

By: Representative Malone

To: Corrections

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3 EMERGENCY POWERS ACT WHICH WAS REPEALED BY OPERATION OF LAW ON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; AND FOR RELATED
7 PURPOSES.

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

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

11 47-5-701. Sections 47-5-701 through 47-5-729 shall be known
12 and may be cited as the "Prison Overcrowding Emergency Powers
13 Act."

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

16 47-5-703. For the purposes of Sections 47-5-701 through
17 47-5-729 the following words shall have the meaning ascribed
18 herein unless the context shall otherwise require:

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

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

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

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

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

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

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

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

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

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

60 47-5-705. The requirements for the declaration of a prison
61 system overcrowding state of emergency are as follows:

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

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

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

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

85 47-5-707. Whenever the prison system population exceeds
86 ninety-five percent (95%) of operating capacity, the Commissioner
87 of Corrections shall immediately notify the Governor and the State
88 Parole Board of this fact. The notice shall include the current
89 prison system population and the prison system operating capacity.
90 A report must be made within ten (10) days after the thirtieth day
91 of operating in excess of ninety-five percent (95%) of operating
92 capacity. The report shall include the prison system operating
93 capacity, the prison system population during the relevant time

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

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

98 47-5-709. If the prison system population exceeds
99 ninety-five percent (95%) of operating capacity for thirty (30)
100 consecutive days, the State Parole Board shall meet to determine
101 whether there has been full appropriate exercise of the powers of
102 the State Parole Board which tend to reduce the prison system
103 population. The State Parole Board shall report its findings to
104 the Governor within ten (10) days after the thirtieth day of
105 operating in excess of ninety-five percent (95%) of prison
106 operating capacity. The report shall include the determination of
107 the State Parole Board regarding its utilization of powers
108 described in paragraph (c) of Section 47-5-705.

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

111 47-5-711. Upon receipt of the report from the Commissioner
112 of Corrections and the report of the State Parole Board, the
113 Governor has the power to:

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

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

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

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

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

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

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

140 47-5-713. Upon the declaration of a state of emergency, the
141 parole eligibility dates of qualified inmates shall be
142 conditionally advanced. The amount of advancement of parole
143 eligibility dates must be specified in the declaration by the
144 Governor. When the state of emergency has been terminated, the
145 parole eligibility dates which were conditionally advanced shall
146 be reset to the parole eligibility date set prior to the emergency
147 for those inmates who were not released on parole under the
148 provisions of Sections 47-5-701 through 47-5-729.

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

151 47-5-715. During the continuation of a state of emergency,
152 the Commissioner of the Department of Corrections shall weekly
153 certify to the Governor the prison system population for each day
154 of the preceding week. The Governor shall declare the state of
155 emergency terminated upon notification that the prison system
156 population has been at or below ninety-five percent (95%) of
157 operating capacity for seven (7) consecutive days.

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

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

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

164 47-5-717. If sixty (60) days after the declaration of a
165 prison system overcrowding state of emergency or of an additional
166 advancement of the parole eligibility dates the prison system
167 population continues to be in excess of ninety-five percent (95%)
168 of operating capacity, the Commissioner of Corrections shall
169 report to the Governor indicating whether an additional
170 advancement of the parole eligibility dates is necessary in order
171 to reduce the prison system population to ninety-five percent
172 (95%) of operating capacity and indicating the amount of any
173 recommended additional advancement of the parole eligibility
174 dates. The recommended amount must be no less than thirty (30)
175 days nor more than ninety (90) days. The report shall include
176 those factors which would tend to indicate that the prison system
177 population is likely to increase above operating capacity within
178 ninety (90) days. The report shall discuss the availability of
179 field supervisors, the currently existing supervision case loads,
180 and the measures that could be taken and the resources that would
181 be needed to provide appropriate supervision of persons released
182 early as a result of an additional advancement of the parole
183 eligibility dates.

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

186 47-5-719. Upon receipt of the report from the Commissioner
187 of Corrections as provided in Section 47-5-717, the Governor has
188 the power to:

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

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

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

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

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

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

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

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

224 47-5-721. If at any time during a state of emergency the
225 Governor determines that the continuation of the state of

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

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

232 47-5-723. Revocation of the conditional advancement of the
233 parole eligibility date is a permissible prison disciplinary
234 action according to the same procedures governing the forfeiture
235 of earned time allowances as a prison disciplinary action.

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

238 47-5-725. The State Parole Board shall prescribe conditions
239 of advancement of the parole eligibility date applicable prior to
240 an inmate's release. The State Parole Board shall prescribe
241 conditions of supervision consistent with existing regulations
242 applicable after release on parole. When an inmate is released
243 under the provisions of Sections 47-5-701 through 47-5-729 he
244 shall be considered to be in the legal custody of the Department
245 of Corrections.

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

248 47-5-727. Advancement of parole eligibility dates under
249 Sections 47-5-701 through 47-5-729 shall occur independently of
250 all other adjustments of the parole eligibility date, such as
251 advancing the parole eligibility dates as a result of receiving
252 earned time allowances.

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

255 47-5-729. The Commissioner of Corrections shall within
256 thirty (30) days after April 10, 1985, establish the operating
257 capacities of the prison system, and shall at least quarterly

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

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

262 47-5-731. Sections 47-5-701 through 47-5-729, Mississippi
263 Code of 1972, which create the Prison Overcrowding Emergency
264 Powers Act, shall stand repealed from and after July 1, 2006.

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