

By: Representative Malone

To: Corrections

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1734

1 AN ACT TO REENACT SECTIONS 47-5-701 THROUGH 47-5-731,
2 MISSISSIPPI CODE OF 1972, WHICH PROVIDE THE PRISON OVERCROWDING
3 EMERGENCY POWERS ACT WHICH WAS REPEALED BY OPERATION OF LAW ON
4 JULY 1, 2004; TO AMEND REENACTED SECTION 47-5-731, MISSISSIPPI
5 CODE OF 1972, TO EXTEND THE DATE OF REPEAL ON THE REENACTED
6 SECTIONS FROM JULY 1, 2004, TO JULY 1, 2006; TO EXTEND THE POWERS
7 OF THIS ACT BY ALLOWING NONVIOLENT OFFENDERS TO BE PLACED ON
8 PAROLE WHEN THE STATE IS OPERATING ITS BUDGET IN A DEFICIT; AND
9 FOR RELATED PURPOSES.

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

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

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

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

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

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

28 (b) "Operating capacity" means the total number of
29 state inmates which can be safely and reasonably housed in
30 facilities operated by the Department of Corrections and in local

31 or county jails or other facilities authorized to house state
32 inmates as certified by the department, subject to applicable
33 federal and state laws and rules and regulations.

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

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

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

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

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

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

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

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

64 (a) Prison system population in excess of ninety-five
65 percent (95%) of the prison system operating capacity for at least
66 thirty (30) consecutive days immediately preceding the declaration
67 of a state of emergency, or the state's budget is operating in a
68 deficit;

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

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

86 **SECTION 4.** Section 47-5-707, Mississippi Code of 1972, is
87 reenacted and amended as follows:

88 47-5-707. Whenever the prison system population exceeds
89 ninety-five percent (95%) of operating capacity or the state is
90 operating its budget in a deficit, the Commissioner of Corrections
91 shall immediately notify the Governor and the State Parole Board
92 of this fact. The notice shall include the current prison system
93 population and the prison system operating capacity or the state's
94 deficit amount. A report must be made within ten (10) days after
95 the thirtieth day of operating in excess of ninety-five percent
96 (95%) of operating capacity or operating in a deficit. The report

97 shall include the prison system operating capacity, the prison
98 system population during the relevant time period or the amount of
99 the deficit, and may include a recommended specific term of
100 advancement of the parole eligibility dates.

101 **SECTION 5.** Section 47-5-709, Mississippi Code of 1972, is
102 reenacted and amended as follows:

103 47-5-709. If the prison system population exceeds
104 ninety-five percent (95%) of operating capacity for thirty (30)
105 consecutive days, or the state is operating its budget in a
106 deficit for thirty (30) consecutive days, the State Parole Board
107 shall meet to determine whether there has been full appropriate
108 exercise of the powers of the State Parole Board which tend to
109 reduce the prison system population. The State Parole Board shall
110 report its findings to the Governor within ten (10) days after the
111 thirtieth day of operating in excess of ninety-five percent (95%)
112 of prison operating capacity or after the thirtieth day the
113 state's budget has been operating in a deficit. The report shall
114 include the determination of the State Parole Board regarding its
115 utilization of powers described in paragraph (c) of Section
116 47-5-705.

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

119 47-5-711. Upon receipt of the report from the Commissioner
120 of Corrections and the report of the State Parole Board, the
121 Governor has the power to:

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

126 (b) Determine that commencement of a state of emergency
127 would be injurious to the public good, or raises the potential of
128 threatening the safety of the public in the state as a whole or in

129 a particular community, in which case no state of emergency shall
130 commence; or

131 (c) Determine that the reports establish the existence
132 of the conditions for a declaration of a prison system
133 overcrowding state of emergency as described in Section 47-5-705
134 and declare a state of emergency, specifying an amount of
135 advancement of parole eligibility dates from thirty (30) to ninety
136 (90) days.

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

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

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

148 47-5-713. Upon the declaration of a state of emergency, the
149 parole eligibility dates of qualified inmates shall be
150 conditionally advanced. The amount of advancement of parole
151 eligibility dates must be specified in the declaration by the
152 Governor. When the state of emergency has been terminated, the
153 parole eligibility dates which were conditionally advanced shall
154 be reset to the parole eligibility date set prior to the emergency
155 for those inmates who were not released on parole under the
156 provisions of Sections 47-5-701 through 47-5-729.

157 **SECTION 8.** Section 47-5-715, Mississippi Code of 1972, is
158 reenacted and amended as follows:

159 47-5-715. During the continuation of a state of emergency,
160 the Commissioner of the Department of Corrections shall weekly
161 certify to the Governor the prison system population for each day

162 of the preceding week or shall weekly determine that the state is
163 operating in a deficit. The Governor shall declare the state of
164 emergency terminated upon notification that the prison system
165 population has been at or below ninety-five percent (95%) of
166 operating capacity for seven (7) consecutive days or that the
167 state has not been operating in a deficit for seven (7)
168 consecutive days.

