

By: Representative Harness

To: Corrections

HOUSE BILL NO. 544

1 AN ACT TO AMEND SECTION 47-7-34, MISSISSIPPI CODE OF 1972, TO
 2 CLARIFY THAT THE MAXIMUM FIVE YEARS THAT MAY BE IMPOSED BY A COURT
 3 FOR POST-RELEASE SUPERVISION MAY BE EXTENDED UNDER CERTAIN
 4 CIRCUMSTANCES; TO AMEND SECTION 47-7-37, MISSISSIPPI CODE OF 1972,
 5 TO PROVIDE THAT THE COURT MAY FIX THE PERIOD OF PROBATION TO THE
 6 STATUTORY MAXIMUM PERIOD WHICH THE DEFENDANT MIGHT ORIGINALLY HAVE
 7 BEEN SENTENCED TO AS LONG AS SUCH PERIOD DOES NOT EXCEED FIVE
 8 YEARS; TO PROVIDE THAT AN OFFENDER MAY NOT HAVE HIS OR HER
 9 PROBATION REVOKED IF THE OFFENDER HAS COMMITTED AN INITIAL
 10 TECHNICAL VIOLATION UNDER CERTAIN CIRCUMSTANCES; TO PROVIDE THAT
 11 FOR THE SECOND TECHNICAL VIOLATION, RATHER THAN THE THIRD
 12 VIOLATION, AN OFFENDER MAY BE IMPRISONED IN A TECHNICAL VIOLATION
 13 CENTER OR A RESTITUTION CENTER FOR FOURTEEN DAYS RATHER THAN 120
 14 DAYS; TO PROVIDE THAT FOR A THIRD TECHNICAL VIOLATION, AN OFFENDER
 15 MAY BE IMPRISONED FOR 120 DAYS; TO PROVIDE THAT FOR A FOURTH
 16 TECHNICAL VIOLATION AN OFFENDER MAY BE IMPRISONED FOR 180 DAYS; TO
 17 PROVIDE THAT FOR FIVE OR MORE TECHNICAL VIOLATIONS AN OFFENDER MAY
 18 BE IMPRISONED FOR THE REMAINDER OF HIS OR HER SENTENCE; TO AMEND
 19 SECTION 47-7-27, MISSISSIPPI CODE OF 1972, TO CONFORM TO THE
 20 PRECEDING SECTION; AND FOR RELATED PURPOSES.

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

22 **SECTION 1.** Section 47-7-34, Mississippi Code of 1972, is
 23 amended as follows:

24 47-7-34. (1) When a court imposes a sentence upon a
 25 conviction for any felony committed after June 30, 1995, the
 26 court, in addition to any other punishment imposed if the other
 27 punishment includes a term of incarceration in a state or local



28 correctional facility, may impose a term of post-release
29 supervision. However, the total number of years of incarceration
30 plus the total number of years of post-release supervision shall
31 not exceed * * * five (5) years from the release of the defendant
32 from any active period of incarceration. The limitation on the
33 period of probation shall not apply to the extent that an
34 additional period is necessary (i) for the defendant to
35 participate in a court-ordered program or (ii) if a defendant owes
36 restitution and is still subject to paying such restitution. The
37 defendant shall be placed under post-release supervision upon
38 release from the term of incarceration. The period of supervision
39 shall be established by the court.

40 (2) The period of post-release supervision shall be
41 conducted in the same manner as a like period of supervised
42 probation, including a requirement that the defendant shall abide
43 by any terms and conditions as the court may establish. Failure
44 to successfully abide by the terms and conditions shall be grounds
45 to terminate the period of post-release supervision and to
46 recommit the defendant to the correctional facility from which he
47 was previously released. Procedures for termination and
48 recommitment shall be conducted in the same manner as procedures
49 for the revocation of probation and imposition of a suspended
50 sentence as required pursuant to Section 47-7-37.

51 (3) Post-release supervision programs shall be operated
52 through the probation and parole unit of the Division of Community



53 Corrections of the department. The maximum amount of time that
54 the Mississippi Department of Corrections may supervise an
55 offender on the post-release supervision program is five (5) years
56 from the release of the defendant from any active period of
57 incarceration as set out under subsection (2) of this section.

