

By: Watson

To: Penitentiary

## HOUSE BILL NO. 499

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 DEFINE NONVIOLENT CRIME; TO BRING  
5 FORWARD FOR PURPOSES OF AMENDMENT SECTIONS 47-7-17 AND 47-7-37,  
6 MISSISSIPPI CODE OF 1972, WHICH PROVIDE FOR ELIGIBILITY FOR PAROLE  
7 AND FOR PERIODS OF PROBATION; AND FOR RELATED PURPOSES.

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

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

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

28 (2) An inmate may forfeit all or part of his earned time

allowance for a serious violation of rules. No forfeiture of the earned time allowance shall be effective except upon approval of the commissioner or his designee, and forfeited earned time may not be restored.

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

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

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

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

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

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

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

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

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

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

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

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

(a) No prisoner convicted as a confirmed and habitual criminal under the provisions of Sections 99-19-81 through

95 99-19-87 shall be eligible for parole;

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

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

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

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

attempted robbery, carjacking or a drive-by shooting on or after October 1, 1994, through the display of a deadly weapon;

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

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

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

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

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

(3) The State Parole Board shall by rules and regulations establish a method of determining a tentative parole hearing date for each eligible offender taken into the custody of the Department of Corrections. The tentative parole hearing date shall be determined within ninety (90) days after the department has assumed custody of the offender. Such tentative parole hearing date shall be calculated by a formula taking into account the offender's age upon first commitment, number of prior

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

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

172 SECTION 3. Section 47-7-17, Mississippi Code of 1972, is  
173 brought forward as follows:

174 47-7-17. Within one (1) year after his admission and at such  
175 intervals thereafter as it may determine, the board shall secure  
176 and consider all pertinent information regarding each offender,  
177 except any under sentence of death or otherwise ineligible for  
178 parole, including the circumstances of his offense, his previous  
179 social history, his previous criminal record, including any  
180 records of law enforcement agencies or of a youth court regarding  
181 that offender's juvenile criminal history, his conduct, employment  
182 and attitude while in the custody of the department, and the  
183 reports of such physical and mental examinations as have been  
184 made. The board shall furnish at least three (3) months' written  
185 notice to each such offender of the date on which he is eligible  
186 for parole.

187 Before ruling on the application for parole of any offender,  
188 the board may have the offender appear before it and interview  
189 him. The hearing shall be held two (2) months prior to the month  
190 of eligibility in order for the department to address any special  
191 conditions required by the board. No application for parole of a  
192 person convicted of a capital offense shall be considered by the  
193 board unless and until notice of the filing of such application

shall have been published at least once a week for two (2) weeks in a newspaper published in or having general circulation in the county in which the crime was committed. The board shall also give notice of the filing of the application for parole to the victim of the offense for which the prisoner is incarcerated and being considered for parole or, in case the offense be homicide, a designee of the immediate family of the victim, provided the victim or designated family member has furnished in writing a current address to the board for such purpose. A parole shall be ordered only for the best interest of society, not as an award of clemency; it shall not be considered to be a reduction of sentence or pardon. An offender shall be placed on parole only when arrangements have been made for his proper employment or for his maintenance and care, and when the board believes that he is able and willing to fulfill the obligations of a law-abiding citizen. Within forty-eight (48) hours prior to the release of an offender on parole, the Director of Records of the department shall give the written notice which is required pursuant to Section 47-5-177.

Every offender while on parole shall remain in the legal custody of the department from which he was released and shall be amenable to the orders of the board. The board, upon rejecting the application for parole of any offender, shall within thirty (30) days following such rejection furnish that offender in general terms the reasons therefor in writing. Upon determination by the board that an offender is eligible for release by parole, notice shall also be given by the board to the victim of the offense or the victim's family member, as indicated above, regarding the date when the offender's release shall occur, provided a current address of the victim or the victim's family member has been furnished in writing to the board for such purpose.

