

By: Representative Gipson

To: Judiciary B

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 387

1 AN ACT TO PROVIDE THAT INCARCERATION SHALL NOT AUTOMATICALLY
2 FOLLOW THE NONPAYMENT OF A FINE, RESTITUTION, OR COURT COSTS; TO
3 PROVIDE THAT THE AGGREGATE TOTAL OF THE PERIOD OF INCARCERATION
4 IMPOSED PURSUANT TO THIS SECTION AND THE TERM OF THE SENTENCE
5 ORIGINALLY IMPOSED MAY NOT EXCEED THE MAXIMUM TERM OF IMPRISONMENT
6 AUTHORIZED FOR THE OFFENSE; TO AMEND SECTIONS 99-19-20, 99-37-7
7 AND 47-1-1, MISSISSIPPI CODE OF 1972, IN CONFORMITY TO THE
8 PRECEDING SECTIONS; TO AMEND SECTION 47-7-3, MISSISSIPPI CODE OF
9 1972, TO PROVIDE THAT AN OTHERWISE INELIGIBLE INMATE FOR PAROLE
10 SHALL BE ELIGIBLE FOR PAROLE IF AN INMATE HAS NOT BEEN CONVICTED
11 OF COMMITTING A CRIME OF VIOLENCE, DRUG TRAFFICKING OR AS A
12 HABITUAL OFFENDER AND HE OR SHE HAS SERVED AT LEAST 25% OF HIS OR
13 HER SENTENCE; TO REQUIRE THE JOINT LEGISLATIVE COMMITTEE ON
14 PERFORMANCE EVALUATION AND EXPENDITURE REVIEW TO CONDUCT A ONE
15 TIME CENSUS OF JAIL POPULATIONS THROUGHOUT THE STATE; TO CREATE
16 THE MISSISSIPPI SENTENCING DISPARITY TASK FORCE; TO APPOINT THE
17 MEMBERS TO THE TASK FORCE; TO AMEND SECTIONS 47-7-27 and 47-7-37,
18 MISSISSIPPI CODE OF 1972, TO PROVIDE THAT THE NUMBER OF PRIOR
19 REVOCATIONS RATHER THAN THE NUMBER OF ALLEGED TECHNICAL VIOLATIONS
20 SHALL BE CONSIDERED FOR PURPOSES OF REVOCATION SENTENCING; TO
21 AMEND SECTION 99-19-81, MISSISSIPPI CODE OF 1972, TO REVISE
22 SENTENCING OF CERTAIN OFFENDERS AS HABITUAL OFFENDERS; AND FOR
23 RELATED PURPOSES.

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

25 **SECTION 1.** (1) Incarceration shall not automatically follow
26 the nonpayment of a fine, restitution, court order or court costs.
27 Incarceration may be employed only after the court has conducted a
28 hearing and examined the reasons for nonpayment and finds, on the



29 record, that the defendant was not indigent or could have made
30 payment but refused to do so. When determining whether a person
31 is indigent, the court shall use the current Federal Poverty
32 Guidelines and there shall be a presumption of indigence when a
33 defendant's income is at or below one hundred twenty-five percent
34 (125%) of the Federal Poverty Guidelines, subject to a review of
35 his or her assets. A defendant at or below one hundred
36 twenty-five percent (125%) of the Federal Poverty Guidelines
37 without substantial liquid assets available to pay fines, fees,
38 and costs shall be deemed indigent. In determining whether a
39 defendant has substantial liquid assets, the judge shall not
40 consider up to Ten Thousand Dollars (\$10,000.00) in tangible
41 personal property, including motor vehicles, household goods, or
42 any other assets exempted from seizure under execution or
43 attachment as provided under Section 85-3-1. If the defendant is
44 above one hundred twenty-five percent (125%) of the Federal
45 Poverty Guidelines, the judge shall make an individualized
46 assessment of his or her ability to pay based on the totality of
47 the circumstances including, but not limited to, the defendant's
48 disposable income, financial obligations and liquid assets. If
49 the judge determines that a defendant who claims indigence is not
50 indigent and the defendant could have made payment but refused to
51 do so, the case file shall include a written explanation of the
52 basis for the determination of the judge. In justice and



53 municipal court, such finding shall be included in the court's
54 order.

55 (2) If it appears to the satisfaction of the court that
56 nonpayment is not willful, the court shall enter an order that
57 allows the defendant additional time for payment, reduces the
58 amount of each installment, revokes the fine, in whole or in part,
59 or allows the defendant to perform community service at the state
60 minimum wage per hour rate. If the court finds nonpayment is
61 willful after consideration of the defendant's situation, means,
62 and conduct with regard to the nonpayment, the court shall
63 determine the period of incarceration, if any, subject to the
64 limitations set by law and subsection (3) of this section.

65 (3) If at the time the fine, restitution or court cost is
66 ordered, a sentence of incarceration is also imposed, the
67 aggregate total of the period of incarceration imposed pursuant to
68 this section and the term of the sentence originally imposed
69 may not exceed the maximum term of imprisonment authorized for the
70 offense.

