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Chapter No. 322
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SENATE BILL NO. 2187

Originated in Senate Liz Welch Secretary

SENATE BILL NO. 2187

AN ACT TO REENACT SECTIONS 47-5-701, 47-5-703, 47-5-705, 47-5-707, 47-5-709, 47-5-711, 47-5-713, 47-5-715, 47-5-717, 47-5-719, 47-5-721, 47-5-723, 47-5-725, 47-5-727 AND 47-5-729, MISSISSIPPI CODE OF 1972, WHICH CREATE THE PRISON OVERCROWDING EMERGENCY POWERS ACT; TO REENACT AND AMEND SECTION 47-5-731, MISSISSIPPI CODE OF 1972, TO EXTEND THE REPEAL DATE TO JULY 1, 2014, ON THE PRISON OVERCROWDING EMERGENCY POWERS ACT IN SECTIONS 47-5-701 THROUGH 47-5-729; AND FOR RELATED PURPOSES.

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

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

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

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

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

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

(b) "Operating capacity" means the total number of state inmates which can be safely and reasonably housed in facilities operated by the Department of Corrections and in local

or county jails or other facilities authorized to house state inmates as certified by the department, subject to applicable federal and state laws and rules and regulations.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 16. Section 47-5-731, Mississippi Code of 1972, is reenacted and amended as follows:

47-5-731. Sections 47-5-701 through 47-5-729, Mississippi Code of 1972, which create the Prison Overcrowding Emergency Powers Act, shall stand repealed from and after July 1, 2014.

SECTION 17. This act shall take effect and be in force from and after its passage.

PASSED BY THE SENATE
March 7, 2012

PRESIDENT OF THE SENATE

PASSED BY THE HOUSE OF REPRESENTATIVES
March 26, 2012

SPEAKER OF THE HOUSE OF REPRESENTATIVES

APPROVED BY THE GOVERNOR

GOVERNOR

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