

By: Representative Malone

To: Corrections

HOUSE BILL NO. 433

1 AN ACT TO AMEND SECTIONS, 47-7-5, 47-7-33, 47-7-34, 47-7-35
2 AND 47-5-1013, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE USE OF
3 ELECTRONIC MONITORING INCLUDING GLOBAL POSITIONING MONITORING FOR
4 PAROLEES AND PROBATIONERS; TO AMEND SECTION 47-7-3, MISSISSIPPI
5 CODE OF 1972, IN CONFORMITY THERETO; AND FOR RELATED PURPOSES.

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

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

9 47-7-5. (1) The State Parole Board, created under former
10 Section 47-7-5, is hereby created, continued and reconstituted and
11 shall be composed of five (5) members. The Governor shall appoint
12 the members with the advice and consent of the Senate. All terms
13 shall be at the will and pleasure of the Governor. Any vacancy
14 shall be filled by the Governor, with the advice and consent of
15 the Senate. The Governor shall appoint a chairman of the board.

16 (2) Any person who is appointed to serve on the board shall
17 possess at least a bachelor's degree or a high school diploma and
18 four (4) years' work experience. Each member shall devote his
19 full time to the duties of his office and shall not engage in any
20 other business or profession or hold any other public office. A
21 member shall not receive compensation or per diem in addition to
22 his salary as prohibited under Section 25-3-38. Each member shall
23 keep such hours and workdays as required of full-time state
24 employees under Section 25-1-98. Individuals shall be appointed
25 to serve on the board without reference to their political
26 affiliations. Each board member, including the chairman, may be
27 reimbursed for actual and necessary expenses as authorized by
28 Section 25-3-41.

29 (3) The board shall have exclusive responsibility for the
30 granting of parole as provided by Sections 47-7-3 and 47-7-17 and
31 shall have exclusive authority for revocation of the same. The
32 board shall have exclusive responsibility for investigating
33 clemency recommendations upon request of the Governor.

34 (4) The board, its members and staff, shall be immune from
35 civil liability for any official acts taken in good faith and in
36 exercise of the board's legitimate governmental authority.

37 (5) The budget of the board shall be funded through a
38 separate line item within the general appropriation bill for the
39 support and maintenance of the department. Employees of the
40 department which are employed by or assigned to the board shall
41 work under the guidance and supervision of the board. There shall
42 be an executive secretary to the board who shall be responsible
43 for all administrative and general accounting duties related to
44 the board. The executive secretary shall keep and preserve all
45 records and papers pertaining to the board.

46 (6) The board shall have no authority or responsibility for
47 supervision of offenders granted a release for any reason,
48 including, but not limited to, probation, parole or executive
49 clemency or other offenders requiring the same through interstate
50 compact agreements. The supervision shall be provided exclusively
51 by the staff of the Division of Community Corrections of the
52 department.

53 (7) (a) The Parole Board is authorized to select and place
54 offenders in an electronic monitoring program, including the use
55 of global positioning monitoring, under the conditions and
56 criteria imposed by the Parole Board. The conditions,
57 restrictions and requirements of Section 47-7-17 and Sections
58 47-5-1001 through 47-5-1015 shall apply to the Parole Board and
59 any offender placed in an electronic monitoring program by the
60 Parole Board.

61 (b) Any offender placed in an electronic monitoring
62 program under this subsection shall pay the program fee provided
63 in Section 47-5-1013. The program fees shall be deposited in the
64 special fund created in Section 47-5-1007.

65 (c) The department shall have absolute immunity from
66 liability for any injury resulting from a determination by the
67 Parole Board that an offender be placed in an electronic
68 monitoring program.

69 (8) (a) The Parole Board shall maintain a central registry
70 of paroled inmates. The Parole Board shall place the following
71 information on the registry: name, address, photograph, crime for
72 which paroled, the date of the end of parole or flat-time date and
73 other information deemed necessary. The Parole Board shall
74 immediately remove information on a parolee at the end of his
75 parole or flat-time date.

76 (b) When a person is placed on parole, the Parole Board
77 shall inform the parolee of the duty to report to the Parole
78 Officer any change in address ten (10) days before changing
79 address.

80 (c) The Parole Board shall utilize an Internet Web site
81 or other electronic means to release or publish the information.

82 (d) Records maintained on the registry shall be open to
83 law enforcement agencies and the public and shall be available no
84 later than July 1, 2003.