169 If no declaration of termination is issued within seven (7)
170 days after the certification of conditions for termination of the
171 state of emergency, the state of emergency is considered
172 terminated as of the seventh day after the certification.

173 **SECTION 9.** Section 47-5-717, Mississippi Code of 1972, is
174 reenacted and amended as follows:

175 47-5-717. If sixty (60) days after the declaration of a
176 prison system overcrowding state of emergency or of an additional
177 advancement of the parole eligibility dates the prison system
178 population continues to be in excess of ninety-five percent (95%)
179 of operating capacity, or the state's budget has continued to
180 operate in a deficit, the Commissioner of Corrections shall report
181 to the Governor indicating whether an additional advancement of
182 the parole eligibility dates is necessary in order to remove the
183 state's budget from a deficit status or in order to reduce the
184 prison system population to ninety-five percent (95%) of operating
185 capacity and indicating the amount of any recommended additional
186 advancement of the parole eligibility dates. The recommended
187 amount must be no less than thirty (30) days nor more than ninety
188 (90) days or that the deficit of the state's budget shall continue
189 to exist within ninety (90) days. The report shall include those
190 factors which would tend to indicate that the prison system
191 population is likely to increase above operating capacity within
192 ninety (90) days. The report shall discuss the availability of
193 field supervisors, the currently existing supervision case loads,
194 and the measures that could be taken and the resources that would

195 be needed to provide appropriate supervision of persons released
196 early as a result of an additional advancement of the parole
197 eligibility dates.

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

200 47-5-719. Upon receipt of the report from the Commissioner
201 of Corrections as provided in Section 47-5-717, the Governor has
202 the power to:

203 (a) Determine to be in error any conclusion of the
204 Commissioner of Corrections that an additional advancement of the
205 parole eligibility dates is necessary in order for the prison
206 system population to be reduced to ninety-five percent (95%) of
207 operating capacity, in which case no additional advancements of
208 the parole eligibility dates shall occur;

209 (b) Determine that the ordering of additional
210 advancements of the parole eligibility dates would be injurious to
211 the public good or raises the potential of threatening the safety
212 of the public in the state as a whole or in a particular
213 community, in which case no additional advancement of parole
214 eligibility dates shall occur; or

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

221 If fourteen (14) days after the receipt of the report to the
222 Governor pursuant to Section 47-5-717 including a determination of
223 the Commissioner of Corrections that an additional advancement of
224 the parole eligibility dates is not necessary in order for the
225 prison system population to be reduced to ninety-five percent
226 (95%) of operating capacity the Governor has not exercised the

227 power provided in paragraph (c) of this section, action initiated
228 under Section 47-5-717 is considered terminated.

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

233 If the Governor orders additional advancements of the parole
234 eligibility dates under this section, the amount of advancement of
235 the parole eligibility dates must be as ordered by the Governor.

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

238 47-5-721. If at any time during a state of emergency the
239 Governor determines that the continuation of the state of
240 emergency is injurious to the public good or raises the potential
241 of threatening the safety of the public in the state as a whole or
242 in a particular community, he may order the state of emergency
243 terminated.

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

246 47-5-723. Revocation of the conditional advancement of the
247 parole eligibility date is a permissible prison disciplinary
248 action according to the same procedures governing the forfeiture
249 of earned time allowances as a prison disciplinary action.

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

252 47-5-725. The State Parole Board shall prescribe conditions
253 of advancement of the parole eligibility date applicable prior to
254 an inmate's release. The State Parole Board shall prescribe
255 conditions of supervision consistent with existing regulations
256 applicable after release on parole. When an inmate is released
257 under the provisions of Sections 47-5-701 through 47-5-729 he
258 shall be considered to be in the legal custody of the Department
259 of Corrections.

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

262 47-5-727. Advancement of parole eligibility dates under
263 Sections 47-5-701 through 47-5-729 shall occur independently of
264 all other adjustments of the parole eligibility date, such as
265 advancing the parole eligibility dates as a result of receiving
266 earned time allowances.

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

269 47-5-729. The Commissioner of Corrections shall within
270 thirty (30) days after April 10, 1985, establish the operating
271 capacities of the prison system, and shall at least quarterly
272 certify existing operating capacities or establish changed or new
273 operating capacities.

274 **SECTION 16.** Section 47-5-731, Mississippi Code of 1972, is
275 reenacted and amended as follows:

276 47-5-731. Sections 47-5-701 through 47-5-729, Mississippi
277 Code of 1972, which create the Prison Overcrowding Emergency
278 Powers Act, shall stand repealed from and after July 1, 2006.

279 **SECTION 17.** This act shall take effect and be in force from
280 and after its passage.