71 (4) A person who is to serve as a confidential informant
72 must be notified that the person has the right to contact an
73 attorney and, if a minor, the right to contact one (1) or both
74 parents.

75 **SECTION 2.** Section 99-19-20, Mississippi Code of 1972, is
76 amended as follows:



77 99-19-20. (1) Except as otherwise provided under Section 1
78 of this act, when any court sentences a defendant to pay a fine,
79 the court may order (a) that the fine be paid immediately, or (b)
80 that the fine be paid in installments to the clerk of * * * the
81 court or to the judge, if there be no clerk, or (c) that payment
82 of the fine be a condition of probation, or (d) that the defendant
83 be required to work on public property for public benefit under
84 the direction of the sheriff for a specific number of hours, or
85 (e) any combination of the above.

86 (2) Except as otherwise provided under Section 1 of this
87 act, the defendant may be imprisoned until the fine is paid if the
88 defendant is financially able to pay a fine and the court so
89 finds, subject to the limitations * * * provided under this
90 section. The defendant shall not be imprisoned if the defendant
91 is financially unable to pay a fine and so states to the court in
92 writing, under oath, after sentence is pronounced, and the court
93 so finds, except if the defendant is financially unable to pay a
94 fine and such defendant failed or refused to comply with a prior
95 sentence as specified in subsection (1) of this section, the
96 defendant may be imprisoned.

97 This subsection shall be limited as follows:

98 (a) In no event shall such period of imprisonment
99 exceed one (1) day for each * * * One Hundred Dollars (\$100.00) of
100 the fine. * * *



101 (b) If a sentence of imprisonment, as well as a fine,
102 were imposed, the aggregate of such term for nonpayment of a fine
103 and the original sentence of imprisonment shall not exceed the
104 maximum authorized term of imprisonment.

105 (c) It shall be in the discretion of the judge to
106 determine the rate of the credit to be earned for work performed
107 under subsection (1)(d), but the rate shall be no lower than the
108 rate of the highest current federal minimum wage.

109 (3) Periods of confinement imposed for nonpayment of two (2)
110 or more fines shall run consecutively unless specified by the
111 court to run concurrently.

112 **SECTION 3.** Section 99-37-7, Mississippi Code of 1972, is
113 amended as follows:

114 99-37-7. (1) Subject to the provisions of Section 1 of this
115 act, when a defendant sentenced to pay a fine or to make
116 restitution defaults in the payment thereof or of any installment,
117 the court, on motion of the district attorney, or upon its own
118 motion, may require him to show cause why his default should not
119 be treated as contempt of court, and may issue a show cause
120 citation or a warrant of arrest for his appearance.

121 (2) Subject to the provisions of Section 1 of this act,
122 unless the defendant shows that his default was not attributable
123 to an intentional refusal to obey the order of the court or to a
124 failure on his part to make a good faith effort to make the
125 payment, the court may find that his default constitutes contempt



126 and may order him committed until the fine or the restitution, or
127 a specified part thereof, is paid.

128 (3) A judicial officer shall not be held criminally or
129 civilly liable for failure of any defendant to pay any fine or to
130 make restitution if the officer exercises his judicial authority
131 in accordance with subsections (1) and (2) of this section to
132 require the payment of such fine or restitution.

133 (4) When a fine or an order of restitution is imposed on a
134 corporation or unincorporated association, it is the duty of the
135 person authorized to make disbursement from the assets of the
136 corporation or association to pay the fine or make the restitution
137 from those assets, and his failure to do so may be held to be
138 contempt unless he makes the showing required in subsection (2) of
139 this section.

140 **SECTION 4.** Section 47-1-1, Mississippi Code of 1972, is
141 amended as follows:

142 47-1-1. Every convict sentenced to imprisonment in the
143 county jail, or to such imprisonment and the payment of a fine, or
144 the payment of a fine, shall be committed to jail, and shall
145 remain in close confinement for the full time specified for
146 imprisonment in the sentence of the court, and in like
147 confinement, subject to the provisions of Section 1 of this act,
148 until the fine, costs and jail fees be fully paid, unless
149 discharged in due course of law, or as hereinafter provided. * * *
150 Subject to the provisions of Section 1 of this act, no convict



151 shall be held in continuous confinement under a conviction for any
152 one (1) offense for failure to pay fine and costs in such case for
153 a period of more than * * * one (1) year.

