

By: Representative Malone

To: Corrections

## HOUSE BILL NO. 1001

1 AN ACT TO REENACT SECTIONS 47-5-701 THROUGH 47-5-729,  
2 MISSISSIPPI CODE OF 1972, WHICH PROVIDE THE PRISON OVERCROWDING  
3 EMERGENCY POWERS ACT; AN ACT TO AMEND SECTION 47-5-731,  
4 MISSISSIPPI CODE OF 1972, TO EXTEND THE DATE OF REPEAL FROM JULY  
5 1, 2006, TO JULY 1, 2007, ON THE REENACTED SECTIONS; AND FOR  
6 RELATED PURPOSES.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

229         **SECTION 12.** Section 47-5-721, Mississippi Code of 1972, is  
230 reenacted as follows:

231         47-5-721. If at any time during a state of emergency the  
232 Governor determines that the continuation of the state of  
233 emergency is injurious to the public good or raises the potential  
234 of threatening the safety of the public in the state as a whole or  
235 in a particular community, he may order the state of emergency  
236 terminated.

237         **SECTION 13.** Section 47-5-723, Mississippi Code of 1972, is  
238 reenacted as follows:

239         47-5-723. Revocation of the conditional advancement of the  
240 parole eligibility date is a permissible prison disciplinary  
241 action according to the same procedures governing the forfeiture  
242 of earned time allowances as a prison disciplinary action.

243         **SECTION 14.** Section 47-5-725, Mississippi Code of 1972, is  
244 reenacted as follows:

245         47-5-725. The State Parole Board shall prescribe conditions  
246 of advancement of the parole eligibility date applicable prior to  
247 an inmate's release. The State Parole Board shall prescribe  
248 conditions of supervision consistent with existing regulations  
249 applicable after release on parole. When an inmate is released  
250 under the provisions of Sections 47-5-701 through 47-5-729 he  
251 shall be considered to be in the legal custody of the Department  
252 of Corrections.

253         **SECTION 15.** Section 47-5-727, Mississippi Code of 1972, is  
254 reenacted as follows:

255         47-5-727. Advancement of parole eligibility dates under  
256 Sections 47-5-701 through 47-5-729 shall occur independently of  
257 all other adjustments of the parole eligibility date, such as



258 advancing the parole eligibility dates as a result of receiving  
259 earned time allowances.

260         **SECTION 16.** Section 47-5-729, Mississippi Code of 1972, is  
261 reenacted as follows:

262         47-5-729. The Commissioner of Corrections shall within  
263 thirty (30) days after April 10, 1985, establish the operating  
264 capacities of the prison system, and shall at least quarterly  
265 certify existing operating capacities or establish changed or new  
266 operating capacities.

267         **SECTION 17.** Section 47-5-731, Mississippi Code of 1972, is  
268 amended as follows:

269         47-5-731. Sections 47-5-701 through 47-5-729, Mississippi  
270 Code of 1972, which create the Prison Overcrowding Emergency  
271 Powers Act, shall stand repealed from and after July 1, 2007.

272         **SECTION 18.** This act shall take effect and be in force from  
273 and after July 1, 2006.