

By: Representatives Gipson, Sykes, Karriem

To: Judiciary B

HOUSE BILL NO. 387
(As Passed the House)

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 minor who is to serve as a confidential informant must
72 be notified that the minor has the right to contact one (1) or
73 both parents.

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

76 99-19-20. (1) Except as otherwise provided under Section 1
77 of this act, when any court sentences a defendant to pay a fine,



78 the court may order (a) that the fine be paid immediately, or (b)
79 that the fine be paid in installments to the clerk of * * * the
80 court or to the judge, if there be no clerk, or (c) that payment
81 of the fine be a condition of probation, or (d) that the defendant
82 be required to work on public property for public benefit under
83 the direction of the sheriff for a specific number of hours, or
84 (e) any combination of the above.

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

96 This subsection shall be limited as follows:

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

100 (b) If a sentence of imprisonment, as well as a fine,
101 were imposed, the aggregate of such term for nonpayment of a fine



102 and the original sentence of imprisonment shall not exceed the
103 maximum authorized term of imprisonment.

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

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

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

113 99-37-7. (1) Subject to the provisions of Section 1 of this
114 act, when a defendant sentenced to pay a fine or to make
115 restitution defaults in the payment thereof or of any installment,
116 the court, on motion of the district attorney, or upon its own
117 motion, may require him to show cause why his default should not
118 be treated as contempt of court, and may issue a show cause
119 citation or a warrant of arrest for his appearance.

120 (2) Subject to the provisions of Section 1 of this act,
121 unless the defendant shows that his default was not attributable
122 to an intentional refusal to obey the order of the court or to a
123 failure on his part to make a good faith effort to make the
124 payment, the court may find that his default constitutes contempt
125 and may order him committed until the fine or the restitution, or
126 a specified part thereof, is paid.



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

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

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

141 47-1-1. Every convict sentenced to imprisonment in the
142 county jail, or to such imprisonment and the payment of a fine, or
143 the payment of a fine, shall be committed to jail, and shall
144 remain in close confinement for the full time specified for
145 imprisonment in the sentence of the court, and in like
146 confinement, subject to the provisions of Section 1 of this act,
147 until the fine, costs and jail fees be fully paid, unless
148 discharged in due course of law, or as hereinafter provided. * * *
149 Subject to the provisions of Section 1 of this act, no convict
150 shall be held in continuous confinement under a conviction for any



151 one (1) offense for failure to pay fine and costs in such case for
152 a period of more than * * * one (1) year.

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

155 47-7-3. (1) Every prisoner who has been convicted of any
156 offense against the State of Mississippi, and is confined in the
157 execution of a judgment of such conviction in the Mississippi
158 Department of Corrections for a definite term or terms of one (1)
159 year or over, or for the term of his or her natural life, whose
160 record of conduct shows that such prisoner has observed the rules
161 of the department, and who has served not less than one-fourth
162 (1/4) of the total of such term or terms for which such prisoner
163 was sentenced, or, if sentenced to serve a term or terms of thirty
164 (30) years or more, or, if sentenced for the term of the natural
165 life of such prisoner, has served not less than ten (10) years of
166 such life sentence, may be released on parole as hereinafter
167 provided, except that:

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

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



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

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

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



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

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

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



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

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

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



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

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

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



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

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

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

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



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

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

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



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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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



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

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

413 47-7-27. (1) The board may, at any time and upon a showing
414 of probable violation of parole, issue a warrant for the return of
415 any paroled offender to the custody of the department. The
416 warrant shall authorize all persons named therein to return the
417 paroled offender to actual custody of the department from which he
418 was paroled.

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



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

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

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

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



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

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



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

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

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



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

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

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



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

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

537 47-7-37. (1) The period of probation shall be fixed by the
538 court, and may at any time be extended or terminated by the court,
539 or judge in vacation. Such period with any extension thereof
540 shall not exceed five (5) years, except that in cases of desertion
541 and/or failure to support minor children, the period of probation
542 may be fixed and/or extended by the court for so long as the duty
543 to support such minor children exists. The time served on
544 probation or post-release supervision may be reduced pursuant to
545 Section 47-7-40.

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



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

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

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



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

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



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

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



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

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



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

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



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

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



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

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

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

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

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



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

726 99-19-81. Every person convicted in this state of a felony
727 who shall have been convicted twice previously of any felony or
728 federal crime upon charges separately brought and arising out of
729 separate incidents at different times and who shall have been
730 sentenced to separate terms of one (1) year or more in any state
731 and/or federal penal institution, whether in this state or
732 elsewhere, shall be sentenced to the maximum term of imprisonment
733 prescribed for such felony unless the court provides an
734 explanation in its sentencing order setting forth the cause for
735 deviating from the maximum sentence, and such sentence shall not
736 be reduced or suspended nor shall such person be eligible for
737 parole or probation.

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

