

By: Representative Kinkade

To: Corrections

HOUSE BILL NO. 61

1 AN ACT TO AMEND SECTION 47-7-38.1, MISSISSIPPI CODE OF 1972,
2 TO AUTHORIZE THE DEPARTMENT OF CORRECTIONS TO TRANSFER A
3 DISRUPTIVE TECHNICAL VIOLATION CENTER OFFENDER TO THE GENERAL
4 PRISON POPULATION FOR THE REMAINDER OF AN OFFENDER'S REVOCATION
5 TERM; TO AMEND SECTIONS 47-7-27 AND 47-7-37, MISSISSIPPI CODE OF
6 1972, IN CONFORMITY TO THE PRECEDING SECTION; AND FOR RELATED
7 PURPOSES.

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

9 **SECTION 1.** Section 47-7-38.1, Mississippi Code of 1972, is
10 amended as follows:

11 47-7-38.1. (1) The Department of Corrections shall
12 establish technical violation centers to detain probation and
13 parole violators revoked by the court or parole board.

14 (2) The department shall place an offender in a violation
15 center for a technical violation as ordered by the board pursuant
16 to Section 47-7-27 and the sentencing court pursuant to Section
17 47-7-37.

18 (3) The violation centers shall be equipped to address the
19 underlying factors that led to the offender's violation as
20 identified based on the results of a risk and needs assessment.



21 At a minimum each violation center shall include substance abuse
22 services shown to reduce recidivism and a reduction in the use of
23 illicit substances or alcohol, education programs, employment
24 preparation and training programs and behavioral programs.

25 (4) As required by Section 47-5-20(b), the department shall
26 notify, by certified mail, each member of the board of supervisors
27 of the county in which the violation center shall be located of
28 the department's intent to convert an existing department facility
29 to a technical violation center.

30 (5) The department shall establish rules and regulations for
31 the implementation and operation of the technical violation
32 centers.

33 (6) The department shall have the authority to transfer any
34 offender out of a technical violation center to the general
35 population for the remainder of the revocation term if the
36 offender is causing a disruption or is a threat to institution
37 safety.

38 (* * *7) The Department of Corrections shall provide to the
39 Oversight Task Force semiannually the average daily population of
40 the technical violation centers, the number of admissions to the
41 technical violation centers, and the average time served in the
42 technical violation centers.

43 **SECTION 2.** Section 47-7-27, Mississippi Code of 1972, is
44 amended as follows:



45 47-7-27. (1) The board may, at any time and upon a showing
46 of probable violation of parole, issue a warrant for the return of
47 any paroled offender to the custody of the department. The
48 warrant shall authorize all persons named therein to return the
49 paroled offender to actual custody of the department from which he
50 was paroled.

51 (2) Any field supervisor may arrest an offender without a
52 warrant or may deputize any other person with power of arrest by
53 giving him a written statement setting forth that the offender
54 has, in the judgment of that field supervisor, violated the
55 conditions of his parole or earned-release supervision. The
56 written statement delivered with the offender by the arresting
57 officer to the official in charge of the department facility from
58 which the offender was released or other place of detention
59 designated by the department shall be sufficient warrant for the
60 detention of the offender.

61 (3) The field supervisor, after making an arrest, shall
62 present to the detaining authorities a similar statement of the
63 circumstances of violation. The field supervisor shall at once
64 notify the board or department of the arrest and detention of the
65 offender and shall submit a written report showing in what manner
66 the offender has violated the conditions of parole or
67 earned-release supervision. An offender for whose return a
68 warrant has been issued by the board shall, after the issuance of
69 the warrant, be deemed a fugitive from justice.



70 (4) Whenever an offender is arrested on a warrant for an
71 alleged violation of parole as herein provided, the board shall
72 hold an informal preliminary hearing within seventy-two (72) hours
73 to determine whether there is reasonable cause to believe the
74 person has violated a condition of parole. A preliminary hearing
75 shall not be required when the offender is not under arrest on a
76 warrant or the offender signed a waiver of a preliminary hearing.
77 The preliminary hearing may be conducted electronically.

78 (5) The right of the State of Mississippi to extradite
79 persons and return fugitives from justice, from other states to
80 this state, shall not be impaired by this chapter and shall remain
81 in full force and effect. An offender convicted of a felony
82 committed while on parole, whether in the State of Mississippi or
83 another state, shall immediately have his parole revoked upon
84 presentment of a certified copy of the commitment order to the
85 board. If an offender is on parole and the offender is convicted
86 of a felony for a crime committed prior to the offender being
87 placed on parole, whether in the State of Mississippi or another
88 state, the offender may have his parole revoked upon presentment
89 of a certified copy of the commitment order to the board.

