

2013

Mississippi Department of Corrections

Sentence Computation Reference Handbook

This manual is a resource tool for first-time records technicians, a refresher handbook for the experienced criminal justice professionals and a reference tool for internal and external stakeholders. It will answer questions while providing information about the Records Bureau's duties and responsibilities. This manual also serves as the earned time handbook that MDOC is required to provide to circuit judges and prosecutors under 47-5-140 Miss. Code Ann. 1972.



Christopher B. Epps, Commissioner
Mississippi Department of Corrections
7/1/2013



Page left blank intentionally

Table of Contents

Records Bureau	4
Records Staff	6
Parole	11
The 85% Law	14
Calculating ERS Dates	15
Dates Found on Computation Sheets	17
Applying Enhanced Penalty	18
MS Habitual Laws	19
Sentence Computation Laws	20
Time Computation Changes	25
ISP Placement Criteria	27
Recent Appellant Cases	28
Attorney General’s Opinion – Burglary of Residence	31
Glossary of Legal Terms	33
FAQs	41
Contact Information	48

THE RECORDS BUREAU

The primary mission of the Mississippi Department of Corrections' (MDOC's) Records Department is to provide accurate and complete records on individuals sentenced to the custody and/or supervision of the MDOC. Files are kept on all offenders convicted of one or more felonies.

MASTER FILE: The master file is a cumulative case history permanently maintained on any offender who has ever been under MDOC's supervision.

CREATING THE MASTER FILE AND LOADING INMATE AND SENTENCE INFORMATION:

The master file begins with an indictment or a Bill of Information, a certified sentencing order, and a notice of criminal disposition provided by the circuit clerk of the county where the offense was committed. Receipt of these documents triggers the creation of the offender's master file in MDOC's Records Department. However, before the documents are placed in the offender's master file, they are scanned into the offender's electronic file within the agency's imaging system.

A faxed request for pre-sentence jail time is sent to the county jail in the county of conviction on each offender to determine how much time the offender served prior to his/her sentence on the charge for which the offender stands convicted. This information is critical for accurate time computation.

A National Criminal Information Center (NCIC) Triple III report is run on the offender so Records can compute the offender's sentence. An offender convicted of a crime committed after June 30, 1995, is ineligible for parole consideration if he has a prior violent felony conviction regardless of whether it occurred in Mississippi. The prior felony conviction also may affect the offender's classification.

Records Technicians must interpret sentencing orders and load the information as well as all pertinent information contained in these documents into MDOC's computer system known as OffenderTrak (OT) in order for the time computation process to begin.

After an offender's demographic and sentencing information has been loaded, the offender sentenced to a term of incarceration, including an offender ordered by the court to participate in the Regimented Inmate Discipline program (RID) or an Alcohol and Drug Program (A&D) (Judicial Review), is transported to the Central Mississippi Correctional Facility (CMCF) for initial classification. The Division of Classification uses the offender's master file to classify the offender based on an Objective Initial Classification process. Psychological and health evaluations also are done at this time. After the offender is classified, the offender is assigned housing suitable for his classification.

DEPARTMENTAL DUTIES

Computing time: Inmate time computation is the main function of the Records Department. The amount of time an offender serves under MDOC's custody is determined by the following:

- Type of crime
- Length of sentence

- Terms and conditions of sentence
- Laws in effect at the time the crime was committed
- Laws in effect at the time offender was sentenced
- Laws and policies regarding conditional early release
- Amount of pre-trial detention
- Meritorious Earned Time (MET), Executive Time, or Trusty Earned Time (TET)
- Institutional misconduct resulting in the loss of earned time or trusty status
- Detainers
- Additional sentences

Handling Discharge:

Another responsibility of Records is to provide discharge certificates to inmates upon discharge of their sentences. Also, Records gives the offenders information regarding which probation and parole field office they are to report for supervision if they have probation or post-release supervision to follow discharge. Notifications are sent to the sentencing judge, district attorney, sheriff, circuit clerk and police chief. Registered victims are also notified.

Checking warrants:

Records is responsible for checking warrants on absconded probationers, parole violators, escaped Earned Release Supervision (ERS) and house arrest offenders and escaped inmates, according to the rules of the NCIC (National Crime Information Center). When offenders placed on NCIC are arrested, Records is notified, and transportation is arranged back to the county jail in the case of probationers and to CMCF for other offenders.

Arranging transportation:

Records also receives court orders regarding inmate transportation. The department arranges movement with transportation to the various county jails for those offenders needed for court. The sheriff's office transporting an inmate to court must provide a certified court order and proper identification before transportation occurs. In the case of new sentences, offenders must be transported to CMCF to be reprocessed after their court appearance. The offenders are then removed from the court at the facility where they were originally held. In order to transport an offender across the state line for court, a governor's extradition (rendition warrant) and proper identification are required.

