

By: Representative Malone

To: Corrections

HOUSE BILL NO. 1734  
(As Sent to Governor)

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3 EMERGENCY POWERS ACT WHICH WAS REPEALED BY OPERATION OF LAW ON  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.