90 (6) (a) The board shall hold a hearing for any parolee who
91 is detained as a result of a warrant or a violation report within
92 twenty-one (21) days of the parolee's admission to detention. The
93 board may, in its discretion, terminate the parole or modify the
94 terms and conditions thereof. If the board revokes parole for a



95 technical violation the board shall impose a period of
96 imprisonment to be served in a technical violation center operated
97 by the department not to exceed ninety (90) days for the first
98 technical violation and not to exceed one hundred twenty (120)
99 days for the second technical violation. For the third technical
100 violation, the board may impose a period of imprisonment to be
101 served in a technical violation center for up to one hundred and
102 eighty (180) days or the board may impose the remainder of the
103 suspended portion of the sentence. For the fourth and any
104 subsequent technical violation, the board may impose up to the
105 remainder of the suspended portion of the sentence. Except as
106 otherwise provided in Section 47-7-38.1(6), the period of
107 imprisonment in a technical violation center imposed under this
108 section shall not be reduced in any manner.

109 (b) If the board does not hold a hearing or does not
110 take action on the violation within the twenty-one-day time frame
111 in paragraph (a) of this subsection, the parolee shall be released
112 from detention and shall return to parole status. The board may
113 subsequently hold a hearing and may revoke parole or may continue
114 parole and modify the terms and conditions of parole. If the
115 board revokes parole for a technical violation the board shall
116 impose a period of imprisonment to be served in a technical
117 violation center operated by the department not to exceed ninety
118 (90) days for the first technical violation and not to exceed one
119 hundred twenty (120) days for the second technical violation. For



120 the third technical violation, the board may impose a period of
121 imprisonment to be served in a technical violation center for up
122 to one hundred eighty (180) days or the board may impose the
123 remainder of the suspended portion of the sentence. For the
124 fourth and any subsequent technical violation, the board may
125 impose up to the remainder of the suspended portion of the
126 sentence. Except as otherwise provided in Section 47-7-38.1(6),
127 the period of imprisonment in a technical violation center imposed
128 under this section shall not be reduced in any manner.

129 (c) For a parolee charged with a technical violation
130 who has not been detained awaiting the revocation hearing, the
131 board may hold a hearing within a reasonable time. The board may
132 revoke parole or may continue parole and modify the terms and
133 conditions of parole. If the board revokes parole for a technical
134 violation the board shall impose a period of imprisonment to be
135 served in a technical violation center operated by the department
136 not to exceed ninety (90) days for the first technical violation
137 and not to exceed one hundred twenty (120) days for the second
138 technical violation. For the third technical violation, the board
139 may impose a period of imprisonment to be served in a technical
140 violation center for up to one hundred eighty (180) days or the
141 board may impose the remainder of the suspended portion of the
142 sentence. For the fourth and any subsequent technical violation,
143 the board may impose up to the remainder of the suspended portion
144 of the sentence. Except as otherwise provided in Section



145 47-7-38.1(6), the period of imprisonment in a technical violation
146 center imposed under this section shall not be reduced in any
147 manner.

148 (7) Unless good cause for the delay is established in the
149 record of the proceeding, the parole revocation charge shall be
150 dismissed if the revocation hearing is not held within the thirty
151 (30) days of the issuance of the warrant.

152 (8) The chairman and each member of the board and the
153 designated parole revocation hearing officer may, in the discharge
154 of their duties, administer oaths, summon and examine witnesses,
155 and take other steps as may be necessary to ascertain the truth of
156 any matter about which they have the right to inquire.

157 (9) The board shall provide semiannually to the Oversight
158 Task Force the number of warrants issued for an alleged violation
159 of parole, the average time between detention on a warrant and
160 preliminary hearing, the average time between detention on a
161 warrant and revocation hearing, the number of ninety-day sentences
162 in a technical violation center issued by the board, the number of
163 one-hundred-twenty-day sentences in a technical violation center
164 issued by the board, the number of one-hundred-eighty-day
165 sentences issued by the board, and the number and average length
166 of the suspended sentences imposed by the board in response to a
167 violation.

168 **SECTION 3.** Section 47-7-37, Mississippi Code of 1972, is
169 amended as follows:



170 47-7-37. (1) The period of probation shall be fixed by the
171 court, and may at any time be extended or terminated by the court,
172 or judge in vacation. Such period with any extension thereof
173 shall not exceed five (5) years, except that in cases of desertion
174 and/or failure to support minor children, the period of probation
175 may be fixed and/or extended by the court for so long as the duty
176 to support such minor children exists. The time served on
177 probation or post-release supervision may be reduced pursuant to
178 Section 47-7-40.

