

By: Representative Scott (80th)

To: Penitentiary

HOUSE BILL NO. 1454

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 MAY BE ELIGIBLE FOR AN EARNED-TIME ALLOWANCE OF MORE THAN
4 FIFTEEN PERCENT OF THE TERM OF SENTENCE; TO REQUIRE THE
5 MISSISSIPPI DEPARTMENT OF CORRECTIONS TO CREATE A REHABILITATIVE
6 PROGRAM FOR NONVIOLENT OFFENDERS WHO RECEIVE AN EARNED-TIME
7 ALLOWANCE OF ONE-HALF OF THE PERIOD OF CONFINEMENT; AND FOR
8 RELATED PURPOSES.

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

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

12 47-5-138. (1) The department may promulgate rules and
13 regulations to carry out an earned-time allowance program based on
14 the good conduct and performance of an inmate. An inmate is
15 eligible to receive an earned-time allowance of one-half (1/2) of
16 the period of confinement imposed by the court except those
17 inmates excluded by law. When an inmate is committed to the
18 custody of the department, the department shall determine a
19 conditional earned-time release date by subtracting the earned
20 time allowance from an inmate's term of sentence. This subsection
21 does not apply to any sentence imposed after June 30, 1995;
22 however, from and after July 1, 2002, this subsection shall apply
23 to sentences for any person convicted of a nonviolent crime. For
24 the purposes of this section "nonviolent crime" means any crime
25 which does not involve the use or attempted use of any force, the
26 use or attempted use of a deadly weapon or a crime which does not
27 involve injury, attempted injury or the killing or attempted
28 killing of a human being.

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) Except as otherwise provided herein, for any sentence
56 imposed after June 30, 1995, an inmate may receive an earned-time
57 allowance of four and one-half (4-1/2) days for each thirty (30)
58 days served if the department determines that the inmate has
59 complied with the good conduct and performance requirements of the
60 earned-time allowance program. For any sentence imposed after
61 July 1, 2002, for conviction of a nonviolent crime, the
62 earned-time allowance of one-half (1/2) of the period of
63 confinement imposed by the court. The earned-time allowance under



64 this subsection shall not exceed fifteen percent (15%) of an
65 inmate's term of sentence, unless the inmate is convicted and
66 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 hearing officer
76 within the department to conduct revocation hearings for inmates
77 violating the conditions of earned-release supervision.

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

82 (8) Nonviolent offenders who receive an earned-time
83 allowance of one-half (1/2) of their period of confinement shall
84 be placed in a rehabilitative program to be created by the
85 Mississippi Department of Corrections for a period of not less
86 than three (3) months. The rehabilitative program shall be
87 designed to address the individual need of the nonviolent offender
88 in relation to the type of crime he has committed. A mental
89 assessment shall be made on each offender placed in the program.

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

92 47-7-3. (1) Every prisoner who has been convicted of any
93 offense against the State of Mississippi, and is confined in the
94 execution of a judgment of such conviction in the Mississippi
95 State Penitentiary for a definite term or terms of one (1) year or
96 over, or for the term of his or her natural life, whose record of



97 conduct shows that such prisoner has observed the rules of the
98 Penitentiary, and who has served not less than one-fourth (1/4) of
99 the total of such term or terms for which such prisoner was
100 sentenced, or, if sentenced to serve a term or terms of thirty
101 (30) years or more, or, if sentenced for the term of the natural
102 life of such prisoner, has served not less than ten (10) years of
103 such life sentence, may be released on parole as hereinafter
104 provided, except that:

105 (a) No prisoner convicted as a confirmed and habitual
106 criminal under the provisions of Sections 99-19-81 through
107 99-19-87 shall be eligible for parole;

108 (b) Any person who shall have been convicted of a sex
109 crime shall not be released on parole except for a person under
110 the age of nineteen (19) who has been convicted under Section
111 97-3-67;

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

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



130 also apply to any person who shall commit robbery or attempted
131 robbery on or after July 1, 1982, through the display of a deadly
132 weapon. This subparagraph (d)(i) shall not apply to persons
133 convicted after September 30, 1994;

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

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

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

149 (g) No person shall be eligible for parole who is
150 convicted or whose suspended sentence is revoked after June 30,
151 1995, except as provided in paragraph (h) or except for a person
152 convicted after July 1, 2002, of a nonviolent crime, as defined in
153 Section 47-5-138;

154 * * *

155 (h) A first offender convicted of a nonviolent crime
156 after January 1, 2000, may be eligible for parole if the offender
157 meets the requirements in subsection (1) and this paragraph. In
158 addition to other requirements, if a first offender is convicted
159 of a drug or driving under the influence felony, the offender must
160 complete a drug and alcohol rehabilitation program prior to parole
161 or the offender may be required to complete a post-release drug
162 and alcohol program as a condition of parole. For purposes of



163 this paragraph, "nonviolent crime" means a felony other than
164 homicide, robbery, manslaughter, sex crimes, arson, burglary of an
165 occupied dwelling, aggravated assault, kidnapping, felonious abuse
166 of vulnerable adults, felonies with enhanced penalties, and the
167 sale or manufacture of a controlled substance under the Uniform
168 Controlled Substances Law.

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

179 (3) The State Parole Board shall by rules and regulations
180 establish a method of determining a tentative parole hearing date
181 for each eligible offender taken into the custody of the
182 Department of Corrections. The tentative parole hearing date
183 shall be determined within ninety (90) days after the department
184 has assumed custody of the offender. Such tentative parole
185 hearing date shall be calculated by a formula taking into account
186 the offender's age upon first commitment, number of prior
187 incarcerations, prior probation or parole failures, the severity
188 and the violence of the offense committed, employment history and
189 other criteria which in the opinion of the board tend to validly
190 and reliably predict the length of incarceration necessary before
191 the offender can be successfully paroled.

192 (4) Any inmate within twenty-four (24) months of his parole
193 eligibility date and who meets the criteria established by the
194 classification board shall receive priority for placement in any
195 educational development and job training programs. Any inmate



196 refusing to participate in an educational development or job
197 training program may be ineligible for parole.

198 **SECTION 3.** This act shall take effect and be in force from
199 and after July 1, 2002.