85 (9) This section shall stand repealed on July 1, 2008.

86 **SECTION 2.** Section 47-7-33, Mississippi Code of 1972, is
87 amended as follows:

88 47-7-33. (1) When it appears to the satisfaction of any
89 circuit court or county court in the State of Mississippi having
90 original jurisdiction over criminal actions, or to the judge
91 thereof, that the ends of justice and the best interest of the
92 public, as well as the defendant, will be served thereby, such
93 court, in termtime or in vacation, shall have the power, after

94 conviction or a plea of guilty, except in a case where a death
95 sentence or life imprisonment is the maximum penalty which may be
96 imposed or where the defendant has been convicted of a felony on a
97 previous occasion in any court or courts of the United States and
98 of any state or territories thereof, to suspend the imposition or
99 execution of sentence, and place the defendant on probation as
100 herein provided, except that the court shall not suspend the
101 execution of a sentence of imprisonment after the defendant shall
102 have begun to serve such sentence. In placing any defendant on
103 probation, the court, or judge, shall direct that such defendant
104 be under the supervision of the Department of Corrections.

105 (2) When any circuit or county court places an offender on
106 probation, the court shall give notice to the Mississippi
107 Department of Corrections within fifteen (15) days of the court's
108 decision to place the offender on probation. Notice shall be
109 delivered to the central office of the Mississippi Department of
110 Corrections and to the regional office of the department which
111 will be providing supervision to the offender on probation.

112 (3) When any circuit court or county court places a person
113 on probation in accordance with the provisions of this section and
114 that person is ordered to make any payments to his family, if any
115 member of his family whom he is ordered to support is receiving
116 public assistance through the State Department of Public Welfare,
117 the court shall order him to make such payments to the county
118 welfare officer of the county rendering public assistance to his
119 family, for the sole use and benefit of said family.

120 (4) The use of electronic monitoring, including global
121 positioning monitoring, is authorized to carry out the provisions
122 of this section.

123 **SECTION 3.** Section 47-7-34, Mississippi Code of 1972, is
124 amended as follows:

125 47-7-34. (1) When a court imposes a sentence upon a
126 conviction for any felony committed after June 30, 1995, the

127 court, in addition to any other punishment imposed if the other
128 punishment includes a term of incarceration in a state or local
129 correctional facility, may impose a term of post-release
130 supervision. However, the total number of years of incarceration
131 plus the total number of years of post-release supervision shall
132 not exceed the maximum sentence authorized to be imposed by law
133 for the felony committed. The defendant shall be placed under
134 post-release supervision upon release from the term of
135 incarceration. The period of supervision shall be established by
136 the court.

137 (2) The period of post-release supervision shall be
138 conducted in the same manner as a like period of supervised
139 probation, including a requirement that the defendant shall abide
140 by any terms and conditions as the court may establish. Failure
141 to successfully abide by the terms and conditions shall be grounds
142 to terminate the period of post-release supervision and to
143 recommit the defendant to the correctional facility from which he
144 was previously released. Procedures for termination and
145 recommitment shall be conducted in the same manner as procedures
146 for the revocation of probation and imposition of a suspended
147 sentence.

148 (3) Post-release supervision programs shall be operated
149 through the probation and parole unit of the Division of Community
150 Corrections of the department. The maximum amount of time that
151 the Mississippi Department of Corrections may supervise an
152 offender on the post-release supervision program is five (5)
153 years.

154 (4) The use of electronic monitoring, including global
155 positioning monitoring, is authorized to carry out the provisions
156 of this section.

157 **SECTION 4.** Section 47-7-35, Mississippi Code of 1972, is
158 amended as follows:

159 47-7-35. (1) The courts referred to in Section 47-7-33 or
160 47-7-34 shall determine the terms and conditions of probation or
161 post-release supervision and may alter or modify, at any time
162 during the period of probation or post-release supervision, the
163 conditions and may include among them the following or any other:

164 That the offender shall:

165 (a) Commit no offense against the laws of this or any
166 other state of the United States, or of the United States;

167 (b) Avoid injurious or vicious habits;

168 (c) Avoid persons or places of disreputable or harmful
169 character;

170 (d) Report to the probation and parole officer as
171 directed;

172 (e) Permit the probation and parole officer to visit
173 him at home or elsewhere;

174 (f) Work faithfully at suitable employment so far as
175 possible;

176 (g) Remain within a specified area;

177 (h) Pay his fine in one (1) or several sums;

178 (i) Support his dependents;

179 (j) Submit, as provided in Section 47-5-601, to any
180 type of breath, saliva or urine chemical analysis test, the
181 purpose of which is to detect the possible presence of alcohol or
182 a substance prohibited or controlled by any law of the State of
183 Mississippi or the United States;

184 (k) Submit to electronic or global positioning
185 monitoring.

