

By: Representative Warren

To: Corrections

## HOUSE BILL NO. 779

1 AN ACT TO REENACT SECTIONS 47-5-701 THROUGH 47-5-729,  
2 MISSISSIPPI CODE OF 1972, WHICH CREATE THE "PRISON OVERCROWDING  
3 EMERGENCY POWERS ACT"; TO AMEND SECTION 47-5-731, MISSISSIPPI CODE  
4 OF 1972, TO EXTEND THE DATE OF REPEAL ON THOSE REENACTED SECTIONS;  
5 AND FOR RELATED PURPOSES.

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

7 **SECTION 1.** Section 47-5-701, Mississippi Code of 1972, is  
8 reenacted as follows:

9 47-5-701. Sections 47-5-701 through 47-5-729 shall be known  
10 and may be cited as the "Prison Overcrowding Emergency Powers  
11 Act."

12 **SECTION 2.** Section 47-5-703, Mississippi Code of 1972, is  
13 reenacted as follows:

14 47-5-703. For the purposes of Sections 47-5-701 through  
15 47-5-729 the following words shall have the meaning ascribed  
16 herein unless the context shall otherwise require:

17 (a) "Inmate" means every person who at the time of the  
18 declaration of a prison system overcrowding state of emergency, or  
19 at any time during the continuation of a state of emergency, is  
20 incarcerated by the Mississippi Department of Corrections as a  
21 result of a commitment to the department, including persons  
22 committed to the department and incarcerated in local or county  
23 jails or other facilities authorized to house state inmates.

24 (b) "Operating capacity" means the total number of  
25 state inmates which can be safely and reasonably housed in  
26 facilities operated by the Department of Corrections and in local  
27 or county jails or other facilities authorized to house state

28 inmates as certified by the department, subject to applicable  
29 federal and state laws and rules and regulations.

30 (c) "Parole eligibility date" means the date on which  
31 an inmate becomes eligible for release by parole under the  
32 provisions of Section 47-7-3, Mississippi Code of 1972. For the  
33 purposes of Sections 47-5-701 through 47-5-729, an inmate with a  
34 sentence of one (1) year shall be deemed to have a parole  
35 eligibility date which shall be the last day of his sentence.

36 (d) "Prison" means any correctional facility operated  
37 by the Mississippi Department of Corrections.

38 (e) "Prison system" means the prisons operated by the  
39 Mississippi Department of Corrections and those local or county  
40 jails or other facilities authorized to house state inmates.

41 (f) "Prison system population" means the total number  
42 of state inmates housed in the prisons operated by the Mississippi  
43 Department of Corrections and in those local or county jails or  
44 other facilities authorized to house state inmates.

45 (g) "Qualified inmate" means inmates who are not  
46 incarcerated for convictions of murder, kidnapping, arson, armed  
47 robbery, rape, sexual offenses or any offense involving the use of  
48 a deadly weapon and who are within that number of days of their  
49 parole eligibility date at the time of the declaration of the  
50 state of emergency as is specified to be conditionally advanced  
51 under the declaration of the state of emergency. An inmate  
52 sentenced as an habitual offender shall not be considered a  
53 "qualified inmate."

54 (h) "State of emergency" means a prison system  
55 overcrowding state of emergency as provided in Section 47-5-711.

56 **SECTION 3.** Section 47-5-705, Mississippi Code of 1972, is  
57 reenacted as follows:

58 47-5-705. The requirements for the declaration of a prison  
59 system overcrowding state of emergency are as follows:

60 (a) Prison system population in excess of ninety-five  
61 percent (95%) of the prison system operating capacity for at least  
62 thirty (30) consecutive days immediately preceding the declaration  
63 of a state of emergency;

64 (b) Full appropriate utilization by the Mississippi  
65 Department of Corrections of powers which tend either to reduce  
66 prison system population or expand operating capacity. Such  
67 powers include, but are not limited to, earned time allowances as  
68 specified in Sections 47-5-138 and 47-5-139, Mississippi Code of  
69 1972, review of offenders for purposes of reclassification,  
70 reevaluation of persons eligible for consideration for work  
71 release, supervised earned release or other release programs  
72 authorized by law and arrangements for housing inmates of the  
73 Department of Corrections in local or county jails or other  
74 facilities authorized to house state inmates; and

75 (c) Full appropriate utilization by the State Parole  
76 Board of those powers which tend to reduce the prison system  
77 population. Such powers include, but are not limited to, parole  
78 as provided in Section 47-7-3, Mississippi Code of 1972, the  
79 review of inmates who have had their parole revoked and the  
80 reevaluation of inmates previously denied parole.