179 (2) At any time during the period of probation, the court,
180 or judge in vacation, may issue a warrant for violating any of the
181 conditions of probation or suspension of sentence and cause the
182 probationer to be arrested. Any probation and parole officer may
183 arrest a probationer without a warrant, or may deputize any other
184 officer with power of arrest to do so by giving him a written
185 statement setting forth that the probationer has, in the judgment
186 of the probation and parole officer, violated the conditions of
187 probation. Such written statement delivered with the probationer
188 by the arresting officer to the official in charge of a county
189 jail or other place of detention shall be sufficient warrant for
190 the detention of the probationer.

191 (3) Whenever an offender is arrested on a warrant for an
192 alleged violation of probation as herein provided, the department
193 shall hold an informal preliminary hearing within seventy-two (72)
194 hours of the arrest to determine whether there is reasonable cause



195 to believe the person has violated a condition of probation. A
196 preliminary hearing shall not be required when the offender is not
197 under arrest on a warrant or the offender signed a waiver of a
198 preliminary hearing. The preliminary hearing may be conducted
199 electronically. If reasonable cause is found, the offender may be
200 confined no more than twenty-one (21) days from the admission to
201 detention until a revocation hearing is held. If the revocation
202 hearing is not held within twenty-one (21) days, the probationer
203 shall be released from custody and returned to probation status.

204 (4) If a probationer or offender is subject to registration
205 as a sex offender, the court must make a finding that the
206 probationer or offender is not a danger to the public prior to
207 release with or without bail. In determining the danger posed by
208 the release of the offender or probationer, the court may consider
209 the nature and circumstances of the violation and any new offenses
210 charged; the offender or probationer's past and present conduct,
211 including convictions of crimes and any record of arrests without
212 conviction for crimes involving violence or sex crimes; any other
213 evidence of allegations of unlawful sexual conduct or the use of
214 violence by the offender or probationer; the offender or
215 probationer's family ties, length of residence in the community,
216 employment history and mental condition; the offender or
217 probationer's history and conduct during the probation or other
218 supervised release and any other previous supervisions, including
219 disciplinary records of previous incarcerations; the likelihood



220 that the offender or probationer will engage again in a criminal
221 course of conduct; the weight of the evidence against the offender
222 or probationer; and any other facts the court considers relevant.

223 (5) (a) The probation and parole officer after making an
224 arrest shall present to the detaining authorities a similar
225 statement of the circumstances of violation. The probation and
226 parole officer shall at once notify the court of the arrest and
227 detention of the probationer and shall submit a report in writing
228 showing in what manner the probationer has violated the conditions
229 of probation. Within twenty-one (21) days of arrest and detention
230 by warrant as herein provided, the court shall cause the
231 probationer to be brought before it and may continue or revoke all
232 or any part of the probation or the suspension of sentence. If
233 the court revokes probation for a technical violation, the court
234 shall impose a period of imprisonment to be served in either a
235 technical violation center or a restitution center not to exceed
236 ninety (90) days for the first technical violation and not to
237 exceed one hundred twenty (120) days for the second technical
238 violation. For the third technical violation, the court may
239 impose a period of imprisonment to be served in either a technical
240 violation center or a restitution center for up to one hundred
241 eighty (180) days or the court may impose the remainder of the
242 suspended portion of the sentence. For the fourth and any
243 subsequent technical violation, the court may impose up to the
244 remainder of the suspended portion of the sentence. Except as



245 otherwise provided in Section 47-7-38.1(6), the period of
246 imprisonment in a technical violation center imposed under this
247 section shall not be reduced in any manner.

248 (b) If the offender is not detained as a result of the
249 warrant, the court shall cause the probationer to be brought
250 before it within a reasonable time and may continue or revoke all
251 or any part of the probation or the suspension of sentence, and
252 may cause the sentence imposed to be executed or may impose any
253 part of the sentence which might have been imposed at the time of
254 conviction. If the court revokes probation for a technical
255 violation, the court shall impose a period of imprisonment to be
256 served in either a technical violation center or a restitution
257 center not to exceed ninety (90) days for the first technical
258 violation and not to exceed one hundred twenty (120) days for the
259 second technical violation. For the third technical violation,
260 the court may impose a period of imprisonment to be served in
261 either a technical violation center or a restitution center for up
262 to one hundred eighty (180) days or the court may impose the
263 remainder of the suspended portion of the sentence. For the
264 fourth and any subsequent technical violation, the court may
265 impose up to the remainder of the suspended portion of the
266 sentence. Except as otherwise provided in Section 47-7-38.1(6),
267 the period of imprisonment in a technical violation center imposed
268 under this section shall not be reduced in any manner.



