

By: Representative Baker (74th)

To: Judiciary A

HOUSE BILL NO. 850

1 AN ACT TO AMEND SECTION 63-11-30, MISSISSIPPI CODE OF 1972,
2 TO PROHIBIT THE REDUCTION OF THIRD OFFENSE SENTENCE; TO ALLOW SUCH
3 SENTENCES TO BE SERVED IN AN ALCOHOL AND DRUG TREATMENT CENTER; TO
4 AMEND SECTION 47-7-3, MISSISSIPPI CODE OF 1972, TO PROHIBIT PAROLE
5 FOR A THIRD OFFENSE OF THE IMPLIED CONSENT LAW; AND FOR RELATED
6 PURPOSES.

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

8 **SECTION 1.** Section 63-11-30, Mississippi Code of 1972, is
9 amended as follows:

10 63-11-30. (1) It is unlawful for any person to drive or
11 otherwise operate a vehicle within this state who (a) is under the
12 influence of intoxicating liquor; (b) is under the influence of
13 any other substance which has impaired such person's ability to
14 operate a motor vehicle; (c) has an alcohol concentration of eight
15 one-hundredths percent (.08%) or more for persons who are above
16 the legal age to purchase alcoholic beverages under state law, or
17 two one-hundredths percent (.02%) or more for persons who are
18 below the legal age to purchase alcoholic beverages under state
19 law, in the person's blood based upon grams of alcohol per one
20 hundred (100) milliliters of blood or grams of alcohol per two
21 hundred ten (210) liters of breath as shown by a chemical analysis
22 of such person's breath, blood or urine administered as authorized
23 by this chapter; (d) is under the influence of any drug or
24 controlled substance, the possession of which is unlawful under
25 the Mississippi Controlled Substances Law; or (e) has an alcohol
26 concentration of four one-hundredths percent (.04%) or more in the
27 person's blood, based upon grams of alcohol per one hundred (100)
28 milliliters of blood or grams of alcohol per two hundred ten (210)
29 liters of breath as shown by a chemical analysis of such person's

30 blood, breath or urine, administered as authorized by this chapter
31 for persons operating a commercial motor vehicle.

32 (2) (a) Except as otherwise provided in subsection (3),
33 upon conviction of any person for the first offense of violating
34 subsection (1) of this section where chemical tests provided for
35 under Section 63-11-5 were given, or where chemical test results
36 are not available, such person shall be fined not less than Two
37 Hundred Fifty Dollars (\$250.00) nor more than One Thousand Dollars
38 (\$1,000.00), or imprisoned for not more than forty-eight (48)
39 hours in jail or both; and the court shall order such person to
40 attend and complete an alcohol safety education program as
41 provided in Section 63-11-32. The court may substitute attendance
42 at a victim impact panel instead of forty-eight (48) hours in
43 jail. In addition, the Department of Public Safety, the
44 Commissioner of Public Safety or his duly authorized agent shall,
45 after conviction and upon receipt of the court abstract, suspend
46 the driver's license and driving privileges of such person for a
47 period of not less than ninety (90) days and until such person
48 attends and successfully completes an alcohol safety education
49 program as herein provided; provided, however, in no event shall
50 such period of suspension exceed one (1) year. Commercial driving
51 privileges shall be suspended as provided in Section 63-1-83.

52 The circuit court having jurisdiction in the county in which
53 the conviction was had or the circuit court of the person's county
54 of residence may reduce the suspension of driving privileges under
55 Section 63-11-30(2)(a) if the denial of which would constitute a
56 hardship on the offender, except that no court may issue such an
57 order reducing the suspension of driving privileges under this
58 subsection until thirty (30) days have elapsed from the effective
59 date of the suspension. Hardships shall only apply to first
60 offenses under Section 63-11-30(1), and shall not apply to second,
61 third or subsequent convictions of any person violating subsection
62 (1) of this section. A reduction of suspension on the basis of

63 hardship shall not be available to any person who refused to
64 submit to a chemical test upon the request of a law enforcement
65 officer as provided in Section 63-11-5. When the petition is
66 filed, such person shall pay to the circuit clerk of the court
67 where the petition is filed a fee of Fifty Dollars (\$50.00), which
68 shall be deposited into the State General Fund to the credit of a
69 special fund hereby created in the State Treasury to be used for
70 alcohol or drug abuse treatment and education, upon appropriation
71 by the Legislature. This fee shall be in addition to any other
72 court costs or fees required for the filing of petitions.

