

By: Representative Warren

To: Corrections

HOUSE BILL NO. 779

1 AN ACT TO REENACT SECTIONS 47-5-701 THROUGH 47-5-729,
2 MISSISSIPPI CODE OF 1972, WHICH CREATE THE "PRISON OVERCROWDING
3 EMERGENCY POWERS ACT"; TO AMEND SECTION 47-5-731, MISSISSIPPI CODE
4 OF 1972, TO EXTEND THE DATE OF REPEAL ON THOSE REENACTED SECTIONS;
5 AND FOR RELATED PURPOSES.

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

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

9 47-5-701. Sections 47-5-701 through 47-5-729 shall be known
10 and may be cited as the "Prison Overcrowding Emergency Powers
11 Act."

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

14 47-5-703. For the purposes of Sections 47-5-701 through
15 47-5-729 the following words shall have the meaning ascribed
16 herein unless the context shall otherwise require:

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

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

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

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

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

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

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

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

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

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

58 47-5-705. The requirements for the declaration of a prison
59 system overcrowding state of emergency are as follows:

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

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

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

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

83 47-5-707. Whenever the prison system population exceeds
84 ninety-five percent (95%) of operating capacity, the Commissioner
85 of Corrections shall immediately notify the Governor and the State
86 Parole Board of this fact. The notice shall include the current
87 prison system population and the prison system operating capacity.
88 A report must be made within ten (10) days after the thirtieth day
89 of operating in excess of ninety-five percent (95%) of operating
90 capacity. The report shall include the prison system operating
91 capacity, the prison system population during the relevant time

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

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

96 47-5-709. If the prison system population exceeds
97 ninety-five percent (95%) of operating capacity for thirty (30)
98 consecutive days, the State Parole Board shall meet to determine
99 whether there has been full appropriate exercise of the powers of
100 the State Parole Board which tend to reduce the prison system
101 population. The State Parole Board shall report its findings to
102 the Governor within ten (10) days after the thirtieth day of
103 operating in excess of ninety-five percent (95%) of prison
104 operating capacity. The report shall include the determination of
105 the State Parole Board regarding its utilization of powers
106 described in paragraph (c) of Section 47-5-705.

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

109 47-5-711. Upon receipt of the report from the Commissioner
110 of Corrections and the report of the State Parole Board, the
111 Governor has the power to:

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

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

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

125 advancement of parole eligibility dates from thirty (30) to ninety
126 (90) days.

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

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

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

138 47-5-713. Upon the declaration of a state of emergency, the
139 parole eligibility dates of qualified inmates shall be
140 conditionally advanced. The amount of advancement of parole
141 eligibility dates must be specified in the declaration by the
142 Governor. When the state of emergency has been terminated, the
143 parole eligibility dates which were conditionally advanced shall
144 be reset to the parole eligibility date set prior to the emergency
145 for those inmates who were not released on parole under the
146 provisions of Sections 47-5-701 through 47-5-729.

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

149 47-5-715. During the continuation of a state of emergency,
150 the Commissioner of the Department of Corrections shall weekly
151 certify to the Governor the prison system population for each day
152 of the preceding week. The Governor shall declare the state of
153 emergency terminated upon notification that the prison system
154 population has been at or below ninety-five percent (95%) of
155 operating capacity for seven (7) consecutive days.

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

158 state of emergency, the state of emergency is considered
159 terminated as of the seventh day after the certification.

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

162 47-5-717. If sixty (60) days after the declaration of a
163 prison system overcrowding state of emergency or of an additional
164 advancement of the parole eligibility dates the prison system
165 population continues to be in excess of ninety-five percent (95%)
166 of operating capacity, the Commissioner of Corrections shall
167 report to the Governor indicating whether an additional
168 advancement of the parole eligibility dates is necessary in order
169 to reduce the prison system population to ninety-five percent
170 (95%) of operating capacity and indicating the amount of any
171 recommended additional advancement of the parole eligibility
172 dates. The recommended amount must be no less than thirty (30)
173 days nor more than ninety (90) days. The report shall include
174 those factors which would tend to indicate that the prison system
175 population is likely to increase above operating capacity within
176 ninety (90) days. The report shall discuss the availability of
177 field supervisors, the currently existing supervision case loads,
178 and the measures that could be taken and the resources that would
179 be needed to provide appropriate supervision of persons released
180 early as a result of an additional advancement of the parole
181 eligibility dates.

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

184 47-5-719. Upon receipt of the report from the Commissioner
185 of Corrections as provided in Section 47-5-717, the Governor has
186 the power to:

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

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

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

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

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

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

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

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

222 47-5-721. If at any time during a state of emergency the
223 Governor determines that the continuation of the state of

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

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

230 47-5-723. Revocation of the conditional advancement of the
231 parole eligibility date is a permissible prison disciplinary
232 action according to the same procedures governing the forfeiture
233 of earned time allowances as a prison disciplinary action.

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

236 47-5-725. The State Parole Board shall prescribe conditions
237 of advancement of the parole eligibility date applicable prior to
238 an inmate's release. The State Parole Board shall prescribe
239 conditions of supervision consistent with existing regulations
240 applicable after release on parole. When an inmate is released
241 under the provisions of Sections 47-5-701 through 47-5-729 he
242 shall be considered to be in the legal custody of the Department
243 of Corrections.

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

246 47-5-727. Advancement of parole eligibility dates under
247 Sections 47-5-701 through 47-5-729 shall occur independently of
248 all other adjustments of the parole eligibility date, such as
249 advancing the parole eligibility dates as a result of receiving
250 earned time allowances.

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

253 47-5-729. The Commissioner of Corrections shall within
254 thirty (30) days after April 10, 1985, establish the operating
255 capacities of the prison system, and shall at least quarterly

256 certify existing operating capacities or establish changed or new
257 operating capacities.

258 **SECTION 16.** Section 47-5-731, Mississippi Code of 1972, is
259 amended as follows:

260 47-5-731. Sections 47-5-701 through 47-5-729, Mississippi
261 Code of 1972, which create the Prison Overcrowding Emergency
262 Powers Act, shall stand repealed from and after July 1, 2008.

263 **SECTION 17.** This act shall take effect and be in force from
264 and after July 1, 2006.