58 **SECTION 2.** Section 47-7-37, Mississippi Code of 1972, is
59 amended as follows:

60 47-7-37. (1) The period of probation shall be fixed by the
61 court, and may at any time be extended or terminated by the court,
62 or judge in vacation. The court may fix the period of probation
63 to the statutory maximum period which the defendant might
64 originally have been sentenced to be imprisoned. Such period with
65 any extension thereof shall not exceed five (5) years,
66 except * * * as provided as follows:

67 (a) In cases of desertion and/or failure to support
68 minor children, the period of probation may be fixed and/or
69 extended by the court for so long as the duty to support such
70 minor children exists;

71 (b) In cases where the defendant is a participant in a
72 court-ordered program; or

73 (c) In cases where a defendant owes restitution and is
74 still subject to paying such restitution. The time served on
75 probation or post-release supervision may be reduced pursuant to
76 Section 47-7-40.



77 (2) At any time during the period of probation, the court,
78 or judge in vacation, may issue a warrant for violating any of the
79 conditions of probation or suspension of sentence and cause the
80 probationer to be arrested. Any probation and parole officer may
81 arrest a probationer without a warrant, or may deputize any other
82 officer with power of arrest to do so by giving him or her a
83 written statement setting forth that the probationer has, in the
84 judgment of the probation and parole officer, violated the
85 conditions of probation. Such written statement delivered with
86 the probationer by the arresting officer to the official in charge
87 of a county jail or other place of detention shall be sufficient
88 warrant for the detention of the probationer.

89 (3) (a) Whenever an offender is arrested on a warrant for
90 an alleged violation of probation as herein provided, the
91 department shall hold an informal preliminary hearing within
92 seventy-two (72) hours of the arrest to determine whether there is
93 reasonable cause to believe the person has violated a condition of
94 probation. A preliminary hearing shall not be required when the
95 offender is not under arrest on a warrant or the offender signed a
96 waiver of a preliminary hearing. The preliminary hearing may be
97 conducted electronically. If reasonable cause is found, the
98 offender may be confined no more than twenty-one (21) days from the
99 admission to detention until a revocation hearing is held. If the
100 revocation hearing is not held within twenty-one (21) days, the



101 probationer shall be released from custody and returned to
102 probation status.

103 (b) Notwithstanding paragraph (a) of this section, a
104 court shall not impose a sentence of a term of imprisonment in a
105 technical violation center or restitution center upon a first
106 technical violation of the terms and conditions of a suspended
107 sentence or probation, and there shall be a presumption against
108 imposing a sentence of a term of active incarceration for any
109 second technical violation of the terms and conditions of a
110 suspended sentence or probation. If a court finds by a
111 preponderance of the evidence that the defendant committed a
112 second technical violation and he or she cannot be safely diverted
113 from active incarceration through less restrictive means, the
114 court may impose not more than fourteen (14) days of imprisonment
115 in a technical violation center or restitution center for a second
116 technical violation. Any subsequent violations after the second
117 violation shall be subject to the terms of imprisonment in a
118 technical violation center or restitution center as set out in
119 this section, unless such defendant has committed a fifth or
120 subsequent technical violation.

121 (c) For purposes of this subsection, a first technical
122 violation shall be considered a second technical violation if:

123 (i) The defendant fails to refrain from the use,
124 ownership, or transportation of a firearm; or



125 (ii) The defendant fails to maintain contact with
126 the probation and parole officer whereby his or her whereabouts
127 are no longer known to the probation officer.

128 Any such subsequent second technical violation as set out
129 under subparagraph (i) or (ii) of this paragraph (c) shall be
130 considered a third or subsequent technical violation.

131 (d) If the court finds the basis of a violation of the
132 terms and conditions of a suspended sentence or probation is that
133 the defendant was convicted of a criminal offense that was
134 committed after the date of suspension, or has violated another
135 condition other than a technical violation or a good conduct
136 violation that did not result in a criminal conviction, the court
137 may revoke the suspension and impose or resuspend any or all of
138 that period previously suspended.

139 (4) If a probationer or offender is subject to registration
140 as a sex offender, the court must make a finding that the
141 probationer or offender is not a danger to the public prior to
142 release with or without bail. In determining the danger posed by
143 the release of the offender or probationer, the court may consider
144 the nature and circumstances of the violation and any new offenses
145 charged; the offender or probationer's past and present conduct,
146 including convictions of crimes and any record of arrests without
147 conviction for crimes involving violence or sex crimes; any other
148 evidence of allegations of unlawful sexual conduct or the use of
149 violence by the offender or probationer; the offender or



150 probationer's family ties, length of residence in the community,
151 employment history and mental condition; the offender or
152 probationer's history and conduct during the probation or other
153 supervised release and any other previous supervisions, including
154 disciplinary records of previous incarcerations; the likelihood
155 that the offender or probationer will engage again in a criminal
156 course of conduct; the weight of the evidence against the offender
157 or probationer; and any other facts the court considers relevant.