73 The petition filed under the provisions of this subsection
74 shall contain the specific facts which the petitioner alleges to
75 constitute a hardship and the driver's license number of the
76 petitioner. A hearing may be held on any petition filed under
77 this subsection only after ten (10) days' prior written notice to
78 the Commissioner of Public Safety, or his designated agent, or the
79 attorney designated to represent the state. At such hearing, the
80 court may enter an order reducing the period of suspension.

81 The order entered under the provisions of this subsection
82 shall contain the specific grounds upon which hardship was
83 determined, and shall order the petitioner to attend and complete
84 an alcohol safety education program as provided in Section
85 63-11-32. A certified copy of such order shall be delivered to
86 the Commissioner of Public Safety by the clerk of the court within
87 five (5) days of the entry of the order. The certified copy of
88 such order shall contain information which will identify the
89 petitioner, including, but not limited to, the name, mailing
90 address, street address, social security number and driver's
91 license number of the petitioner.

92 At any time following at least thirty (30) days of suspension
93 for a first offense violation of this section, the court may grant
94 the person hardship driving privileges upon written petition of

95 the defendant, if it finds reasonable cause to believe that
96 revocation would hinder the person's ability to:

97 (i) Continue his employment;

98 (ii) Continue attending school or an educational
99 institution; or

100 (iii) Obtain necessary medical care.

101 Proof of the hardship shall be established by clear and
102 convincing evidence which shall be supported by independent
103 documentation.

104 (b) Except as otherwise provided in subsection (3),
105 upon any second conviction of any person violating subsection (1)
106 of this section, the offenses being committed within a period of
107 five (5) years, such person shall be fined not less than Six
108 Hundred Dollars (\$600.00) nor more than One Thousand Five Hundred
109 Dollars (\$1,500.00), shall be imprisoned not less than five (5)
110 days nor more than one (1) year and sentenced to community service
111 work for not less than ten (10) days nor more than one (1) year.
112 The minimum penalties shall not be suspended or reduced by the
113 court and no prosecutor shall offer any suspension or sentence
114 reduction as part of a plea bargain. Except as may otherwise be
115 provided by paragraph (d) of this subsection, the Commissioner of
116 Public Safety shall suspend the driver's license of such person
117 for two (2) years. Suspension of a commercial driver's license
118 shall be governed by Section 63-1-83. Upon any second conviction
119 as described in this paragraph, the court shall ascertain whether
120 the defendant is married, and if the defendant is married shall
121 obtain the name and address of the defendant's spouse; the clerk
122 of the court shall submit this information to the Department of
123 Public Safety. Further, the commissioner shall notify in writing,
124 by certified mail, return receipt requested, the owner of the
125 vehicle and the spouse, if any, of the person convicted of the
126 second violation of the possibility of forfeiture of the vehicle
127 if such person is convicted of a third violation of subsection (1)

128 of this section. The owner of the vehicle and the spouse shall be
129 considered notified under this paragraph if the notice is
130 deposited in the United States mail and any claim that the notice
131 was not in fact received by the addressee shall not affect a
132 subsequent forfeiture proceeding.

133 For any second or subsequent conviction of any person under
134 this section, the person shall also be subject to the penalties
135 set forth in Section 63-11-31.