Failure to provide notice to the victim or the victim's family member of the filing of the application for parole or of any decision made by the board regarding parole shall not

constitute grounds for vacating an otherwise lawful parole determination nor shall it create any right or liability, civilly or criminally, against the board or any member thereof.

A letter of protest against granting an offender parole shall not be treated as the conclusive and only reason for not granting parole.

The board may adopt such other rules not inconsistent with law as it may deem proper or necessary with respect to the eligibility of offenders for parole, the conduct of parole hearings, or conditions to be imposed upon parolees, including a condition that the parolee submit, as provided in Section 47-5-601 to any type of breath, saliva or urine chemical analysis test, the purpose of which is to detect the possible presence of alcohol or a substance prohibited or controlled by any law of the State of Mississippi or the United States. The board shall have the authority to adopt rules permitting certain offenders to be placed on unsupervised parole. However, in no case shall an offender be placed on unsupervised parole before he has served a minimum of three (3) years of supervised parole.

SECTION 4. Section 47-7-37, Mississippi Code of 1972, is brought forward as follows:

47-7-37. The period of probation shall be fixed by the court, and may at any time be extended or terminated by the court, or judge in vacation. Such period with any extension thereof shall not exceed five (5) years, except that in cases of desertion and/or failure to support minor children, the period of probation may be fixed and/or extended by the court for so long as the duty to support such minor children exists.

At any time during the period of probation the court, or judge in vacation, may issue a warrant for violating any of the conditions of probation or suspension of sentence and cause the probationer to be arrested. Any probation and parole officer may arrest a probationer without a warrant, or may deputize any other



officer with power of arrest to do so by giving him a written statement setting forth that the probationer has, in the judgment of the probation and parole officer, violated the conditions of probation. Such written statement delivered with the probationer by the arresting officer to the official in charge of a county jail or other place of detention shall be sufficient warrant for the detention of the probationer.

The probation and parole officer after making an arrest shall present to the detaining authorities a similar statement of the circumstances of violation. The probation and parole officer shall at once notify the court of the arrest and detention of the probationer and shall submit a report in writing showing in what manner the probationer has violated the conditions of probation. Thereupon, or upon an arrest by warrant as herein provided, the court, in termtime or vacation, shall cause the probationer to be brought before it and may continue or revoke all or any part of the probation or the suspension of sentence, and may cause the sentence imposed to be executed or may impose any part of the sentence which might have been imposed at the time of conviction.

If the probationer is arrested in a circuit court district in the State of Mississippi other than that in which he was convicted, the probation and parole officer, upon the written request of the sentencing judge, shall furnish to the circuit court or the county court of the county in which the arrest is made, or to the judge of such court, a report concerning the probationer, and such court or the judge in vacation shall have authority, after a hearing, to continue or revoke all or any part of probation or all or any part of the suspension of sentence, and may in case of revocation proceed to deal with the case as if there had been no probation. In such case, the clerk of the court in which the order of revocation is issued shall forward a transcript of such order to the clerk of the court of original jurisdiction, and the clerk of that court shall proceed as if the

293 order of revocation had been issued by the court of original  
294 jurisdiction. Upon the revocation of probation or suspension of  
295 sentence of any offender, such offender shall be placed in the  
296 legal custody of the State Department of Corrections and shall be  
297 subject to the requirements thereof.

298 Any probationer who removes himself from the State of  
299 Mississippi without permission of the court placing him on  
300 probation, or the court to which jurisdiction has been  
301 transferred, shall be deemed and considered a fugitive from  
302 justice and shall be subject to extradition as now provided by  
303 law. No part of the time that one is on probation shall be  
304 considered as any part of the time that he shall be sentenced to  
305 serve.

306 The arresting officer, except when a probation and parole  
307 officer, shall be allowed the same fees as now provided by law for  
308 arrest on warrant, and such fees shall be taxed against the  
309 probationer and paid as now provided by law.

310 The arrest, revocation and recommitment procedures of this  
311 section also apply to persons who are serving a period of  
312 post-release supervision imposed by the court.

313 SECTION 5. This act shall take effect and be in force from  
314 and after July 1, 2000.