81 **SECTION 4.** Section 47-5-707, Mississippi Code of 1972, is  
82 reenacted as follows:

83 47-5-707. Whenever the prison system population exceeds  
84 ninety-five percent (95%) of operating capacity, the Commissioner  
85 of Corrections shall immediately notify the Governor and the State  
86 Parole Board of this fact. The notice shall include the current  
87 prison system population and the prison system operating capacity.  
88 A report must be made within ten (10) days after the thirtieth day  
89 of operating in excess of ninety-five percent (95%) of operating  
90 capacity. The report shall include the prison system operating  
91 capacity, the prison system population during the relevant time

92 period, and may include a recommended specific term of advancement  
93 of the parole eligibility dates.

94 **SECTION 5.** Section 47-5-709, Mississippi Code of 1972, is  
95 reenacted as follows:

96 47-5-709. If the prison system population exceeds  
97 ninety-five percent (95%) of operating capacity for thirty (30)  
98 consecutive days, the State Parole Board shall meet to determine  
99 whether there has been full appropriate exercise of the powers of  
100 the State Parole Board which tend to reduce the prison system  
101 population. The State Parole Board shall report its findings to  
102 the Governor within ten (10) days after the thirtieth day of  
103 operating in excess of ninety-five percent (95%) of prison  
104 operating capacity. The report shall include the determination of  
105 the State Parole Board regarding its utilization of powers  
106 described in paragraph (c) of Section 47-5-705.

107 **SECTION 6.** Section 47-5-711, Mississippi Code of 1972, is  
108 reenacted as follows:

109 47-5-711. Upon receipt of the report from the Commissioner  
110 of Corrections and the report of the State Parole Board, the  
111 Governor has the power to:

112 (a) Determine to be in error the determination that  
113 there had been full appropriate exercise of powers which tends to  
114 reduce prison population, in which case no state of emergency  
115 shall commence;

116 (b) Determine that commencement of a state of emergency  
117 would be injurious to the public good, or raises the potential of  
118 threatening the safety of the public in the state as a whole or in  
119 a particular community, in which case no state of emergency shall  
120 commence; or

121 (c) Determine that the reports establish the existence  
122 of the conditions for a declaration of a prison system  
123 overcrowding state of emergency as described in Section 47-5-705  
124 and declare a state of emergency, specifying an amount of

125 advancement of parole eligibility dates from thirty (30) to ninety  
126 (90) days.

127 If fourteen (14) days after the receipt of the reports to the  
128 Governor pursuant to Sections 47-5-707 and 47-5-709 the Governor  
129 has not exercised any of the powers specified in paragraphs (a),  
130 (b) and (c) of this section, action under Sections 47-5-701  
131 through 47-5-729 is considered terminated.

132 If the Governor exercises a power under paragraphs (a) or (b)  
133 of this section, he shall state the reasons for the exercise of  
134 such power in the notification of his action to the Commissioner  
135 of Corrections and the State Parole Board.

136 **SECTION 7.** Section 47-5-713, Mississippi Code of 1972, is  
137 reenacted as follows:

138 47-5-713. Upon the declaration of a state of emergency, the  
139 parole eligibility dates of qualified inmates shall be  
140 conditionally advanced. The amount of advancement of parole  
141 eligibility dates must be specified in the declaration by the  
142 Governor. When the state of emergency has been terminated, the  
143 parole eligibility dates which were conditionally advanced shall  
144 be reset to the parole eligibility date set prior to the emergency  
145 for those inmates who were not released on parole under the  
146 provisions of Sections 47-5-701 through 47-5-729.

147 **SECTION 8.** Section 47-5-715, Mississippi Code of 1972, is  
148 reenacted as follows:

149 47-5-715. During the continuation of a state of emergency,  
150 the Commissioner of the Department of Corrections shall weekly  
151 certify to the Governor the prison system population for each day  
152 of the preceding week. The Governor shall declare the state of  
153 emergency terminated upon notification that the prison system  
154 population has been at or below ninety-five percent (95%) of  
155 operating capacity for seven (7) consecutive days.

156 If no declaration of termination is issued within seven (7)  
157 days after the certification of conditions for termination of the

158 state of emergency, the state of emergency is considered  
159 terminated as of the seventh day after the certification.

160 **SECTION 9.** Section 47-5-717, Mississippi Code of 1972, is  
161 reenacted as follows:

162 47-5-717. If sixty (60) days after the declaration of a  
163 prison system overcrowding state of emergency or of an additional  
164 advancement of the parole eligibility dates the prison system  
165 population continues to be in excess of ninety-five percent (95%)  
166 of operating capacity, the Commissioner of Corrections shall  
167 report to the Governor indicating whether an additional  
168 advancement of the parole eligibility dates is necessary in order  
169 to reduce the prison system population to ninety-five percent  
170 (95%) of operating capacity and indicating the amount of any  
171 recommended additional advancement of the parole eligibility  
172 dates. The recommended amount must be no less than thirty (30)  
173 days nor more than ninety (90) days. The report shall include  
174 those factors which would tend to indicate that the prison system  
175 population is likely to increase above operating capacity within  
176 ninety (90) days. The report shall discuss the availability of  
177 field supervisors, the currently existing supervision case loads,  
178 and the measures that could be taken and the resources that would  
179 be needed to provide appropriate supervision of persons released  
180 early as a result of an additional advancement of the parole  
181 eligibility dates.