154 **SECTION 5.** Section 47-7-3, Mississippi Code of 1972, is
155 amended as follows:

156 47-7-3. (1) Every prisoner who has been convicted of any
157 offense against the State of Mississippi, and is confined in the
158 execution of a judgment of such conviction in the Mississippi
159 Department of Corrections for a definite term or terms of one (1)
160 year or over, or for the term of his or her natural life, whose
161 record of conduct shows that such prisoner has observed the rules
162 of the department, and who has served not less than one-fourth
163 (1/4) of the total of such term or terms for which such prisoner
164 was sentenced, or, if sentenced to serve a term or terms of thirty
165 (30) years or more, or, if sentenced for the term of the natural
166 life of such prisoner, has served not less than ten (10) years of
167 such life sentence, may be released on parole as hereinafter
168 provided, except that:

169 (a) No prisoner convicted as a confirmed and habitual
170 criminal under the provisions of Sections 99-19-81 through
171 99-19-87 shall be eligible for parole;

172 (b) Any person who shall have been convicted of a sex
173 crime shall not be released on parole except for a person under
174 the age of nineteen (19) who has been convicted under Section
175 97-3-67;



176 (c) (i) No person shall be eligible for parole who
177 shall, on or after January 1, 1977, be convicted of robbery or
178 attempted robbery through the display of a firearm until he shall
179 have served ten (10) years if sentenced to a term or terms of more
180 than ten (10) years or if sentenced for the term of the natural
181 life of such person. If such person is sentenced to a term or
182 terms of ten (10) years or less, then such person shall not be
183 eligible for parole. The provisions of this paragraph (c)(i)
184 shall also apply to any person who shall commit robbery or
185 attempted robbery on or after July 1, 1982, through the display of
186 a deadly weapon. This paragraph (c)(i) shall not apply to persons
187 convicted after September 30, 1994;

188 (ii) No person shall be eligible for parole who
189 shall, on or after October 1, 1994, be convicted of robbery,
190 attempted robbery or carjacking as provided in Section 97-3-115 et
191 seq., through the display of a firearm or drive-by shooting as
192 provided in Section 97-3-109. The provisions of this paragraph
193 (c)(ii) shall also apply to any person who shall commit robbery,
194 attempted robbery, carjacking or a drive-by shooting on or after
195 October 1, 1994, through the display of a deadly weapon. This
196 paragraph (c)(ii) shall not apply to persons convicted after July
197 1, 2014;

198 (d) No person shall be eligible for parole who, on or
199 after July 1, 1994, is charged, tried, convicted and sentenced to



200 life imprisonment without eligibility for parole under the
201 provisions of Section 99-19-101;

202 (e) No person shall be eligible for parole who is
203 charged, tried, convicted and sentenced to life imprisonment under
204 the provisions of Section 99-19-101;

205 (f) No person shall be eligible for parole who is
206 convicted or whose suspended sentence is revoked after June 30,
207 1995, except that an offender convicted of only nonviolent crimes
208 after June 30, 1995, may be eligible for parole if the offender
209 meets the requirements in subsection (1) and this paragraph. In
210 addition to other requirements, if an offender is convicted of a
211 drug or driving under the influence felony, the offender must
212 complete a drug and alcohol rehabilitation program prior to parole
213 or the offender may be required to complete a post-release drug
214 and alcohol program as a condition of parole. For purposes of
215 this paragraph, "nonviolent crime" means a felony other than
216 homicide, robbery, manslaughter, sex crimes, arson, burglary of an
217 occupied dwelling, aggravated assault, kidnapping, felonious abuse
218 of vulnerable adults, felonies with enhanced penalties, except
219 enhanced penalties for the crime of possession of a controlled
220 substance under Section 41-29-147, the sale or manufacture of a
221 controlled substance under the Uniform Controlled Substances Law,
222 felony child abuse, or exploitation or any crime under Section
223 97-5-33 or Section 97-5-39(2) or 97-5-39(1)(b), 97-5-39(1)(c) or a
224 violation of Section 63-11-30(5). In addition, an offender



225 incarcerated for committing the crime of possession of a
226 controlled substance under the Uniform Controlled Substances Law
227 after July 1, 1995, including an offender who receives an enhanced
228 penalty under the provisions of Section 41-29-147 for such
229 possession, shall be eligible for parole. An offender
230 incarcerated for committing the crime of sale or manufacture of a
231 controlled substance shall be eligible for parole after serving
232 one-fourth (1/4) of the sentence imposed by the trial court. This
233 paragraph (f) shall not apply to persons convicted on or after
234 July 1, 2014;

235 (g) (i) No person who, on or after July 1, 2014, is
236 convicted of a crime of violence pursuant to Section 97-3-2, a sex
237 crime or an offense that specifically prohibits parole release,
238 shall be eligible for parole. All persons convicted of any other
239 offense on or after July 1, 2014, are eligible for parole after
240 they have served one-fourth (1/4) of the sentence or sentences
241 imposed by the trial court.