186 (2) When any court places a defendant on misdemeanor
187 probation, the court must cause to be conducted a search of the
188 probationer's name or other identifying information against the
189 registration information regarding sex offenders maintained under
190 Title 45, Chapter 33. The search may be conducted using the

191 Internet site maintained by the Department of Public Safety Sex
192 Offender Registry.

193 **SECTION 5.** Section 47-5-1013, Mississippi Code of 1972, is
194 amended as follows:

195 47-5-1013. Participants enrolled in an intensive supervision
196 program shall be required to:

197 (a) Maintain employment if physically able, or
198 full-time student status at an approved school or vocational
199 trade, and make progress deemed satisfactory to the correctional
200 field officer, or both, or be involved in supervised job searches.

201 (b) Pay restitution and program fees as directed by the
202 department. Program fees shall not be less than Seventy-five
203 Dollars (\$75.00) per month. The sentencing judge may charge a
204 program fee of less than Seventy-five Dollars (\$75.00) per month
205 in cases of extreme financial hardship, when such judge determines
206 that the offender's participation in the program would provide a
207 benefit to his community. Program fees shall be deposited in the
208 special fund created in Section 47-5-1007.

209 (c) Establish a place of residence at a place approved
210 by the correctional field officer, and not change his residence
211 without the officer's approval. The correctional officer shall be
212 allowed to inspect the place of residence for alcoholic beverages,
213 controlled substances and drug paraphernalia.

214 (d) Remain at his place of residence at all times
215 except to go to work, to attend school, to perform community
216 service and as specifically allowed in each instance by the
217 correctional field officer.

218 (e) Allow administration of drug and alcohol tests as
219 requested by the field officer.

220 (f) Perform not less than ten (10) hours of community
221 service each month.

222 (g) Meet any other conditions imposed by the court to
223 meet the needs of the offender and limit the risks to the

224 community, including the use of electronic or global positioning
225 monitoring.

226 **SECTION 6.** Section 47-7-3, Mississippi Code of 1972, is
227 amended as follows:

228 47-7-3. (1) Every prisoner who has been convicted of any
229 offense against the State of Mississippi, and is confined in the
230 execution of a judgment of such conviction in the Mississippi
231 Department of Corrections for a definite term or terms of one (1)
232 year or over, or for the term of his or her natural life, whose
233 record of conduct shows that such prisoner has observed the rules
234 of the department, and who has served not less than one-fourth
235 (1/4) of the total of such term or terms for which such prisoner
236 was sentenced, or, if sentenced to serve a term or terms of thirty
237 (30) years or more, or, if sentenced for the term of the natural
238 life of such prisoner, has served not less than ten (10) years of
239 such life sentence, may be released on parole as hereinafter
240 provided, except that:

241 (a) No prisoner convicted as a confirmed and habitual
242 criminal under the provisions of Sections 99-19-81 through
243 99-19-87 shall be eligible for parole;

244 (b) Any person who shall have been convicted of a sex
245 crime shall not be released on parole except for a person under
246 the age of nineteen (19) who has been convicted under Section
247 97-3-67;

248 (c) No one shall be eligible for parole until he shall
249 have served one (1) year of his sentence, unless such person has
250 accrued any meritorious earned time allowances, in which case he
251 shall be eligible for parole if he has served (i) nine (9) months
252 of his sentence or sentences, when his sentence or sentences is
253 two (2) years or less; (ii) ten (10) months of his sentence or
254 sentences when his sentence or sentences is more than two (2)
255 years but no more than five (5) years; and (iii) one (1) year of

256 his sentence or sentences when his sentence or sentences is more
257 than five (5) years;

258 (d) (i) No person shall be eligible for parole who
259 shall, on or after January 1, 1977, be convicted of robbery or
260 attempted robbery through the display of a firearm until he shall
261 have served ten (10) years if sentenced to a term or terms of more
262 than ten (10) years or if sentenced for the term of the natural
263 life of such person. If such person is sentenced to a term or
264 terms of ten (10) years or less, then such person shall not be
265 eligible for parole. The provisions of this paragraph (d) shall
266 also apply to any person who shall commit robbery or attempted
267 robbery on or after July 1, 1982, through the display of a deadly
268 weapon. This subparagraph (d)(i) shall not apply to persons
269 convicted after September 30, 1994;