158 (5) (a) The probation and parole officer after making an
159 arrest shall present to the detaining authorities a similar
160 statement of the circumstances of violation. The probation and
161 parole officer shall at once notify the court of the arrest and
162 detention of the probationer and shall submit a report in writing
163 showing in what manner the probationer has violated the conditions
164 of probation. Within twenty-one (21) days of arrest and detention
165 by warrant as herein provided, the court shall cause the
166 probationer to be brought before it and may continue or revoke all
167 or any part of the probation or the suspension of sentence. If
168 the court revokes probation for * * * two (2) technical
169 violations, the court shall impose a period of imprisonment to be
170 served in either a technical violation center or a restitution
171 center not to exceed * * * fourteen (14) days for the * * * second
172 revocation and not to exceed one hundred twenty (120) days for
173 the * * * third revocation. For the * * * fourth revocation, the
174 court may impose a period of imprisonment to be served in either a



175 technical violation center or a restitution center for up to one
176 hundred eighty (180) days or the court may impose the remainder of
177 the suspended portion of the sentence. For the * * * fifth and
178 any subsequent revocation, the court may impose up to the
179 remainder of the suspended portion of the sentence. The period of
180 imprisonment in a technical violation center imposed under this
181 section shall not be reduced in any manner.

182 (b) If the offender is not detained as a result of the
183 warrant, the court shall cause the probationer to be brought
184 before it within a reasonable time and may continue or revoke all
185 or any part of the probation or the suspension of sentence, and
186 may cause the sentence imposed to be executed or may impose any
187 part of the sentence which might have been imposed at the time of
188 conviction. If the court revokes probation for one or more
189 technical violations, the court shall impose a period of
190 imprisonment to be served in either a technical violation center
191 or a restitution center not to exceed * * * fourteen (14) days for
192 the * * * second revocation and not to exceed one hundred twenty
193 (120) days for the * * * third revocation. For the * * * fourth
194 revocation, the court may impose a period of imprisonment to be
195 served in either a technical violation center or a restitution
196 center for up to one hundred eighty (180) days or the court may
197 impose the remainder of the suspended portion of the sentence.
198 For the * * * fifth and any subsequent revocation, the court may
199 impose up to the remainder of the suspended portion of the



200 sentence. The period of imprisonment in a technical violation
201 center imposed under this section shall not be reduced in any
202 manner.

203 (c) If the court does not hold a hearing or does not
204 take action on the violation within the twenty-one-day period, the
205 offender shall be released from detention and shall return to
206 probation status. The court may subsequently hold a hearing and
207 may revoke probation or may continue probation and modify the
208 terms and conditions of probation. If the court revokes probation
209 for * * * two (2) technical violations, the court shall impose a
210 period of imprisonment to be served in either a technical
211 violation center operated by the department or a restitution
212 center not to exceed * * * (fourteen) days for the * * * second
213 revocation and not to exceed one hundred twenty (120) days for
214 the * * * third revocation. For the * * * fourth revocation, the
215 court may impose a period of imprisonment to be served in either a
216 technical violation center or a restitution center for up to one
217 hundred eighty (180) days or the court may impose the remainder of
218 the suspended portion of the sentence. For the * * * fifth and
219 any subsequent revocation, the court may impose up to the
220 remainder of the suspended portion of the sentence. The period of
221 imprisonment in a technical violation center imposed under this
222 section shall not be reduced in any manner.

223 (d) For an offender charged with a technical violation
224 who has not been detained awaiting the revocation hearing, the



225 court may hold a hearing within a reasonable time. The court may
226 revoke probation or may continue probation and modify the terms
227 and conditions of probation. If the court revokes probation for
228 one or more technical violations the court shall impose a period
229 of imprisonment to be served in either a technical violation
230 center operated by the department or a restitution center not to
231 exceed * * * fourteen (14) days for the * * * second revocation and
232 not to exceed one hundred twenty (120) days for the * * * third
233 revocation. For the * * * fourth revocation, the court may impose
234 a period of imprisonment to be served in either a technical
235 violation center or a restitution center for up to one hundred
236 eighty (180) days or the court may impose the remainder of the
237 suspended portion of the sentence. For the * * * fifth and any
238 subsequent revocation, the court may impose up to the remainder of
239 the suspended portion of the sentence. The period of imprisonment
240 in a technical violation center imposed under this section shall
241 not be reduced in any manner.