242 (ii) Notwithstanding the provisions in paragraph
243 (i) of this subsection, a person serving a sentence who has
244 reached the age of sixty (60) or older and who has served no less
245 than ten (10) years of the sentence or sentences imposed by the
246 trial court shall be eligible for parole. Any person eligible for
247 parole under this subsection shall be required to have a parole
248 hearing before the board prior to parole release. No inmate shall
249 be eligible for parole under this paragraph of this subsection if:



- 250 1. The inmate is sentenced as a habitual
251 offender under Sections 99-19-81 through 99-19-87;
- 252 2. The inmate is sentenced for a crime of
253 violence under Section 97-3-2;
- 254 3. The inmate is sentenced for an offense
255 that specifically prohibits parole release;
- 256 4. The inmate is sentenced for trafficking in
257 controlled substances under Section 41-29-139(f);
- 258 5. The inmate is sentenced for a sex crime;
- 259 or
- 260 6. The inmate has not served one-fourth (1/4)
261 of the sentence imposed by the court.

262 (iii) Notwithstanding the provisions of
263 paragraph * * * (a) of this subsection, any offender who has not
264 committed a crime of violence under Section 97-3-2 and has served
265 twenty-five percent (25%) or more of his sentence may be paroled
266 by the parole board if, after the sentencing judge or if the
267 sentencing judge is retired, disabled or incapacitated, the senior
268 circuit judge authorizes the offender to be eligible for parole
269 consideration.

270 (h) Notwithstanding any other provision of law, an
271 inmate who has not been convicted as a habitual offender under
272 Sections 99-19-81 through 99-19-87, has not been convicted of
273 committing a crime of violence, as defined under Section 97-3-2,
274 has not been convicted of a sex crime or any other crime that



275 specifically prohibits parole release, and has not been convicted
276 of drug trafficking under Section 41-29-139 is eligible for parole
277 if the inmate has served twenty-five percent (25%) or more of his
278 or her sentence, but is otherwise ineligible for parole.

279 (2) Notwithstanding any other provision of law, an inmate
280 shall not be eligible to receive earned time, good time or any
281 other administrative reduction of time which shall reduce the time
282 necessary to be served for parole eligibility as provided in
283 subsection (1) of this section.

284 (3) The State Parole Board shall, by rules and regulations,
285 establish a method of determining a tentative parole hearing date
286 for each eligible offender taken into the custody of the
287 Department of Corrections. The tentative parole hearing date
288 shall be determined within ninety (90) days after the department
289 has assumed custody of the offender. The parole hearing date
290 shall occur when the offender is within thirty (30) days of the
291 month of his parole eligibility date. The parole eligibility date
292 shall not be earlier than one-fourth (1/4) of the prison sentence
293 or sentences imposed by the court.

294 (4) Any inmate within twenty-four (24) months of his parole
295 eligibility date and who meets the criteria established by the
296 classification board shall receive priority for placement in any
297 educational development and job training programs that are part of
298 his or her parole case plan. Any inmate refusing to participate
299 in an educational development or job training program that is part



300 of the case plan may be in jeopardy of noncompliance with the case
301 plan and may be denied parole.

302 **SECTION 6.** Any person who supervises an individual placed on
303 parole by the Parole Board or placed on probation by the court
304 shall set the times and locations for meetings that are required
305 for parole or probation at such times and locations that are
306 reasonably designed to accommodate the work schedule of an
307 individual on parole or probation who is employed by another
308 person or entity. To effectuate the provisions of this section,
309 the parole officer or probation officer may utilize technology
310 portals such as Skype, FaceTime or Google video chat, or any other
311 technology portal that allows communication between the individual
312 on parole or probation and the parole or probation officer, as
313 applicable, to occur simultaneously in real time by voice and
314 video in lieu of requiring a face-to-face in person meeting of
315 such individual and the parole or probation officer, as
316 applicable. For individuals who are self-employed, the provisions
317 of this section shall only apply with the agreement of their
318 supervising parole or probation officer.

319 **SECTION 7.** (1) The Joint Legislative Committee on
320 Performance Evaluation and Expenditure Review (PEER) shall conduct
321 a one-time census of populations in juvenile detention centers and
322 in county and municipal jails in the State of Mississippi. The
323 data collected shall reflect the populations at a given date or
324 date range, as determined by PEER. The following data shall be



325 collected and aggregated by individual facility, as well as by
326 inmate or detainee characteristics, including race, gender, and
327 adult or juvenile status:

328 (a) The number of individuals detained for a new
329 offense or delinquent act.

330 (b) The number of individuals detained for pretrial.

331 (c) The number of offenders detained for a revocation
332 of supervision.

333 (d) The average sentence length for new jail sentences
334 by offense type.

335 (e) The average sentence length for offenders in jail
336 for a probation revocation.

337 (f) The average sentence length for offenders in jail
338 for a parole revocation.

339 (g) The percentage of sentences in each category
340 offense type, including whether the offense was violent, property,
341 drug, or public order. All drug offenses shall include the type
342 of drug implicated in the offense, as well as type of offense,
343 such as possession, sale or manufacture.

344 (h) The average length of stay by offense type.

345 (i) For individuals awaiting trial, the average length
346 of stay from the time of their arrest to the time of indictment,
347 and from the time of indictment to trial.

348 (2) PEER shall also make recommendations to the Legislature
349 for a reporting mechanism that would facilitate the regular



350 reporting of this information to the Legislature to guide
351 policymaking decisions.

