

By: Ishee

To: Judiciary B

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 55

1 AN ACT TO AMEND SECTIONS 47-5-138 AND 47-7-3, MISSISSIPPI
2 CODE OF 1972, TO PROVIDE THAT PERSONS CONVICTED OF NONVIOLENT
3 CRIMES SHALL NOT BE SUBJECT TO THE MANDATORY EIGHTY-FIVE PERCENT
4 SENTENCING PROVISIONS; TO ALLOW THE TRIAL JUDGE IN A CRIMINAL CASE
5 TO MAKE THE DETERMINATION OF WHAT CONSTITUTES A NONVIOLENT CRIME;
6 AND FOR RELATED PURPOSES.

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

8 SECTION 1. Section 47-5-138, Mississippi Code of 1972, is
9 amended as follows:

10 47-5-138. (1) The department may promulgate rules and
11 regulations to carry out an earned time allowance program based on
12 the good conduct and performance of an inmate. An inmate is
13 eligible to receive an earned time allowance of one-half (1/2) of
14 the period of confinement imposed by the court except those
15 inmates excluded by law. When an inmate is committed to the
16 custody of the department, the department shall determine a
17 conditional earned time release date by subtracting the earned
18 time allowance from an inmate's term of sentence. This subsection
19 does not apply to any sentence imposed after June 30, 1995;
20 provided, however, from and after July 1, 2000, this subsection
21 shall apply to sentences for any person convicted of a nonviolent
22 crime. For the purposes of this section "nonviolent crime" means
23 any crime which, in the discretion of the trial judge and based
24 upon his interpretation of the facts and circumstances of the
25 case, does not involve injury, attempted injury or the killing or
26 attempted killing of a human being. The judge shall expressly
27 state in the sentencing order whether the crime is violent or
28 nonviolent.

29 (2) An inmate may forfeit all or part of his earned time
30 allowance for a serious violation of rules. No forfeiture of the
31 earned time allowance shall be effective except upon approval of
32 the commissioner or his designee, and forfeited earned time may
33 not be restored.

34 (3) (a) For the purposes of this subsection, "final order"
35 means an order of a state or federal court that dismisses a
36 lawsuit brought by an inmate while the inmate was in the custody
37 of the Department of Corrections as frivolous, malicious or for
38 failure to state a claim upon which relief could be granted.

39 (b) On receipt of a final order, the department shall
40 forfeit:

41 (i) Sixty (60) days of an inmate's accrued earned
42 time if the department has received one (1) final order as defined
43 herein;

44 (ii) One hundred twenty (120) days of an inmate's
45 accrued earned time if the department has received two (2) final
46 orders as defined herein;

47 (iii) One hundred eighty (180) days of an inmate's
48 accrued earned time if the department has received three (3) or
49 more final orders as defined herein.

50 (c) The department may not restore earned time
51 forfeited under this subsection.

52 (4) An inmate who meets the good conduct and performance
53 requirements of the earned time allowance program may be released
54 on his conditional earned time release date.

55 (5) For any sentence imposed after June 30, 1995, an inmate
56 may receive an earned time allowance of four and one-half (4-1/2)
57 days for each thirty (30) days served if the department determines
58 that the inmate has complied with the good conduct and performance
59 requirements of the earned time allowance program. The earned
60 time allowance under this subsection shall not exceed fifteen
61 percent (15%) of an inmate's term of sentence, unless the inmate

62 is convicted and sentenced for a nonviolent crime.

63 (6) Any inmate, who is released before the expiration of his
64 term of sentence under this section, shall be placed under
65 earned-release supervision until the expiration of the term of
66 sentence. The inmate shall retain inmate status and remain under
67 the jurisdiction of the department. The period of earned-release
68 supervision shall be conducted in the same manner as a period of
69 supervised parole. The department shall develop rules, terms and
70 conditions for the earned-release supervision program. The
71 commissioner shall designate the appropriate classification
72 committee or other division within the department to conduct
73 revocation hearings for inmates violating the conditions of
74 earned-release supervision.

75 (7) If the earned-release supervision is revoked, the inmate
76 shall serve the remainder of the sentence and the time the inmate
77 was on earned-release supervision, shall not be applied to and
78 shall not reduce his sentence.

