

By: Representatives Ishee, Mayo

To: Judiciary B;
Penitentiary

HOUSE BILL NO. 166
(As Passed the House)

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; AND FOR RELATED
5 PURPOSES.

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

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

9 47-5-138. (1) The department may promulgate rules and
10 regulations to carry out an earned time allowance program based on
11 the good conduct and performance of an inmate. An inmate is
12 eligible to receive an earned time allowance of one-half (1/2) of
13 the period of confinement imposed by the court except those
14 inmates excluded by law. When an inmate is committed to the
15 custody of the department, the department shall determine a
16 conditional earned time release date by subtracting the earned
17 time allowance from an inmate's term of sentence. This subsection
18 does not apply to any sentence imposed after June 30, 1995;
19 provided, however, from and after July 1, 2001, this subsection
20 shall apply to sentences for any person convicted of a nonviolent
21 crime which was committed on or after July 1, 2001. For the
22 purposes of this section "nonviolent crime" means any crime which,
23 in the discretion of the trial judge and based upon his
24 interpretation of the facts and circumstances of the case, does
25 not involve, injury, attempted injury or the killing or attempted
26 killing of a human being. The judge shall expressly state in the
27 sentencing order whether the crime is violent or nonviolent. For
28 the purposes of this section the following crimes shall be deemed

29 to be violent: murder, voluntary or intentional manslaughter,
30 forcible rape, statutory rape, robbery, aggravated assault,
31 burglary of an occupied or unoccupied dwelling, exploitation of
32 children, child abuse and sale of a controlled substance.

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

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

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

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

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

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

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

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

59 (5) For any sentence imposed after June 30, 1995, an inmate
60 may receive an earned time allowance of four and one-half (4-1/2)
61 days for each thirty (30) days served if the department determines

62 that the inmate has complied with the good conduct and performance
63 requirements of the earned time allowance program. The earned
64 time allowance under this subsection shall not exceed fifteen
65 percent (15%) of an inmate's term of sentence, unless the inmate
66 is convicted and sentenced for a nonviolent crime.

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; provided, however, persons convicted of a nonviolent crime
145 as defined in Section 47-5-138 shall be eligible for parole;

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

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

158 (3) The State Parole Board shall by rules and regulations
159 establish a method of determining a tentative parole hearing date

160 for each eligible offender taken into the custody of the
161 Department of Corrections. The tentative parole hearing date
162 shall be determined within ninety (90) days after the department
163 has assumed custody of the offender. Such tentative parole
164 hearing date shall be calculated by a formula taking into account
165 the offender's age upon first commitment, number of prior
166 incarcerations, prior probation or parole failures, the severity
167 and the violence of the offense committed, employment history and
168 other criteria which in the opinion of the board tend to validly
169 and reliably predict the length of incarceration necessary before
170 the offender can be successfully paroled.

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

177 SECTION 3. This act shall take effect and be in force from
178 and after July 1, 2001.