

By: Jackson, Simmons, Harden, Jordan, Horhn To: Judiciary

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 2800

1 AN ACT TO AMEND SECTION 47-5-138, MISSISSIPPI CODE OF 1972,
2 TO PROVIDE THAT PERSONS CONVICTED OF NONVIOLENT CRIMES SHALL NOT
3 BE SUBJECT TO THE MANDATORY 85% SENTENCING PROVISIONS; TO AMEND
4 SECTION 47-7-3, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT A PERSON
5 CONVICTED OF A NONVIOLENT CRIME MAY BE ELIGIBLE FOR PAROLE; TO
6 AMEND SECTION 47-7-5, MISSISSIPPI CODE OF 1972, TO EXTEND THE
7 REPEALER ON THE STATE PAROLE BOARD; TO AMEND SECTION 47-7-53,
8 MISSISSIPPI CODE OF 1972, TO CONFORM; TO AMEND SECTION 47-5-1003,
9 MISSISSIPPI CODE OF 1972, TO REVISE ELIGIBILITY FOR HOUSE ARREST;
10 TO CREATE CODE SECTION 47-7-72, MISSISSIPPI CODE OF 1972, TO
11 PROHIBIT THE DEPARTMENT OF CORRECTIONS FROM ACCEPTING FOR
12 SUPERVISION AN OUT-OF-STATE PAROLEE WHO HAS THREE OR MORE VIOLENT
13 FELONY CONVICTIONS; AND FOR RELATED PURPOSES.

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

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

17 47-5-138. (1) (a) The department may promulgate rules and
18 regulations to carry out an earned time allowance program based on
19 the good conduct and performance of an inmate. An inmate is
20 eligible to receive an earned time allowance of one-half (1/2) of
21 the period of confinement imposed by the court except those
22 inmates excluded by law. When an inmate is committed to the
23 custody of the department, the department shall determine a
24 conditional earned time release date by subtracting the earned
25 time allowance from an inmate's term of sentence. This subsection
26 does not apply to any sentence imposed after June 30, 1995.

27 (b) A person sentenced for a nonviolent crime after
28 June 30, 2000, is eligible to receive the earned time allowance
29 provided in this subsection. A person is not eligible for the
30 earned time allowance under this subsection if he has been
31 convicted of a crime of violence.

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

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

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

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

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

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

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

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

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

65 does not apply to any inmate who is eligible for the earned time
66 allowance in subsection (1).

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

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

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

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

98 (a) No prisoner convicted as a confirmed and habitual
99 criminal under the provisions of Sections 99-19-81 through
100 99-19-87 shall be eligible for parole;

101 (b) Any person who shall have been convicted of a sex
102 crime shall not be released on parole except for a person under
103 the age of nineteen (19) who has been convicted under Section
104 97-3-67;

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

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

127 (ii) No person shall be eligible for parole who
128 shall, on or after October 1, 1994, be convicted of robbery,
129 attempted robbery or carjacking as provided in Section 97-3-115 et
130 seq., through the display of a firearm or drive-by shooting as

131 provided in Section 97-3-109. The provisions of this subparagraph
132 (d)(ii) shall also apply to any person who shall commit robbery,
133 attempted robbery, carjacking or a drive-by shooting on or after
134 October 1, 1994, through the display of a deadly weapon;

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

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

142 (g) No person shall be eligible for parole who is
143 convicted or whose suspended sentence is revoked after June 30,
144 1995; except a person who is convicted of a nonviolent crime and
145 who is eligible for the earned time allowance under Section
146 47-5-138(1) shall be eligible for parole;

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

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

159 (3) The State Parole Board shall by rules and regulations
160 establish a method of determining a tentative parole hearing date
161 for each eligible offender taken into the custody of the
162 Department of Corrections. The tentative parole hearing date
163 shall be determined within ninety (90) days after the department

164 has assumed custody of the offender. Such tentative parole
165 hearing date shall be calculated by a formula taking into account
166 the offender's age upon first commitment, number of prior
167 incarcerations, prior probation or parole failures, the severity
168 and the violence of the offense committed, employment history and
169 other criteria which in the opinion of the board tend to validly
170 and reliably predict the length of incarceration necessary before
171 the offender can be successfully paroled.

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

178 SECTION 3. Section 47-7-5, Mississippi Code of 1972, is
179 amended as follows:[LTR1]

180 47-7-5. (1) The State Parole Board, created under former
181 Section 47-7-5, is hereby created, continued and reconstituted and
182 shall be composed of five (5) members, one (1) from each
183 congressional district. The Governor shall appoint the members
184 with the advice and consent of the Senate. The terms of the
185 members serving on the board from Supreme Court districts shall
186 expire on June 30, 1997. The three (3) members may be reappointed
187 to the board. The terms of the members of the reconstituted board
188 shall begin on July 1, 1997. All terms shall be coterminous with
189 the term of the Governor. Any vacancy shall be filled for the
190 unexpired term by the Governor, with the advice and consent of the
191 Senate. The board shall elect a chairman of the board annually.
192 No member may serve consecutive terms as chairman.