79 SECTION 2. Section 47-7-3, Mississippi Code of 1972, is
80 amended as follows:

81 47-7-3. (1) Every prisoner who has been convicted of any
82 offense against the State of Mississippi, and is confined in the
83 execution of a judgment of such conviction in the Mississippi
84 State Penitentiary for a definite term or terms of one (1) year or
85 over, or for the term of his or her natural life, whose record of
86 conduct shows that such prisoner has observed the rules of the
87 penitentiary, and who has served not less than one-fourth (1/4) of
88 the total of such term or terms for which such prisoner was
89 sentenced, or, if sentenced to serve a term or terms of thirty
90 (30) years or more, or, if sentenced for the term of the natural
91 life of such prisoner, has served not less than ten (10) years of
92 such life sentence, may be released on parole as hereinafter
93 provided, except that:

94 (a) No prisoner convicted as a confirmed and habitual

95 criminal under the provisions of Sections 99-19-81 through
96 99-19-87 shall be eligible for parole;

97 (b) Any person who shall have been convicted of a sex
98 crime shall not be released on parole except for a person under
99 the age of nineteen (19) who has been convicted under Section
100 97-3-67;

101 (c) No one shall be eligible for parole until he shall
102 have served one (1) year of his sentence, unless such person has
103 accrued any meritorious earned time allowances, in which case he
104 shall be eligible for parole if he has served (i) nine (9) months
105 of his sentence or sentences, when his sentence or sentences is
106 two (2) years or less; (ii) ten (10) months of his sentence or
107 sentences when his sentence or sentences is more than two (2)
108 years but no more than five (5) years; and (iii) one (1) year of
109 his sentence or sentences when his sentence or sentences is more
110 than five (5) years;

111 (d) (i) No person shall be eligible for parole who
112 shall, on or after January 1, 1977, be convicted of robbery or
113 attempted robbery through the display of a firearm until he shall
114 have served ten (10) years if sentenced to a term or terms of more
115 than ten (10) years or if sentenced for the term of the natural
116 life of such person. If such person is sentenced to a term or
117 terms of ten (10) years or less, then such person shall not be
118 eligible for parole. The provisions of this paragraph (d) shall
119 also apply to any person who shall commit robbery or attempted
120 robbery on or after July 1, 1982, through the display of a deadly
121 weapon. This subparagraph (d)(i) shall not apply to persons
122 convicted after September 30, 1994;

123 (ii) No person shall be eligible for parole who
124 shall, on or after October 1, 1994, be convicted of robbery,
125 attempted robbery or carjacking as provided in Section 97-3-115 et
126 seq., through the display of a firearm or drive-by shooting as
127 provided in Section 97-3-109. The provisions of this subparagraph

128 (d)(ii) shall also apply to any person who shall commit robbery,
129 attempted robbery, carjacking or a drive-by shooting on or after
130 October 1, 1994, through the display of a deadly weapon;

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

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

138 (g) No person shall be eligible for parole who is
139 convicted or whose suspended sentence is revoked after June 30,
140 1995; provided, however, persons convicted of a nonviolent crime
141 as provided in Section 47-5-138 shall be eligible for parole;

142 (h) An offender may be eligible for medical release
143 under Section 47-7-4.

144 (2) Notwithstanding any other provision of law, an inmate
145 shall not be eligible to receive earned time, good time or any
146 other administrative reduction of time which shall reduce the time
147 necessary to be served for parole eligibility as provided in
148 subsection (1) of this section; however, this subsection shall not
149 apply to the advancement of parole eligibility dates pursuant to
150 the Prison Overcrowding Emergency Powers Act. Moreover,
151 meritorious earned time allowances may be used to reduce the time
152 necessary to be served for parole eligibility as provided in
153 paragraph (c) of subsection (1) of this section.

154 (3) The State Parole Board shall by rules and regulations
155 establish a method of determining a tentative parole hearing date
156 for each eligible offender taken into the custody of the
157 Department of Corrections. The tentative parole hearing date
158 shall be determined within ninety (90) days after the department
159 has assumed custody of the offender. Such tentative parole
160 hearing date shall be calculated by a formula taking into account

161 the offender's age upon first commitment, number of prior
162 incarcerations, prior probation or parole failures, the severity
163 and the violence of the offense committed, employment history and
164 other criteria which in the opinion of the board tend to validly
165 and reliably predict the length of incarceration necessary before
166 the offender can be successfully paroled.

167 (4) Any inmate within twenty-four (24) months of his parole
168 eligibility date and who meets the criteria established by the
169 classification committee shall receive priority for placement in
170 any educational development and job training programs. Any inmate
171 refusing to participate in an educational development or job
172 training program may be ineligible for parole.

173 SECTION 3. This act shall take effect and be in force from
174 and after July 1, 2000.