269 (c) If the court does not hold a hearing or does not
270 take action on the violation within the twenty-one-day period, the
271 offender shall be released from detention and shall return to
272 probation status. The court may subsequently hold a hearing and
273 may revoke probation or may continue probation and modify the
274 terms and conditions of probation. If the court revokes probation
275 for a technical violation, the court shall impose a period of
276 imprisonment to be served in either a technical violation center
277 operated by the department or a restitution center not to exceed
278 ninety (90) days for the first technical violation and not to
279 exceed one hundred twenty (120) days for the second technical
280 violation. For the third technical violation, the court may
281 impose a period of imprisonment to be served in either a technical
282 violation center or a restitution center for up to one
283 hundred * * * eighty (180) days or the court may impose the
284 remainder of the suspended portion of the sentence. For the
285 fourth and any subsequent technical violation, the court may
286 impose up to the remainder of the suspended portion of the
287 sentence. Except as otherwise provided in Section 47-7-38.1(6),
288 the period of imprisonment in a technical violation center imposed
289 under this section shall not be reduced in any manner.

290 (d) For an offender charged with a technical violation
291 who has not been detained awaiting the revocation hearing, the
292 court may hold a hearing within a reasonable time. The court may
293 revoke probation or may continue probation and modify the terms



294 and conditions of probation. If the court revokes probation for a
295 technical violation the court shall impose a period of
296 imprisonment to be served in either a technical violation center
297 operated by the department or a restitution center not to exceed
298 ninety (90) days for the first technical violation and not to
299 exceed one hundred twenty (120) days for the second technical
300 violation. For the third technical violation, the court may
301 impose a period of imprisonment to be served in either a technical
302 violation center or a restitution center for up to one hundred
303 eighty (180) days or the court may impose the remainder of the
304 suspended portion of the sentence. For the fourth and any
305 subsequent technical violation, the court may impose up to the
306 remainder of the suspended portion of the sentence. The period of
307 imprisonment in a technical violation center imposed under this
308 section shall not be reduced in any manner.

309 (6) If the probationer is arrested in a circuit court
310 district in the State of Mississippi other than that in which he
311 was convicted, the probation and parole officer, upon the written
312 request of the sentencing judge, shall furnish to the circuit
313 court or the county court of the county in which the arrest is
314 made, or to the judge of such court, a report concerning the
315 probationer, and such court or the judge in vacation shall have
316 authority, after a hearing, to continue or revoke all or any part
317 of probation or all or any part of the suspension of sentence, and
318 may in case of revocation proceed to deal with the case as if



319 there had been no probation. In such case, the clerk of the court
320 in which the order of revocation is issued shall forward a
321 transcript of such order to the clerk of the court of original
322 jurisdiction, and the clerk of that court shall proceed as if the
323 order of revocation had been issued by the court of original
324 jurisdiction. Upon the revocation of probation or suspension of
325 sentence of any offender, such offender shall be placed in the
326 legal custody of the State Department of Corrections and shall be
327 subject to the requirements thereof.

328 (7) Any probationer who removes himself from the State of
329 Mississippi without permission of the court placing him on
330 probation, or the court to which jurisdiction has been
331 transferred, shall be deemed and considered a fugitive from
332 justice and shall be subject to extradition as now provided by
333 law. No part of the time that one is on probation shall be
334 considered as any part of the time that he shall be sentenced to
335 serve.

336 (8) The arresting officer, except when a probation and
337 parole officer, shall be allowed the same fees as now provided by
338 law for arrest on warrant, and such fees shall be taxed against
339 the probationer and paid as now provided by law.

340 (9) The arrest, revocation and recommitment procedures of
341 this section also apply to persons who are serving a period of
342 post-release supervision imposed by the court.



343 (10) Unless good cause for the delay is established in the
344 record of the proceeding, the probation revocation charge shall be
345 dismissed if the revocation hearing is not held within thirty (30)
346 days of the warrant being issued.

347 (11) The Department of Corrections shall provide
348 semiannually to the Oversight Task Force the number of warrants
349 issued for an alleged violation of probation or post-release
350 supervision, the average time between detention on a warrant and
351 preliminary hearing, the average time between detention on a
352 warrant and revocation hearing, the number of ninety-day sentences
353 in a technical violation center issued by the court, the number of
354 one-hundred-twenty-day sentences in a technical violation center
355 issued by the court, the number of one-hundred-eighty-day
356 sentences issued by the court, and the number and average length
357 of the suspended sentences imposed by the court in response to a
358 violation.

359 **SECTION 4.** This act shall take effect and be in force from
360 and after its passage.