352 (3) This report shall be provided to the Legislature by no
353 later than November 30, 2018.

354 **SECTION 8.** (1) There is created the Mississippi Sentencing
355 Disparity Task Force. The purpose of the task force is to study
356 and report the existence of possible disparity in sentencing for
357 crimes as documented by the Mississippi Department of Corrections
358 in order to promote the interest of uniform justice throughout the
359 State of Mississippi.

360 (2) The Mississippi Sentencing Disparity Task Force shall be
361 composed of the following fourteen (14) members, who shall serve
362 for two-year terms:

363 (a) Two (2) members of the Mississippi House of
364 Representatives, appointed by the Speaker of the House;

365 (b) Two (2) members of the Mississippi State Senate,
366 appointed by the Lieutenant Governor;

367 (c) Two (2) members appointed by the Governor;

368 (d) The Commissioner of the Mississippi Department of
369 Corrections, or a designee;

370 (e) The Attorney General of the State of Mississippi,
371 or his or her designee;

372 (f) The director of a faith-based organization involved
373 in re-entry programs, or a designee appointed by the Lieutenant
374 Governor;



375 (g) The Chief Justice of the Mississippi Supreme Court,
376 or a designee;

377 (h) The Chairman of the Parole Board, or a designee;

378 (i) A person who is a former offender appointed by the
379 Chairman of the Parole Board;

380 (j) The President of the Mississippi Prosecutors
381 Association, or a designee; and

382 (k) A sentencing circuit or county court judge, or a
383 designee to be appointed by the Chief Justice of the Mississippi
384 Supreme Court.

385 (3) The Chief Justice of the Mississippi Supreme Court shall
386 call the first meeting of the task force. The task force shall
387 hold its first meeting no later than thirty (30) days after the
388 effective date of this act. At its first meeting, the task force
389 shall elect a chairman and vice chairman from its membership and
390 adopt rules for transacting its business and keeping records. The
391 chairman and vice chairman shall serve one-year terms or until
392 such time as a successor is elected.

393 **SECTION 9.** Upon the request of any county for eligible
394 inmates, the Department of Corrections shall make available for
395 participation in the state-county work program in the requesting
396 county any eligible inmates. Upon request and approval of such
397 request by the Department of Corrections, the requesting county
398 shall arrange for transportation of such inmates from the
399 Department of Corrections to such county. Upon receiving any



400 inmates, the county shall be responsible for all expenses related
401 to housing and caring for such inmates. The Department of
402 Corrections shall not be obligated to pay the county for any costs
403 associated with housing or caring for such inmates, while the
404 inmates are in the custody of the county for the purposes of the
405 state-county work program. Regardless of any eligibility criteria
406 established by the Department of Corrections, no inmate convicted
407 of a sex crime, a crime of violence as defined by Section 97-3-2,
408 or any other crime which specifically prohibits parole shall be
409 eligible for participation in the program. The requesting county
410 may, in its sole discretion, refuse any inmate deemed to present
411 an undue risk to such county.

412 **SECTION 10.** Section 47-7-27, Mississippi Code of 1972, is
413 amended as follows:

414 47-7-27. (1) The board may, at any time and upon a showing
415 of probable violation of parole, issue a warrant for the return of
416 any paroled offender to the custody of the department. The
417 warrant shall authorize all persons named therein to return the
418 paroled offender to actual custody of the department from which he
419 was paroled.

420 (2) Any field supervisor may arrest an offender without a
421 warrant or may deputize any other person with power of arrest by
422 giving him a written statement setting forth that the offender
423 has, in the judgment of that field supervisor, violated the
424 conditions of his parole or earned-release supervision. The



425 written statement delivered with the offender by the arresting
426 officer to the official in charge of the department facility from
427 which the offender was released or other place of detention
428 designated by the department shall be sufficient warrant for the
429 detention of the offender.

430 (3) The field supervisor, after making an arrest, shall
431 present to the detaining authorities a similar statement of the
432 circumstances of violation. The field supervisor shall at once
433 notify the board or department of the arrest and detention of the
434 offender and shall submit a written report showing in what manner
435 the offender has violated the conditions of parole or
436 earned-release supervision. An offender for whose return a
437 warrant has been issued by the board shall, after the issuance of
438 the warrant, be deemed a fugitive from justice.

439 (4) Whenever an offender is arrested on a warrant for an
440 alleged violation of parole as herein provided, the board shall
441 hold an informal preliminary hearing within seventy-two (72) hours
442 to determine whether there is reasonable cause to believe the
443 person has violated a condition of parole. A preliminary hearing
444 shall not be required when the offender is not under arrest on a
445 warrant or the offender signed a waiver of a preliminary hearing.
446 The preliminary hearing may be conducted electronically.