136 (c) Except as otherwise provided in subsection (3), for
137 any third or subsequent conviction of any person violating
138 subsection (1) of this section, the offenses being committed
139 within a period of five (5) years, such person shall be guilty of
140 a felony and fined not less than Two Thousand Dollars (\$2,000.00)
141 nor more than Five Thousand Dollars (\$5,000.00), shall serve not
142 less than one (1) year nor more than five (5) years in the custody
143 of the Department of Corrections; provided, however, that for any
144 such offense which does not result in serious injury or death to
145 any person, any sentence of incarceration may be served in the
146 county jail and/or in an alcohol and drug treatment center rather
147 than in the State Penitentiary at the discretion of the circuit
148 court judge. A person sentenced under this paragraph shall serve
149 every day of the sentence imposed by the court. The minimum
150 penalties and any sentence imposed shall not be suspended or
151 reduced by the court and no prosecutor shall offer any suspension
152 or sentence reduction as part of a plea bargain. The law
153 enforcement agency shall seize the vehicle operated by any person
154 charged with a third or subsequent violation of subsection (1) of
155 this section, if such convicted person was driving the vehicle at
156 the time the offense was committed. Such vehicle may be forfeited
157 in the manner provided by Sections 63-11-49 through 63-11-53.
158 Except as may otherwise be provided by paragraph (e) of this
159 subsection, the Commissioner of Public Safety shall suspend the
160 driver's license of such person for five (5) years. The

161 suspension of a commercial driver's license shall be governed by
162 Section 63-1-83.

163 (d) Except as otherwise provided in subsection (3), any
164 person convicted of a second violation of subsection (1) of this
165 section shall receive an in-depth diagnostic assessment, and if as
166 a result of such assessment is determined to be in need of
167 treatment of his alcohol and/or drug abuse problem, such person
168 shall successfully complete treatment of his alcohol and/or drug
169 abuse problem at a program site certified by the Department of
170 Mental Health. Such person shall be eligible for reinstatement of
171 his driving privileges upon the successful completion of such
172 treatment after a period of one (1) year after such person's
173 driver's license is suspended. Each person who receives a
174 diagnostic assessment shall pay a fee representing the cost of
175 such assessment. Each person who participates in a treatment
176 program shall pay a fee representing the cost of such treatment.

177 (e) Except as otherwise provided in subsection (3), any
178 person convicted of a third or subsequent violation of subsection
179 (1) of this section shall receive an in-depth diagnostic
180 assessment, and if as a result of such assessment is determined to
181 be in need of treatment of his alcohol and/or drug abuse problem,
182 such person shall enter an alcohol and/or drug abuse program
183 approved by the Department of Mental Health for treatment of such
184 person's alcohol and/or drug abuse problem. If such person
185 successfully completes such treatment, such person shall be
186 eligible for reinstatement of his driving privileges after a
187 period of three (3) years after such person's driver's license is
188 suspended.

189 (f) The Department of Public Safety shall promulgate
190 rules and regulations for the use of interlock ignition devices as
191 provided in Section 63-11-31 and consistent with the provisions
192 therein. Such rules and regulations shall provide for the
193 calibration of such devices and shall provide that the cost of the

194 use of such systems shall be borne by the offender. The
195 Department of Public Safety shall approve which vendors of such
196 devices shall be used to furnish such systems.

197 (3) (a) This subsection shall be known and may be cited as
198 Zero Tolerance for Minors. The provisions of this subsection
199 shall apply only when a person under the age of twenty-one (21)
200 years has a blood alcohol concentration of two one-hundredths
201 percent (.02%) or more, but lower than eight one-hundredths
202 percent (.08%). If such person's blood alcohol concentration is
203 eight one-hundredths percent (.08%) or more, the provisions of
204 subsection (2) shall apply.

