

By: Representative Fleming

To: Corrections

HOUSE BILL NO. 41

1 AN ACT TO AMEND SECTION 47-5-138.1, MISSISSIPPI CODE OF 1972,
2 TO AUTHORIZE THE CLASSIFICATION BOARD OF THE DEPARTMENT OF
3 CORRECTIONS TO CONSIDER AN INMATE'S MILITARY RECORD AS A FACTOR
4 WHEN DETERMINING ELIGIBILITY FOR TRUSTY STATUS FOR AN INMATE; TO
5 AMEND SECTION 47-7-3, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE
6 STATE PAROLE BOARD TO CONSIDER AN INMATE'S MILITARY RECORD AS A
7 FACTOR WHEN DETERMINING A TENTATIVE PAROLE HEARING DATE FOR AN
8 INMATE; AND FOR RELATED PURPOSES.

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

10 **SECTION 1.** Section 47-5-138.1, Mississippi Code of 1972, is
11 amended as follows:

12 47-5-138.1. (1) In addition to any other administrative
13 reduction of sentence, an offender in trusty status as defined by
14 the classification board of the Department of Corrections may be
15 awarded a trusty time allowance of thirty (30) days' reduction of
16 sentence for each thirty (30) days of participation during any
17 calendar month in an approved program while in trusty status,
18 including satisfactory participation in education or instructional
19 programs, satisfactory participation in work projects and
20 satisfactory participation in any special incentive program. When
21 deciding whether an inmate is eligible for trusty status, one (1)
22 of the factors that the classification board may use is whether an
23 inmate has served in the United States Armed Forces and whether he
24 or she has an honorable discharge.

25 (2) An offender in trusty status shall not be eligible for a
26 reduction of sentence under this section if:

- 27 (a) The offender was sentenced to life imprisonment;
- 28 (b) The offender was convicted as an habitual offender
29 under Sections 99-19-81 through 99-19-87;
- 30 (c) The offender was convicted of a sex crime;

31 (d) The offender has not served the mandatory time
32 required for parole eligibility, as prescribed under Section
33 47-7-3, for a conviction of robbery or attempted robbery through
34 the display of a deadly weapon, carjacking through the display of
35 a deadly weapon or a drive-by shooting;

36 (e) The offender was convicted of violating Section
37 41-29-139(a) and sentenced under Section 41-29-139(b) or
38 41-29-139(f); or

39 (f) The offender was convicted of trafficking in
40 controlled substances under Section 41-29-139.

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

43 47-7-3. (1) Every prisoner who has been convicted of any
44 offense against the State of Mississippi, and is confined in the
45 execution of a judgment of such conviction in the Mississippi
46 Department of Corrections for a definite term or terms of one (1)
47 year or over, or for the term of his or her natural life, whose
48 record of conduct shows that such prisoner has observed the rules
49 of the department, and who has served not less than one-fourth
50 (1/4) of the total of such term or terms for which such prisoner
51 was sentenced, or, if sentenced to serve a term or terms of thirty
52 (30) years or more, or, if sentenced for the term of the natural
53 life of such prisoner, has served not less than ten (10) years of
54 such life sentence, may be released on parole as hereinafter
55 provided, except that:

56 (a) No prisoner convicted as a confirmed and habitual
57 criminal under the provisions of Sections 99-19-81 through
58 99-19-87 shall be eligible for parole;

59 (b) Any person who shall have been convicted of a sex
60 crime shall not be released on parole except for a person under
61 the age of nineteen (19) who has been convicted under Section
62 97-3-67;

63 (c) No one shall be eligible for parole until he shall
64 have served one (1) year of his sentence, unless such person has
65 accrued any meritorious earned time allowances, in which case he
66 shall be eligible for parole if he has served (i) nine (9) months
67 of his sentence or sentences, when his sentence or sentences is
68 two (2) years or less; (ii) ten (10) months of his sentence or
69 sentences when his sentence or sentences is more than two (2)
70 years but no more than five (5) years; and (iii) one (1) year of
71 his sentence or sentences when his sentence or sentences is more
72 than five (5) years;

73 (d) (i) No person shall be eligible for parole who
74 shall, on or after January 1, 1977, be convicted of robbery or
75 attempted robbery through the display of a firearm until he shall
76 have served ten (10) years if sentenced to a term or terms of more
77 than ten (10) years or if sentenced for the term of the natural
78 life of such person. If such person is sentenced to a term or
79 terms of ten (10) years or less, then such person shall not be
80 eligible for parole. The provisions of this paragraph (d) shall
81 also apply to any person who shall commit robbery or attempted
82 robbery on or after July 1, 1982, through the display of a deadly
83 weapon. This subparagraph (d)(i) shall not apply to persons
84 convicted after September 30, 1994;