447 (5) The right of the State of Mississippi to extradite
448 persons and return fugitives from justice, from other states to
449 this state, shall not be impaired by this chapter and shall remain



450 in full force and effect. An offender convicted of a felony
451 committed while on parole, whether in the State of Mississippi or
452 another state, shall immediately have his parole revoked upon
453 presentment of a certified copy of the commitment order to the
454 board. If an offender is on parole and the offender is convicted
455 of a felony for a crime committed prior to the offender being
456 placed on parole, whether in the State of Mississippi or another
457 state, the offender may have his parole revoked upon presentment
458 of a certified copy of the commitment order to the board.

459 (6) (a) The board shall hold a hearing for any parolee who
460 is detained as a result of a warrant or a violation report within
461 twenty-one (21) days of the parolee's admission to detention. The
462 board may, in its discretion, terminate the parole or modify the
463 terms and conditions thereof. If the board revokes parole
464 for * * * one or more technical violations the board shall impose
465 a period of imprisonment to be served in a technical violation
466 center operated by the department not to exceed ninety (90) days
467 for the first * * * revocation and not to exceed one hundred
468 twenty (120) days for the second * * * revocation. For the
469 third * * * revocation, the board may impose a period of
470 imprisonment to be served in a technical violation center for up
471 to one hundred and eighty (180) days or the board may impose the
472 remainder of the suspended portion of the sentence. For the
473 fourth and any subsequent * * * revocation, the board may impose
474 up to the remainder of the suspended portion of the sentence. The



475 period of imprisonment in a technical violation center imposed
476 under this section shall not be reduced in any manner.

477 (b) If the board does not hold a hearing or does not
478 take action on the violation within the twenty-one-day time frame
479 in paragraph (a) of this subsection, the parolee shall be released
480 from detention and shall return to parole status. The board may
481 subsequently hold a hearing and may revoke parole or may continue
482 parole and modify the terms and conditions of parole. If the
483 board revokes parole for * * * one or more technical violations
484 the board shall impose a period of imprisonment to be served in a
485 technical violation center operated by the department not to
486 exceed ninety (90) days for the first * * * revocation and not to
487 exceed one hundred twenty (120) days for the second * * *
488 revocation. For the third * * * revocation, the board may impose
489 a period of imprisonment to be served in a technical violation
490 center for up to one hundred eighty (180) days or the board may
491 impose the remainder of the suspended portion of the sentence.
492 For the fourth and any subsequent * * * revocation, the board may
493 impose up to the remainder of the suspended portion of the
494 sentence. The period of imprisonment in a technical violation
495 center imposed under this section shall not be reduced in any
496 manner.

497 (c) For a parolee charged with * * * one or more
498 technical violations who has not been detained awaiting the
499 revocation hearing, the board may hold a hearing within a



500 reasonable time. The board may revoke parole or may continue
501 parole and modify the terms and conditions of parole. If the
502 board revokes parole for * * * one or more technical violations
503 the board shall impose a period of imprisonment to be served in a
504 technical violation center operated by the department not to
505 exceed ninety (90) days for the first * * * revocation and not to
506 exceed one hundred twenty (120) days for the second * * *
507 revocation. For the third * * * revocation, the board may impose
508 a period of imprisonment to be served in a technical violation
509 center for up to one hundred eighty (180) days or the board may
510 impose the remainder of the suspended portion of the sentence.
511 For the fourth and any subsequent * * * revocation, the board may
512 impose up to the remainder of the suspended portion of the
513 sentence. The period of imprisonment in a technical violation
514 center imposed under this section shall not be reduced in any
515 manner.

516 (7) Unless good cause for the delay is established in the
517 record of the proceeding, the parole revocation charge shall be
518 dismissed if the revocation hearing is not held within the thirty
519 (30) days of the issuance of the warrant.

520 (8) The chairman and each member of the board and the
521 designated parole revocation hearing officer may, in the discharge
522 of their duties, administer oaths, summon and examine witnesses,
523 and take other steps as may be necessary to ascertain the truth of
524 any matter about which they have the right to inquire.



525 (9) The board shall provide semiannually to the Oversight
526 Task Force the number of warrants issued for an alleged violation
527 of parole, the average time between detention on a warrant and
528 preliminary hearing, the average time between detention on a
529 warrant and revocation hearing, the number of ninety-day sentences
530 in a technical violation center issued by the board, the number of
531 one-hundred-twenty-day sentences in a technical violation center
532 issued by the board, the number of one-hundred-eighty-day
533 sentences issued by the board, and the number and average length
534 of the suspended sentences imposed by the board in response to a
535 violation.

536 **SECTION 11.** Section 47-7-37, Mississippi Code of 1972, is
537 amended as follows:

538 47-7-37. (1) The period of probation shall be fixed by the
539 court, and may at any time be extended or terminated by the court,
540 or judge in vacation. Such period with any extension thereof
541 shall not exceed five (5) years, except that in cases of desertion
542 and/or failure to support minor children, the period of probation
543 may be fixed and/or extended by the court for so long as the duty
544 to support such minor children exists. The time served on
545 probation or post-release supervision may be reduced pursuant to
546 Section 47-7-40.