205 (b) Upon conviction of any person under the age of
206 twenty-one (21) years for the first offense of violating
207 subsection (1) of this section where chemical tests provided for
208 under Section 63-11-5 were given, or where chemical test results
209 are not available, such person shall have his driver's license
210 suspended for ninety (90) days and shall be fined Two Hundred
211 Fifty Dollars (\$250.00); and the court shall order such person to
212 attend and complete an alcohol safety education program as
213 provided in Section 63-11-32. The court may also require
214 attendance at a victim impact panel.

215 The court in the county in which the conviction was had or
216 the circuit court of the person's county of residence may reduce
217 the suspension of driving privileges under Section 63-11-30(2)(a)
218 if the denial of which would constitute a hardship on the
219 offender, except that no court may issue such an order reducing
220 the suspension of driving privileges under this subsection until
221 thirty (30) days have elapsed from the effective date of the
222 suspension. Hardships shall only apply to first offenses under
223 Section 63-11-30(1), and shall not apply to second, third or
224 subsequent convictions of any person violating subsection (1) of
225 this section. A reduction of suspension on the basis of hardship
226 shall not be available to any person who refused to submit to a

227 chemical test upon the request of a law enforcement officer as
228 provided in Section 63-11-5. When the petition is filed, such
229 person shall pay to the circuit clerk of the court where the
230 petition is filed a fee of Fifty Dollars (\$50.00), which shall be
231 deposited into the State General Fund to the credit of a special
232 fund hereby created in the State Treasury to be used for alcohol
233 or drug abuse treatment and education, upon appropriation by the
234 Legislature. This fee shall be in addition to any other court
235 costs or fees required for the filing of petitions.

236 The petition filed under the provisions of this subsection
237 shall contain the specific facts which the petitioner alleges to
238 constitute a hardship and the driver's license number of the
239 petitioner. A hearing may be held on any petition filed under
240 this subsection only after ten (10) days' prior written notice to
241 the Commissioner of Public Safety, or his designated agent, or the
242 attorney designated to represent the state. At such hearing, the
243 court may enter an order reducing the period of suspension.

244 The order entered under the provisions of this subsection
245 shall contain the specific grounds upon which hardship was
246 determined, and shall order the petitioner to attend and complete
247 an alcohol safety education program as provided in Section
248 63-11-32. A certified copy of such order shall be delivered to
249 the Commissioner of Public Safety by the clerk of the court within
250 five (5) days of the entry of the order. The certified copy of
251 such order shall contain information which will identify the
252 petitioner, including, but not limited to, the name, mailing
253 address, street address, social security number and driver's
254 license number of the petitioner.

255 At any time following at least thirty (30) days of suspension
256 for a first offense violation of this section, the court may grant
257 the person hardship driving privileges upon written petition of
258 the defendant, if it finds reasonable cause to believe that
259 revocation would hinder the person's ability to:

- 260 (i) Continue his employment;
- 261 (ii) Continue attending school or an educational
262 institution; or
- 263 (iii) Obtain necessary medical care.

264 Proof of the hardship shall be established by clear and
265 convincing evidence which shall be supported by independent
266 documentation.

267 (c) Upon any second conviction of any person under the
268 age of twenty-one (21) years violating subsection (1) of this
269 section, the offenses being committed within a period of five (5)
270 years, such person shall be fined not more than Five Hundred
271 Dollars (\$500.00) and shall have his driver's license suspended
272 for one (1) year.

273 (d) For any third or subsequent conviction of any
274 person under the age of twenty-one (21) years violating subsection
275 (1) of this section, the offenses being committed within a period
276 of five (5) years, such person shall be fined not more than One
277 Thousand Dollars (\$1,000.00) and shall have his driver's license
278 suspended until he reaches the age of twenty-one (21) or for two
279 (2) years, whichever is longer.