193 (2) Any person who is appointed to serve on the board shall
194 possess at least a bachelor's degree or a high school diploma and
195 four (4) years' work experience. Each member shall devote his
196 full time to the duties of his office and shall not engage in any

197 other business or profession or hold any other public office. A
198 member shall not receive compensation or per diem in addition to
199 his salary as prohibited under Section 25-3-38. Each member shall
200 keep such hours and workdays as required of full-time state
201 employees under Section 25-1-98. Individuals shall be appointed
202 to serve on the board without reference to their political
203 affiliations. Each board member, including the chairman, may be
204 reimbursed for actual and necessary expenses as authorized by
205 Section 25-3-41; but a member shall not be reimbursed for travel
206 expenses from his residence to the nearest state penitentiary. In
207 addition, a member must use a state vehicle, if available, for
208 travel and a member who refuses to use an available state vehicle
209 shall not receive reimbursement for mileage expenses for use of a
210 privately owned motor vehicle.

211 (3) The board shall have exclusive responsibility for the
212 granting of parole as provided by Sections 47-7-3 and 47-7-17 and
213 shall have exclusive authority for revocation of the same. The
214 board shall have exclusive responsibility for investigating
215 clemency recommendations upon request of the Governor.

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

219 (5) The budget of the board shall be funded through a
220 separate line item within the general appropriation bill for the
221 support and maintenance of the department. Employees of the
222 department which are employed by or assigned to the board shall
223 work under the guidance and supervision of the board. There shall
224 be an executive secretary to the board who shall be responsible
225 for all administrative and general accounting duties related to
226 the board. The executive secretary shall keep and preserve all
227 records and papers pertaining to board.

228 (6) The board shall have no authority or responsibility for
229 supervision of offenders granted probation, parole or executive

230 clemency or other offenders requiring the same through interstate
231 compact agreements. The supervision shall be provided exclusively
232 by the staff of the Division of Community Services of the
233 department.

234 * * *

235 SECTION 4. Section 47-7-53, Mississippi Code of 1972, is
236 amended as follows:[LTR2]

237 47-7-53. If the Parole Board is abolished, the Department of
238 Corrections shall assume and exercise all the duties, powers and
239 responsibilities of the State Parole Board. The
240 Commissioner * * * may assign to the appropriate officers and
241 divisions any powers and duties deemed appropriate to carry out
242 the duties and powers of the Parole Board. Wherever the terms
243 "State Parole Board" or "Parole Board" appear in any state law,
244 they shall mean the Department of Corrections.

245 SECTION 5. Section 47-5-1003, Mississippi Code of 1972, is
246 amended as follows:[CSQ3]

247 47-5-1003. (1) An intensive supervision program may be used
248 as an alternative to incarceration for offenders who are low risk
249 and nonviolent as selected by the department or court. Any
250 offender convicted of a sex crime or a felony for the sale or
251 manufacture of a controlled substance under the uniform controlled
252 substances law shall not be placed in the program.

253 (2) The court placing an offender in the intensive
254 supervision program may, acting upon the advice and consent of the
255 commissioner at the time of the initial sentencing only, and not
256 later than one (1) year after the defendant has been delivered to
257 the custody of the department, suspend the further execution of
258 the sentence and place the defendant on intensive supervision,
259 except when a death sentence or life imprisonment is the maximum
260 penalty which may be imposed or if the defendant has been confined
261 for the conviction of a felony on a previous occasion in any court
262 or courts of the United States and of any state or territories

263 thereof or has been convicted of a felony involving the use of a
264 deadly weapon.

265 (3) To protect and to ensure the safety of the state's
266 citizens, any offender who violates an order or condition of the
267 intensive supervision program shall be arrested by the
268 correctional field officer and placed in the actual custody of the
269 Department of Corrections. Such offender is under the full and
270 complete jurisdiction of the department and subject to removal
271 from the program by the classification committee.

272 (4) From and after July 1, 2001, all persons sentenced for a
273 nonviolent crime and who are within one (1) year of eligibility
274 for parole or release may be considered by the classification
275 committee for house arrest under the electronic home detention
276 program. Any offender who violates an order or condition of the
277 program shall be required to serve the full term to which
278 sentenced, in the discretion of the department, either under house
279 arrest or while incarcerated.

280 SECTION 6. The following shall be codified as Section
281 47-7-72, Mississippi Code of 1972:

282 47-7-72. (1) The Department of Corrections shall not accept
283 any person convicted of three (3) or more violent felony offenses
284 placed on probation or released on parole under the Uniform Act
285 for Out-of-State Parolee Suspension.

286 (2) The Department of Corrections shall not consent to any
287 person convicted of three (3) or more violent felony offenses
288 being sent to reside in Mississippi under Section 47-7-71.

289 (3) The Department of Corrections shall immediately notify
290 any state having an out-of-state parolee agreement with
291 Mississippi of this condition and take immediate action to modify
292 such agreements, or to renounce such agreement if a contracting
293 state refuses to agree with the restrictions placed on such
294 agreements with the Department of Corrections under this section.

295 SECTION 7. This act shall take effect and be in force from

296 and after July 1, 2000.