547 (2) At any time during the period of probation, the court,
548 or judge in vacation, may issue a warrant for violating any of the
549 conditions of probation or suspension of sentence and cause the



550 probationer to be arrested. Any probation and parole officer may
551 arrest a probationer without a warrant, or may deputize any other
552 officer with power of arrest to do so by giving him a written
553 statement setting forth that the probationer has, in the judgment
554 of the probation and parole officer, violated the conditions of
555 probation. Such written statement delivered with the probationer
556 by the arresting officer to the official in charge of a county
557 jail or other place of detention shall be sufficient warrant for
558 the detention of the probationer.

559 (3) Whenever an offender is arrested on a warrant for an
560 alleged violation of probation as herein provided, the department
561 shall hold an informal preliminary hearing within seventy-two (72)
562 hours of the arrest to determine whether there is reasonable cause
563 to believe the person has violated a condition of probation. A
564 preliminary hearing shall not be required when the offender is not
565 under arrest on a warrant or the offender signed a waiver of a
566 preliminary hearing. The preliminary hearing may be conducted
567 electronically. If reasonable cause is found, the offender may be
568 confined no more than twenty-one (21) days from the admission to
569 detention until a revocation hearing is held. If the revocation
570 hearing is not held within twenty-one (21) days, the probationer
571 shall be released from custody and returned to probation status.

572 (4) If a probationer or offender is subject to registration
573 as a sex offender, the court must make a finding that the
574 probationer or offender is not a danger to the public prior to



575 release with or without bail. In determining the danger posed by
576 the release of the offender or probationer, the court may consider
577 the nature and circumstances of the violation and any new offenses
578 charged; the offender or probationer's past and present conduct,
579 including convictions of crimes and any record of arrests without
580 conviction for crimes involving violence or sex crimes; any other
581 evidence of allegations of unlawful sexual conduct or the use of
582 violence by the offender or probationer; the offender or
583 probationer's family ties, length of residence in the community,
584 employment history and mental condition; the offender or
585 probationer's history and conduct during the probation or other
586 supervised release and any other previous supervisions, including
587 disciplinary records of previous incarcerations; the likelihood
588 that the offender or probationer will engage again in a criminal
589 course of conduct; the weight of the evidence against the offender
590 or probationer; and any other facts the court considers relevant.

591 (5) (a) The probation and parole officer after making an
592 arrest shall present to the detaining authorities a similar
593 statement of the circumstances of violation. The probation and
594 parole officer shall at once notify the court of the arrest and
595 detention of the probationer and shall submit a report in writing
596 showing in what manner the probationer has violated the conditions
597 of probation. Within twenty-one (21) days of arrest and detention
598 by warrant as herein provided, the court shall cause the
599 probationer to be brought before it and may continue or revoke all



600 or any part of the probation or the suspension of sentence. If
601 the court revokes probation for * * * one or more technical
602 violations, the court shall impose a period of imprisonment to be
603 served in either a technical violation center or a restitution
604 center not to exceed ninety (90) days for the first * * *
605 revocation and not to exceed one hundred twenty (120) days for the
606 second * * * revocation. For the third * * * revocation, the
607 court may impose a period of imprisonment to be served in either a
608 technical violation center or a restitution center for up to one
609 hundred eighty (180) days or the court may impose the remainder of
610 the suspended portion of the sentence. For the fourth and any
611 subsequent * * * revocation, the court may impose up to the
612 remainder of the suspended portion of the sentence. The period of
613 imprisonment in a technical violation center imposed under this
614 section shall not be reduced in any manner.

615 (b) If the offender is not detained as a result of the
616 warrant, the court shall cause the probationer to be brought
617 before it within a reasonable time and may continue or revoke all
618 or any part of the probation or the suspension of sentence, and
619 may cause the sentence imposed to be executed or may impose any
620 part of the sentence which might have been imposed at the time of
621 conviction. If the court revokes probation for * * * one or more
622 technical violations, the court shall impose a period of
623 imprisonment to be served in either a technical violation center
624 or a restitution center not to exceed ninety (90) days for the



625 first * * * revocation and not to exceed one hundred twenty (120)
626 days for the second * * * revocation. For the third * * *
627 revocation, the court may impose a period of imprisonment to be
628 served in either a technical violation center or a restitution
629 center for up to one hundred eighty (180) days or the court may
630 impose the remainder of the suspended portion of the sentence.
631 For the fourth and any subsequent * * * revocation, the court may
632 impose up to the remainder of the suspended portion of the
633 sentence. The period of imprisonment in a technical violation
634 center imposed under this section shall not be reduced in any
635 manner.