280 (e) Any person under the age of twenty-one (21) years
281 convicted of a second violation of subsection (1) of this section,
282 may have the period that his driver's license is suspended reduced
283 if such person receives an in-depth diagnostic assessment, and as
284 a result of such assessment is determined to be in need of
285 treatment of his alcohol and/or drug abuse problem and
286 successfully completes treatment of his alcohol and/or drug abuse
287 problem at a program site certified by the Department of Mental
288 Health. Such person shall be eligible for reinstatement of his
289 driving privileges upon the successful completion of such
290 treatment after a period of six (6) months after such person's
291 driver's license is suspended. Each person who receives a
292 diagnostic assessment shall pay a fee representing the cost of

293 such assessment. Each person who participates in a treatment
294 program shall pay a fee representing the cost of such treatment.

295 (f) Any person under the age of twenty-one (21) years
296 convicted of a third or subsequent violation of subsection (1) of
297 this section shall complete treatment of an alcohol and/or drug
298 abuse program at a site certified by the Department of Mental
299 Health.

300 (g) The court shall have the discretion to rule that a
301 first offense of this subsection by a person under the age of
302 twenty-one (21) years shall be nonadjudicated. Such person shall
303 be eligible for nonadjudication only once. The Department of
304 Public Safety shall maintain a confidential registry of all cases
305 which are nonadjudicated as provided in this paragraph. A judge
306 who rules that a case is nonadjudicated shall forward such ruling
307 to the Department of Public Safety. Judges and prosecutors
308 involved in implied consent violations shall have access to the
309 confidential registry for the purpose of determining
310 nonadjudication eligibility. A record of a person who has been
311 nonadjudicated shall be maintained for five (5) years or until
312 such person reaches the age of twenty-one (21) years. Any person
313 whose confidential record has been disclosed in violation of this
314 paragraph shall have a civil cause of action against the person
315 and/or agency responsible for such disclosure.

316 (4) In addition to the other penalties provided in this
317 section, every person refusing a law enforcement officer's request
318 to submit to a chemical test of his breath as provided in this
319 chapter, or who was unconscious at the time of a chemical test and
320 refused to consent to the introduction of the results of such test
321 in any prosecution, shall suffer an additional suspension of
322 driving privileges as follows:

323 The Commissioner of Public Safety or his authorized agent
324 shall suspend the driver's license or permit to drive or deny the
325 issuance of a license or permit to such person as provided for

326 first, second and third or subsequent offenders in subsection (2)
327 of this section. Such suspension shall be in addition to any
328 suspension imposed pursuant to subsection (1) of Section 63-11-23.
329 The minimum suspension imposed under this subsection shall not be
330 reduced and no prosecutor is authorized to offer a reduction of
331 such suspension as part of a plea bargain.

332 (5) Every person who operates any motor vehicle in violation
333 of the provisions of subsection (1) of this section and who in a
334 negligent manner causes the death of another or mutilates,
335 disfigures, permanently disables or destroys the tongue, eye, lip,
336 nose or any other limb, organ or member of another shall, upon
337 conviction, be guilty of a separate felony for each such death,
338 mutilation, disfigurement or other injury and shall be committed
339 to the custody of the State Department of Corrections for a period
340 of time of not less than five (5) years and not to exceed
341 twenty-five (25) years for each such death, mutilation,
342 disfigurement or other injury, and the imprisonment for the second
343 or each subsequent conviction, in the discretion of the court,
344 shall commence either at the termination of the imprisonment for
345 the preceding conviction or run concurrently with the preceding
346 conviction. Any person charged with causing the death of another
347 as described in this subsection shall be required to post bail
348 before being released after arrest.

349 (6) Upon conviction of any violation of subsection (1) of
350 this section, the trial judge shall sign in the place provided on
351 the traffic ticket, citation or affidavit stating that the person
352 arrested either employed an attorney or waived his right to an
353 attorney after having been properly advised. If the person
354 arrested employed an attorney, the name, address and telephone
355 number of the attorney shall be written on the ticket, citation or
356 affidavit. The judge shall cause a copy of the traffic ticket,
357 citation or affidavit, and any other pertinent documents
358 concerning the conviction, to be sent to the Commissioner of

359 Public Safety. A copy of the traffic ticket, citation or
360 affidavit and any other pertinent documents, having been attested
361 as true and correct by the Commissioner of Public Safety, or his
362 designee, shall be sufficient proof of the conviction for purposes
363 of determining the enhanced penalty for any subsequent convictions
364 of violations of subsection (1) of this section.