242 (6) If the probationer is arrested in a circuit court
243 district in the State of Mississippi other than that in which he
244 was convicted, the probation and parole officer, upon the written
245 request of the sentencing judge, shall furnish to the circuit
246 court or the county court of the county in which the arrest is
247 made, or to the judge of such court, a report concerning the
248 probationer, and such court or the judge in vacation shall have
249 authority, after a hearing, to continue or revoke all or any part



250 of probation or all or any part of the suspension of sentence, and
251 may in case of revocation proceed to deal with the case as if
252 there had been no probation. In such case, the clerk of the court
253 in which the order of revocation is issued shall forward a
254 transcript of such order to the clerk of the court of original
255 jurisdiction, and the clerk of that court shall proceed as if the
256 order of revocation had been issued by the court of original
257 jurisdiction. Upon the revocation of probation or suspension of
258 sentence of any offender, such offender shall be placed in the
259 legal custody of the State Department of Corrections and shall be
260 subject to the requirements thereof.

261 (7) Any probationer who removes himself from the State of
262 Mississippi without permission of the court placing him on
263 probation, or the court to which jurisdiction has been
264 transferred, shall be deemed and considered a fugitive from
265 justice and shall be subject to extradition as now provided by
266 law. No part of the time that one is on probation shall be
267 considered as any part of the time that he shall be sentenced to
268 serve.

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



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

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

280 (11) The Department of Corrections shall provide
281 semiannually to the Oversight Task Force the number of warrants
282 issued for an alleged violation of probation or post-release
283 supervision, the average time between detention on a warrant and
284 preliminary hearing, the average time between detention on a
285 warrant and revocation hearing, the number of * * * fourteen (14)
286 day sentences in a technical violation center issued by the court,
287 the number of one-hundred-twenty-day sentences in a technical
288 violation center issued by the court, the number of
289 one-hundred-eighty-day sentences issued by the court, and the
290 number and average length of the suspended sentences imposed by
291 the court in response to a violation.

292 **SECTION 3.** Section 47-7-27, Mississippi Code of 1972, is
293 amended as follows:

294 47-7-27. (1) The board may, at any time and upon a showing
295 of probable violation of parole, issue a warrant for the return of
296 any paroled offender to the custody of the department. The
297 warrant shall authorize all persons named therein to return the



298 paroled offender to actual custody of the department from which he
299 was paroled.

300 (2) Any field supervisor may arrest an offender without a
301 warrant or may deputize any other person with power of arrest by
302 giving him a written statement setting forth that the offender
303 has, in the judgment of that field supervisor, violated the
304 conditions of his parole or earned-release supervision. The
305 written statement delivered with the offender by the arresting
306 officer to the official in charge of the department facility from
307 which the offender was released or other place of detention
308 designated by the department shall be sufficient warrant for the
309 detention of the offender.

310 (3) The field supervisor, after making an arrest, shall
311 present to the detaining authorities a similar statement of the
312 circumstances of violation. The field supervisor shall at once
313 notify the board or department of the arrest and detention of the
314 offender and shall submit a written report showing in what manner
315 the offender has violated the conditions of parole or
316 earned-release supervision. An offender for whose return a
317 warrant has been issued by the board shall, after the issuance of
318 the warrant, be deemed a fugitive from justice.

319 (4) Whenever an offender is arrested on a warrant for an
320 alleged violation of parole as herein provided, the board shall
321 hold an informal preliminary hearing within seventy-two (72) hours
322 to determine whether there is reasonable cause to believe the



323 person has violated a condition of parole. A preliminary hearing
324 shall not be required when the offender is not under arrest on a
325 warrant or the offender signed a waiver of a preliminary hearing.
326 The preliminary hearing may be conducted electronically.

