

By: Representative Scott (80th)

To: Judiciary B;
Penitentiary

HOUSE BILL NO. 1089

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 REQUIRE THE MISSISSIPPI DEPARTMENT OF
5 CORRECTIONS TO CREATE A REHABILITATIVE PROGRAM FOR NONVIOLENT
6 OFFENDERS WHO RECEIVE AN EARNED-TIME ALLOWANCE OF ONE-HALF OF THE
7 PERIOD OF CONFINEMENT; 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
19 earned-time allowance from an inmate's term of sentence. This
20 subsection does not apply to any sentence imposed after June 30,
21 1995; however, from and after July 1, 2001, this subsection shall
22 apply to sentences for any person convicted of a nonviolent crime.
23 For the purposes of this section "nonviolent crime" means any
24 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) Nonviolent offenders who receive an earned-time
29 allowance of one-half (½) of their period of confinement shall be
30 placed in a rehabilitative program to be created by the
31 Mississippi Department of Corrections for a period of not less
32 than three (3) months. The rehabilitative program shall be
33 designed to address the individual need of the nonviolent offender
34 in relation to the type of crime he has committed. A mental
35 assessment shall be made on each offender placed in the program.

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

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

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

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

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

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

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

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

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

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

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

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

88 47-7-3. (1) Every prisoner who has been convicted of any
89 offense against the State of Mississippi, and is confined in the
90 execution of a judgment of such conviction in the Mississippi
91 State Penitentiary for a definite term or terms of one (1) year or

92 over, or for the term of his or her natural life, whose record of
93 conduct shows that such prisoner has observed the rules of the
94 penitentiary, and who has served not less than one-fourth (1/4) of
95 the total of such term or terms for which such prisoner was
96 sentenced, or, if sentenced to serve a term or terms of thirty
97 (30) years or more, or, if sentenced for the term of the natural
98 life of such prisoner, has served not less than ten (10) years of
99 such life sentence, may be released on parole as hereinafter
100 provided, except that:

101 (a) No prisoner convicted as a confirmed and habitual
102 criminal under the provisions of Sections 99-19-81 through
103 99-19-87 shall be eligible for parole;

104 (b) Any person who shall have been convicted of a sex
105 crime shall not be released on parole except for a person under
106 the age of nineteen (19) who has been convicted under Section
107 97-3-67;

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

118 (d) (i) No person shall be eligible for parole who
119 shall, on or after January 1, 1977, be convicted of robbery or
120 attempted robbery through the display of a firearm until he shall
121 have served ten (10) years if sentenced to a term or terms of more
122 than ten (10) years or if sentenced for the term of the natural
123 life of such person. If such person is sentenced to a term or
124 terms of ten (10) years or less, then such person shall not be

125 eligible for parole. The provisions of this paragraph (d) shall
126 also apply to any person who shall commit robbery or attempted
127 robbery on or after July 1, 1982, through the display of a deadly
128 weapon. This subparagraph (d)(i) shall not apply to persons
129 convicted after September 30, 1994;

130 (ii) No person shall be eligible for parole who
131 shall, on or after October 1, 1994, be convicted of robbery,
132 attempted robbery or carjacking as provided in Section 97-3-115 et
133 seq., through the display of a firearm or drive-by shooting as
134 provided in Section 97-3-109. The provisions of this subparagraph
135 (d)(ii) shall also apply to any person who shall commit robbery,
136 attempted robbery, carjacking or a drive-by shooting on or after
137 October 1, 1994, through the display of a deadly weapon;

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

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

145 (g) No person shall be eligible for parole who is
146 convicted or whose suspended sentence is revoked after June 30,
147 1995; however, a person convicted of a nonviolent crime, as
148 defined in Section 47-5-138, shall be eligible for parole;

149 * * *

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

157 meritorious earned-time allowances may be used to reduce the time
158 necessary to be served for parole eligibility as provided in
159 paragraph (c) of subsection (1) of this section.

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

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

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