365 (7) Convictions in other states of violations for driving or
366 operating a vehicle while under the influence of an intoxicating
367 liquor or while under the influence of any other substance that
368 has impaired the person's ability to operate a motor vehicle
369 occurring after July 1, 1992, shall be counted for the purposes of
370 determining if a violation of subsection (1) of this section is a
371 first, second, third or subsequent offense and the penalty that
372 shall be imposed upon conviction for a violation of subsection (1)
373 of this section.

374 (8) For the purposes of determining how to impose the
375 sentence for a second, third or subsequent conviction under this
376 section, the indictment shall not be required to enumerate
377 previous convictions. It shall only be necessary that the
378 indictment state the number of times that the defendant has been
379 convicted and sentenced within the past five (5) years under this
380 section to determine if an enhanced penalty shall be imposed. The
381 amount of fine and imprisonment imposed in previous convictions
382 shall not be considered in calculating offenses to determine a
383 second, third or subsequent offense of this section.

384 (9) Any person under the legal age to obtain a license to
385 operate a motor vehicle convicted under this section shall not be
386 eligible to receive such license until the person reaches the age
387 of eighteen (18) years.

388 (10) Suspension of driving privileges for any person
389 convicted of violations of Section 63-11-30(1) shall run
390 consecutively.

391 (11) The court may order the use of any ignition interlock
392 device as provided in Section 63-11-31.

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

395 47-7-3. (1) Every prisoner who has been convicted of any
396 offense against the State of Mississippi, and is confined in the
397 execution of a judgment of such conviction in the Mississippi
398 State Penitentiary for a definite term or terms of one (1) year or
399 over, or for the term of his or her natural life, whose record of
400 conduct shows that such prisoner has observed the rules of the
401 Penitentiary, and who has served not less than one-fourth (1/4) of
402 the total of such term or terms for which such prisoner was
403 sentenced, or, if sentenced to serve a term or terms of thirty
404 (30) years or more, or, if sentenced for the term of the natural
405 life of such prisoner, has served not less than ten (10) years of
406 such life sentence, may be released on parole as hereinafter
407 provided, except that:

408 (a) No prisoner convicted as a confirmed and habitual
409 criminal under the provisions of Sections 99-19-81 through
410 99-19-87 shall be eligible for parole;

411 (b) Any person who shall have been convicted of a sex
412 crime shall not be released on parole except for a person under
413 the age of nineteen (19) who has been convicted under Section
414 97-3-67;

415 (c) No one shall be eligible for parole until he shall
416 have served one (1) year of his sentence, unless such person has
417 accrued any meritorious earned time allowances, in which case he
418 shall be eligible for parole if he has served (i) nine (9) months
419 of his sentence or sentences, when his sentence or sentences is
420 two (2) years or less; (ii) ten (10) months of his sentence or
421 sentences when his sentence or sentences is more than two (2)
422 years but no more than five (5) years; and (iii) one (1) year of

423 his sentence or sentences when his sentence or sentences is more
424 than five (5) years;

425 (d) (i) No person shall be eligible for parole who
426 shall, on or after January 1, 1977, be convicted of robbery or
427 attempted robbery through the display of a firearm until he shall
428 have served ten (10) years if sentenced to a term or terms of more
429 than ten (10) years or if sentenced for the term of the natural
430 life of such person. If such person is sentenced to a term or
431 terms of ten (10) years or less, then such person shall not be
432 eligible for parole. The provisions of this paragraph (d) shall
433 also apply to any person who shall commit robbery or attempted
434 robbery on or after July 1, 1982, through the display of a deadly
435 weapon. This subparagraph (d)(i) shall not apply to persons
436 convicted after September 30, 1994;