182 **SECTION 10.** Section 47-5-719, Mississippi Code of 1972, is  
183 reenacted as follows:

184 47-5-719. Upon receipt of the report from the Commissioner  
185 of Corrections as provided in Section 47-5-717, the Governor has  
186 the power to:

187 (a) Determine to be in error any conclusion of the  
188 Commissioner of Corrections that an additional advancement of the  
189 parole eligibility dates is necessary in order for the prison  
190 system population to be reduced to ninety-five percent (95%) of

191 operating capacity, in which case no additional advancements of  
192 the parole eligibility dates shall occur;

193 (b) Determine that the ordering of additional  
194 advancements of the parole eligibility dates would be injurious to  
195 the public good or raises the potential of threatening the safety  
196 of the public in the state as a whole or in a particular  
197 community, in which case no additional advancement of parole  
198 eligibility dates shall occur; or

199 (c) Determine that an additional advancement of the  
200 parole eligibility dates is necessary in order for the prison  
201 system population to be reduced to ninety-five percent (95%) of  
202 operating capacity and order additional advancements specifying  
203 the amount of additional advancements, which shall be at least  
204 thirty (30) and not more than ninety (90) days.

205 If fourteen (14) days after the receipt of the report to the  
206 Governor pursuant to Section 47-5-717 including a determination of  
207 the Commissioner of Corrections that an additional advancement of  
208 the parole eligibility dates is not necessary in order for the  
209 prison system population to be reduced to ninety-five percent  
210 (95%) of operating capacity the Governor has not exercised the  
211 power provided in paragraph (c) of this section, action initiated  
212 under Section 47-5-717 is considered terminated.

213 If the Governor exercises a power provided under paragraphs  
214 (a) or (b) of this section he shall state the reasons for the  
215 exercise of such power in the notification of his action to the  
216 Commissioner of Corrections and the State Parole Board.

217 If the Governor orders additional advancements of the parole  
218 eligibility dates under this section, the amount of advancement of  
219 the parole eligibility dates must be as ordered by the Governor.

220 **SECTION 11.** Section 47-5-721, Mississippi Code of 1972, is  
221 reenacted as follows:

222 47-5-721. If at any time during a state of emergency the  
223 Governor determines that the continuation of the state of

224 emergency is injurious to the public good or raises the potential  
225 of threatening the safety of the public in the state as a whole or  
226 in a particular community, he may order the state of emergency  
227 terminated.

228         **SECTION 12.** Section 47-5-723, Mississippi Code of 1972, is  
229 reenacted as follows:

230         47-5-723. Revocation of the conditional advancement of the  
231 parole eligibility date is a permissible prison disciplinary  
232 action according to the same procedures governing the forfeiture  
233 of earned time allowances as a prison disciplinary action.

234         **SECTION 13.** Section 47-5-725, Mississippi Code of 1972, is  
235 reenacted as follows:

236         47-5-725. The State Parole Board shall prescribe conditions  
237 of advancement of the parole eligibility date applicable prior to  
238 an inmate's release. The State Parole Board shall prescribe  
239 conditions of supervision consistent with existing regulations  
240 applicable after release on parole. When an inmate is released  
241 under the provisions of Sections 47-5-701 through 47-5-729 he  
242 shall be considered to be in the legal custody of the Department  
243 of Corrections.

244         **SECTION 14.** Section 47-5-727, Mississippi Code of 1972, is  
245 reenacted as follows:

246         47-5-727. Advancement of parole eligibility dates under  
247 Sections 47-5-701 through 47-5-729 shall occur independently of  
248 all other adjustments of the parole eligibility date, such as  
249 advancing the parole eligibility dates as a result of receiving  
250 earned time allowances.

251         **SECTION 15.** Section 47-5-729, Mississippi Code of 1972, is  
252 reenacted as follows:

253         47-5-729. The Commissioner of Corrections shall within  
254 thirty (30) days after April 10, 1985, establish the operating  
255 capacities of the prison system, and shall at least quarterly



256 certify existing operating capacities or establish changed or new  
257 operating capacities.

258         **SECTION 16.** Section 47-5-731, Mississippi Code of 1972, is  
259 amended as follows:

260         47-5-731. Sections 47-5-701 through 47-5-729, Mississippi  
261 Code of 1972, which create the Prison Overcrowding Emergency  
262 Powers Act, shall stand repealed from and after July 1, 2008.

263         **SECTION 17.** This act shall take effect and be in force from  
264 and after July 1, 2006.