636 (c) If the court does not hold a hearing or does not
637 take action on the violation within the twenty-one-day period, the
638 offender shall be released from detention and shall return to
639 probation status. The court may subsequently hold a hearing and
640 may revoke probation or may continue probation and modify the
641 terms and conditions of probation. If the court revokes probation
642 for * * * one or more technical violations, the court shall impose
643 a period of imprisonment to be served in either a technical
644 violation center operated by the department or a restitution
645 center not to exceed ninety (90) days for the first * * *
646 revocation and not to exceed one hundred twenty (120) days for the
647 second * * * revocation. For the third * * * revocation, the
648 court may impose a period of imprisonment to be served in either a
649 technical violation center or a restitution center for up to one



650 hundred * * * eighty (180) days or the court may impose the
651 remainder of the suspended portion of the sentence. For the
652 fourth and any subsequent * * * revocation, the court may impose
653 up to the remainder of the suspended portion of the sentence. The
654 period of imprisonment in a technical violation center imposed
655 under this section shall not be reduced in any manner.

656 (d) For an offender charged with a technical violation
657 who has not been detained awaiting the revocation hearing, the
658 court may hold a hearing within a reasonable time. The court may
659 revoke probation or may continue probation and modify the terms
660 and conditions of probation. If the court revokes probation
661 for * * * one or more technical violations the court shall impose
662 a period of imprisonment to be served in either a technical
663 violation center operated by the department or a restitution
664 center not to exceed ninety (90) days for the first * * *
665 revocation and not to exceed one hundred twenty (120) days for the
666 second * * * revocation. For the third * * * revocation, the
667 court may impose a period of imprisonment to be served in either a
668 technical violation center or a restitution center for up to one
669 hundred eighty (180) days or the court may impose the remainder of
670 the suspended portion of the sentence. For the fourth and any
671 subsequent * * * revocation, the court may impose up to the
672 remainder of the suspended portion of the sentence. The period of
673 imprisonment in a technical violation center imposed under this
674 section shall not be reduced in any manner.



675 (6) If the probationer is arrested in a circuit court
676 district in the State of Mississippi other than that in which he
677 was convicted, the probation and parole officer, upon the written
678 request of the sentencing judge, shall furnish to the circuit
679 court or the county court of the county in which the arrest is
680 made, or to the judge of such court, a report concerning the
681 probationer, and such court or the judge in vacation shall have
682 authority, after a hearing, to continue or revoke all or any part
683 of probation or all or any part of the suspension of sentence, and
684 may in case of revocation proceed to deal with the case as if
685 there had been no probation. In such case, the clerk of the court
686 in which the order of revocation is issued shall forward a
687 transcript of such order to the clerk of the court of original
688 jurisdiction, and the clerk of that court shall proceed as if the
689 order of revocation had been issued by the court of original
690 jurisdiction. Upon the revocation of probation or suspension of
691 sentence of any offender, such offender shall be placed in the
692 legal custody of the State Department of Corrections and shall be
693 subject to the requirements thereof.

694 (7) Any probationer who removes himself from the State of
695 Mississippi without permission of the court placing him on
696 probation, or the court to which jurisdiction has been
697 transferred, shall be deemed and considered a fugitive from
698 justice and shall be subject to extradition as now provided by
699 law. No part of the time that one is on probation shall be



700 considered as any part of the time that he shall be sentenced to
701 serve.

702 (8) The arresting officer, except when a probation and
703 parole officer, shall be allowed the same fees as now provided by
704 law for arrest on warrant, and such fees shall be taxed against
705 the probationer and paid as now provided by law.

706 (9) The arrest, revocation and recommitment procedures of
707 this section also apply to persons who are serving a period of
708 post-release supervision imposed by the court.

709 (10) Unless good cause for the delay is established in the
710 record of the proceeding, the probation revocation charge shall be
711 dismissed if the revocation hearing is not held within thirty (30)
712 days of the warrant being issued.

713 (11) The Department of Corrections shall provide
714 semiannually to the Oversight Task Force the number of warrants
715 issued for an alleged violation of probation or post-release
716 supervision, the average time between detention on a warrant and
717 preliminary hearing, the average time between detention on a
718 warrant and revocation hearing, the number of ninety-day sentences
719 in a technical violation center issued by the court, the number of
720 one-hundred-twenty-day sentences in a technical violation center
721 issued by the court, the number of one-hundred-eighty-day
722 sentences issued by the court, and the number and average length
723 of the suspended sentences imposed by the court in response to a
724 violation.



725 **SECTION 12.** Section 99-19-81, Mississippi Code of 1972, is
726 amended as follows:

727 99-19-81. Every person convicted in this state of a felony
728 who shall have been convicted twice previously of any felony or
729 federal crime upon charges separately brought and arising out of
730 separate incidents at different times and who shall have been
731 sentenced to separate terms of one (1) year or more in any state
732 and/or federal penal institution, whether in this state or
733 elsewhere, shall be sentenced to the maximum term of imprisonment
734 prescribed for such felony unless the court provides an
735 explanation in its sentencing order setting forth the cause for
736 deviating from the maximum sentence, and such sentence shall not
737 be reduced or suspended nor shall such person be eligible for
738 parole or probation.

739 **SECTION 13.** This act shall take effect and be in force from
740 and after its passage.