437 (ii) No person shall be eligible for parole who
438 shall, on or after October 1, 1994, be convicted of robbery,
439 attempted robbery or carjacking as provided in Section 97-3-115 et
440 seq., through the display of a firearm or drive-by shooting as
441 provided in Section 97-3-109. The provisions of this subparagraph
442 (d)(ii) shall also apply to any person who shall commit robbery,
443 attempted robbery, carjacking or a drive-by shooting on or after
444 October 1, 1994, through the display of a deadly weapon;

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

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

452 (g) No person shall be eligible for parole who is
453 convicted or whose suspended sentence is revoked after June 30,
454 1995, except that a first offender convicted of a nonviolent crime
455 after January 1, 2000, may be eligible for parole if the offender

456 meets the requirements in subsection (1) and this paragraph. In
457 addition to other requirements, if a first offender is convicted
458 of a drug or driving under the influence felony, the offender must
459 complete a drug and alcohol rehabilitation program prior to parole
460 or the offender may be required to complete a post-release drug
461 and alcohol program as a condition of parole. For purposes of
462 this paragraph, "nonviolent crime" means a felony other than
463 homicide, robbery, manslaughter, sex crimes, arson, burglary of an
464 occupied dwelling, aggravated assault, kidnapping, felonious abuse
465 of vulnerable adults, felonies with enhanced penalties, the sale
466 or manufacture of a controlled substance under the Uniform
467 Controlled Substances Law, felony child abuse and a violation of
468 Section 63-11-30(5) resulting in death, or serious bodily injury
469 resulting in the loss of a limb or dismemberment, loss of
470 eyesight, a coma, permanent dysfunction of any vital organ,
471 paralysis or resulting in an individual's permanent bedridden
472 state. For purposes of this paragraph, "first offender" means a
473 person who at the time of sentencing has not been convicted of a
474 felony on a previous occasion in any court or courts of the United
475 States or in any state or territory thereof.

476 (h) No person shall be eligible for parole who is
477 convicted of a third or subsequent violation of Section 63-11-30.

478 (2) Notwithstanding any other provision of law, an inmate
479 shall not be eligible to receive earned time, good time or any
480 other administrative reduction of time which shall reduce the time
481 necessary to be served for parole eligibility as provided in
482 subsection (1) of this section; however, this subsection shall not
483 apply to the advancement of parole eligibility dates pursuant to
484 the Prison Overcrowding Emergency Powers Act. Moreover,
485 meritorious earned time allowances may be used to reduce the time
486 necessary to be served for parole eligibility as provided in
487 paragraph (c) of subsection (1) of this section.

488 (3) (a) The State Parole Board shall by rules and
489 regulations establish a method of determining a tentative parole
490 hearing date for each eligible offender taken into the custody of
491 the Department of Corrections. The tentative parole hearing date
492 shall be determined within ninety (90) days after the department
493 has assumed custody of the offender. Such tentative parole
494 hearing date shall be calculated by a formula taking into account
495 the offender's age upon first commitment, number of prior
496 incarcerations, prior probation or parole failures, the severity
497 and the violence of the offense committed, employment history and
498 other criteria which in the opinion of the board tend to validly
499 and reliably predict the length of incarceration necessary before
500 the offender can be successfully paroled.

501 (b) If an application for parole from an eligible
502 offender is rejected, the Parole Board shall reconsider the
503 application from that offender no later than one (1) year after
504 the initial application for parole is rejected, unless the crime
505 for which the offender was convicted is defined as a violent crime
506 under subsection (2)(g) of this section.

507 This paragraph shall stand repealed on July 1, 2005.

508 (4) Any inmate within twenty-four (24) months of his parole
509 eligibility date and who meets the criteria established by the
510 classification board shall receive priority for placement in any
511 educational development and job training programs. Any inmate
512 refusing to participate in an educational development or job
513 training program may be ineligible for parole.

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