85 (ii) No person shall be eligible for parole who
86 shall, on or after October 1, 1994, be convicted of robbery,
87 attempted robbery or carjacking as provided in Section 97-3-115 et
88 seq., through the display of a firearm or drive-by shooting as
89 provided in Section 97-3-109. The provisions of this subparagraph
90 (d)(ii) shall also apply to any person who shall commit robbery,
91 attempted robbery, carjacking or a drive-by shooting on or after
92 October 1, 1994, through the display of a deadly weapon;

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

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

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

100 (g) No person shall be eligible for parole who is
101 convicted or whose suspended sentence is revoked after June 30,
102 1995, except that a first offender convicted of a nonviolent crime
103 after January 1, 2000, may be eligible for parole if the offender
104 meets the requirements in subsection (1) and this paragraph. In
105 addition to other requirements, if a first offender is convicted
106 of a drug or driving under the influence felony, the offender must
107 complete a drug and alcohol rehabilitation program prior to parole
108 or the offender may be required to complete a post-release drug
109 and alcohol program as a condition of parole. For purposes of
110 this paragraph, "nonviolent crime" means a felony other than
111 homicide, robbery, manslaughter, sex crimes, arson, burglary of an
112 occupied dwelling, aggravated assault, kidnapping, felonious abuse
113 of vulnerable adults, felonies with enhanced penalties, the sale
114 or manufacture of a controlled substance under the Uniform
115 Controlled Substances Law, felony child abuse, or any crime under
116 Section 97-5-33 or Section 97-5-39(2) or a violation of Section
117 63-11-30(5) resulting in death, or serious bodily injury resulting
118 in the loss of a limb or dismemberment, loss of eyesight, a coma,
119 permanent dysfunction of any vital organ, paralysis or resulting
120 in an individual's permanent bedridden state. For purposes of
121 this paragraph, "first offender" means a person who at the time of
122 sentencing has not been convicted of a felony on a previous
123 occasion in any court or courts of the United States or in any
124 state or territory thereof. In addition, a first time offender
125 incarcerated for committing the crime of possession of a
126 controlled substance under the Uniform Controlled Substances Law

127 after July 1, 1995, shall be eligible for parole as provided for
128 such offenders in this paragraph after July 1, 2000.

129 (2) Notwithstanding any other provision of law, an inmate
130 shall not be eligible to receive earned time, good time or any
131 other administrative reduction of time which shall reduce the time
132 necessary to be served for parole eligibility as provided in
133 subsection (1) of this section; however, this subsection shall not
134 apply to the advancement of parole eligibility dates pursuant to
135 the Prison Overcrowding Emergency Powers Act. Moreover,
136 meritorious earned time allowances may be used to reduce the time
137 necessary to be served for parole eligibility as provided in
138 paragraph (c) of subsection (1) of this section.

139 (3) (a) The State Parole Board shall by rules and
140 regulations establish a method of determining a tentative parole
141 hearing date for each eligible offender taken into the custody of
142 the Department of Corrections. The tentative parole hearing date
143 shall be determined within ninety (90) days after the department
144 has assumed custody of the offender. Such tentative parole
145 hearing date shall be calculated by a formula taking into account
146 the offender's age upon first commitment, number of prior
147 incarcerations, prior probation or parole failures, the severity
148 and the violence of the offense committed, employment history,
149 whether the offender served in the United States Armed Forces and
150 has an honorable discharge and other criteria which in the opinion
151 of the board tend to validly and reliably predict the length of
152 incarceration necessary before the offender can be successfully
153 paroled.

154 (b) If an application for parole from an eligible
155 offender is rejected, the Parole Board shall reconsider the
156 application from that offender no later than one (1) year after
157 the initial application for parole is rejected, unless the crime
158 for which the offender was convicted is defined as a violent crime
159 under subsection (2)(g) of this section.

160 This paragraph shall stand repealed on July 1, 2007.

161 (4) Any inmate within twenty-four (24) months of his parole
162 eligibility date and who meets the criteria established by the
163 classification board shall receive priority for placement in any
164 educational development and job training programs. Any inmate
165 refusing to participate in an educational development or job
166 training program may be ineligible for parole.

167 **SECTION 3.** This act shall take effect and be in force from
168 and after July 1, 2006.