status and remain under
176 the jurisdiction of the department. The period of earned-release
177 supervision shall be conducted in the same manner as a period of
178 supervised parole. The department shall develop rules, terms and
179 conditions for the earned-release supervision program. The
180 commissioner shall designate the appropriate hearing officer
181 within the department to conduct revocation hearings for inmates
182 violating the conditions of earned-release supervision.

183 (7) If the earned-release supervision is revoked, the inmate
184 shall serve the remainder of the sentence and the time the inmate
185 was on earned-release supervision, shall not be applied to and
186 shall not reduce his sentence.

187 **SECTION 3.** This act shall take effect and be in force from
188 and after July 1, 2005.