270 (ii) No person shall be eligible for parole who
271 shall, on or after October 1, 1994, be convicted of robbery,
272 attempted robbery or carjacking as provided in Section 97-3-115 et
273 seq., through the display of a firearm or drive-by shooting as
274 provided in Section 97-3-109. The provisions of this subparagraph
275 (d)(ii) shall also apply to any person who shall commit robbery,
276 attempted robbery, carjacking or a drive-by shooting on or after
277 October 1, 1994, through the display of a deadly weapon;

278 (e) No person shall be eligible for parole who, on or
279 after July 1, 1994, is charged, tried, convicted and sentenced to
280 life imprisonment without eligibility for parole under the
281 provisions of Section 99-19-101;

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

285 (g) No person shall be eligible for parole who is
286 convicted or whose suspended sentence is revoked after June 30,
287 1995, except that a first offender convicted of a nonviolent crime
288 after January 1, 2000, may be eligible for parole if the offender

289 meets the requirements in subsection (1) and this paragraph. In
290 addition to other requirements, if a first offender is convicted
291 of a drug or driving under the influence felony, the offender must
292 complete a drug and alcohol rehabilitation program prior to parole
293 or the offender may be required to complete a post-release drug
294 and alcohol program as a condition of parole. For purposes of
295 this paragraph, "nonviolent crime" means a felony other than
296 homicide, robbery, manslaughter, sex crimes, arson, burglary of an
297 occupied dwelling, aggravated assault, kidnapping, felonious abuse
298 of vulnerable adults, felonies with enhanced penalties, the sale
299 or manufacture of a controlled substance under the Uniform
300 Controlled Substances Law, felony child abuse, or any crime under
301 Section 97-5-33 or Section 97-5-39(2) or a violation of Section
302 63-11-30(5) resulting in death, or serious bodily injury resulting
303 in the loss of a limb or dismemberment, loss of eyesight, a coma,
304 permanent dysfunction of any vital organ, paralysis or resulting
305 in an individual's permanent bedridden state. For purposes of
306 this paragraph, "first offender" means a person who at the time of
307 sentencing has not been convicted of a felony on a previous
308 occasion in any court or courts of the United States or in any
309 state or territory thereof. In addition, a first time offender
310 incarcerated for committing the crime of possession of a
311 controlled substance under the Uniform Controlled Substances Law
312 after July 1, 1995, shall be eligible for parole as provided for
313 such offenders in this paragraph after July 1, 2000.

314 (2) Notwithstanding any other provision of law, an inmate
315 shall not be eligible to receive earned time, good time or any
316 other administrative reduction of time which shall reduce the time
317 necessary to be served for parole eligibility as provided in
318 subsection (1) of this section; however, this subsection shall not
319 apply to the advancement of parole eligibility dates pursuant to
320 the Prison Overcrowding Emergency Powers Act or the use of
321 electronic monitoring which shall include global positioning

322 monitoring. Moreover, meritorious earned time allowances may be
323 used to reduce the time necessary to be served for parole
324 eligibility as provided in paragraph (c) of subsection (1) of this
325 section.

326 (3) (a) The State Parole Board shall by rules and
327 regulations establish a method of determining a tentative parole
328 hearing date for each eligible offender taken into the custody of
329 the Department of Corrections. The tentative parole hearing date
330 shall be determined within ninety (90) days after the department
331 has assumed custody of the offender. Such tentative parole
332 hearing date shall be calculated by a formula taking into account
333 the offender's age upon first commitment, number of prior
334 incarcerations, prior probation or parole failures, the severity
335 and the violence of the offense committed, employment history and
336 other criteria which in the opinion of the board tend to validly
337 and reliably predict the length of incarceration necessary before
338 the offender can be successfully paroled.

339 (b) [Repealed].

340 (4) Any inmate within twenty-four (24) months of his parole
341 eligibility date and who meets the criteria established by the
342 classification board shall receive priority for placement in any
343 educational development and job training programs. Any inmate
344 refusing to participate in an educational development or job
345 training program may be ineligible for parole.

346 **SECTION 7.** This act shall take effect and be in force from
347 and after July 1, 2007.