327 (5) The right of the State of Mississippi to extradite
328 persons and return fugitives from justice, from other states to
329 this state, shall not be impaired by this chapter and shall remain
330 in full force and effect. An offender convicted of a felony
331 committed while on parole, whether in the State of Mississippi or
332 another state, shall immediately have his parole revoked upon
333 presentment of a certified copy of the commitment order to the
334 board. If an offender is on parole and the offender is convicted
335 of a felony for a crime committed prior to the offender being
336 placed on parole, whether in the State of Mississippi or another
337 state, the offender may have his parole revoked upon presentment
338 of a certified copy of the commitment order to the board.

339 (6) (a) The board shall hold a hearing for any parolee who
340 is detained as a result of a warrant or a violation report within
341 twenty-one (21) days of the parolee's admission to detention. The
342 board may, in its discretion, terminate the parole or modify the
343 terms and conditions thereof. If the board revokes parole
344 for * * * two (2) technical violations, the board shall impose a
345 period of imprisonment to be served in a technical violation
346 center operated by the department not to exceed * * * fourteen
347 (14) days for the * * * second revocation and not to exceed one



348 hundred twenty (120) days for the * * * third revocation. For
349 the * * * fourth revocation, the board may impose a period of
350 imprisonment to be served in a technical violation center for up
351 to one hundred * * * eighty (180) days or the board may impose the
352 remainder of the suspended portion of the sentence. For the * * *
353 fifth and any subsequent revocation, the board may impose up to
354 the remainder of the suspended portion of the sentence. The
355 period of imprisonment in a technical violation center imposed
356 under this section shall not be reduced in any manner.

357 (b) If the board does not hold a hearing or does not
358 take action on the violation within the twenty-one-day time frame
359 in paragraph (a) of this subsection, the parolee shall be released
360 from detention and shall return to parole status. The board may
361 subsequently hold a hearing and may revoke parole or may continue
362 parole and modify the terms and conditions of parole. If the
363 board revokes parole for * * * two (2) technical violations, the
364 board shall impose a period of imprisonment to be served in a
365 technical violation center operated by the department not to
366 exceed * * * fourteen (14) days for the * * * second revocation
367 and not to exceed one hundred twenty (120) days for the * * *
368 third revocation. For the * * * fourth revocation, the board may
369 impose a period of imprisonment to be served in a technical
370 violation center for up to one hundred eighty (180) days or the
371 board may impose the remainder of the suspended portion of the
372 sentence. For the * * * fifth and any subsequent revocation, the



373 board may impose up to the remainder of the suspended portion of
374 the sentence. The period of imprisonment in a technical violation
375 center imposed under this section shall not be reduced in any
376 manner.

377 (c) For a parolee charged with one or more technical
378 violations who has not been detained awaiting the revocation
379 hearing, the board may hold a hearing within a reasonable time.
380 The board may revoke parole or may continue parole and modify the
381 terms and conditions of parole. If the board revokes parole
382 for * * * two (2) technical violations, the board shall impose a
383 period of imprisonment to be served in a technical violation
384 center operated by the department not to exceed * * * fourteen
385 (14) days for the * * * second revocation and not to exceed one
386 hundred twenty (120) days for the * * * third revocation. For
387 the * * * fourth revocation, the board may impose a period of
388 imprisonment to be served in a technical violation center for up
389 to one hundred eighty (180) days or the board may impose the
390 remainder of the suspended portion of the sentence. For the * * *
391 fifth and any subsequent revocation, the board may impose up to
392 the remainder of the suspended portion of the sentence. The
393 period of imprisonment in a technical violation center imposed
394 under this section shall not be reduced in any manner.

395 (7) Unless good cause for the delay is established in the
396 record of the proceeding, the parole revocation charge shall be



397 dismissed if the revocation hearing is not held within the thirty
398 (30) days of the issuance of the warrant.

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

404 (9) The board shall provide semiannually to the Oversight
405 Task Force the number of warrants issued for an alleged violation
406 of parole, the average time between detention on a warrant and
407 preliminary hearing, the average time between detention on a
408 warrant and revocation hearing, the number of * * * fourteen (14)
409 day sentences in a technical violation center issued by the board,
410 the number of one-hundred-twenty-day sentences in a technical
411 violation center issued by the board, the number of
412 one-hundred-eighty-day sentences issued by the board, and the
413 number and average length of the suspended sentences imposed by
414 the board in response to a violation.

415 **SECTION 4.** This section shall take effect and be in force
416 from and after July 1, 2022.