Filing detainers:

When an offender subject to a Mississippi sentence is incarcerated in another state or by the federal Bureau of Prisons (BOP), Records files detainers with the other state or the BOP requesting notification for when the offender is ready for release.

Records maintains detainers filed with MDOC regarding offenders in MDOC custody and notifies the various county, state, and federal jurisdictions when the offenders are ready to be released to them.

Miscellaneous:

Other law enforcement agencies frequently contact Records for information on both current and former offenders. Records provides penitentiary packages (PEN Packs) that are used to show prior criminal convictions. This involves making copies of pertinent information and certifying that it is correct.

The identification office photographs offenders to provide Records a current visual image; fingerprints offenders; and prepares appropriate notification on the sex offender's registration prior to discharging their sentence.

This office also prepares documentation necessary to comply with DNA laws on offenders.

REQUESTS FOR INFORMATION:

Records shall release information only to persons authorized by appropriate legislation and regulations. Inmates, attorneys, legislators, the governor's office, victims, law enforcement agencies, the inmate's family and others may contact Records about an offender's record or sentence.

STAFF POSITIONS AND DESCRIPTIONS**Records Director**

The director of records reviews pending and new legislation concerning the sentencing of offenders and/or parole eligibility; directs the implementation of new sentencing laws and changes in interpretation of existing laws, based on the attorney general's opinions, opinions from departmental legal counsel and lawsuits; advises staff when new laws affect sentence calculation so computer programs and work procedures can be modified. Other responsibilities include:

- Performs sentence calculation work and supervisory work; is responsible for correctional program managerial work of considerable difficulty and performs related work as required.
- Assigns, trains, supervises and evaluates assigned staff and their work; reviews and makes recommendations on employment, promotion, demotion, transfer and other human resources actions.
- Evaluates the success and effectiveness of the department; assists in establishing goals; evaluates the recommendations provided by staff concerning changes or modifications to sentence processing or work procedures; compares the work unit's performance against goals to evaluate success in meeting goals and to identify problems; evaluates the effect of policy decisions on operations in the department.
- Develops, implements, and monitors policies and procedures.
- Studies organization, operations, and services; makes recommendations for improvements affecting economy, efficiency, and quality of agency, operations and services.

- Supervises the preparation and maintenance of a wide variety of records and reports.
- Performs personal contact and liaison work with inmates, attorneys, families and other interested citizens; and acts as a liaison between central office and field personnel.

Deputy Records Director

The MDOC deputy records director explains, interprets, and enforces laws and policies pertaining to sentence calculation and operations; performs sentence calculation work of considerable difficulty and supervisory work of considerable difficulty and performs related work as required; under minimal supervision, reviews pending and new legislation concerning the sentencing of offenders and/or parole eligibility; directs the implementation of new sentencing laws and changes in interpretation of existing laws based on the attorney general's opinions, opinions from departmental legal counsel and lawsuits; and advises staff when new laws affect sentence calculation or parole docketing programs so computer programs and work procedures can be modified. Other responsibilities include:

- Establishes and maintains personal contacts with the office of the attorney general, circuit court judges, district attorneys, and other county officials explaining and interpreting laws pertaining to sentence calculations;
- Manages professional, paraprofessional, and/or technical staff involved in all aspects of sentence calculation felony offenders sentenced by the State of Mississippi; reviews the work of sentence calculation to ensure decisions are complete and accurate; informs staff of new procedures and information; decides on employment, retention, promotion, demotion, and other personnel actions; interviews applicants and makes recommendations for employment; conducts performance evaluations of staff involved with sentence research; identifies training needs for new and incumbent technical or management staff; and conducts training classes and on-the-job training.
- Educates staff from institutions, probation offices, county jails, work centers, and community correction agencies on sentencing procedures, sentence calculation work, parole procedures, and/or correctional computer operations; develops an educational program; reviews training manuals; presents instructional materials to groups; and evaluates success of educational effort.

Supervisor

The Supervisor(s) is responsible for the verification of all sentence calculations in a timely and accurate manner. This includes sentence calculations performed for offenders sentenced to imprisonment and those who are subject to court-ordered supervision in Community Corrections. The supervisor is responsible for identifying systemic issues in sentence calculation and developing remedial strategies where necessary. Records management staff are responsible for:

1. scanning court documentation to the offender's electronic record;
2. calculating the offender's sentence to accurately reflect the period of imprisonment release dates;
3. recording remands and court appearances;

4. checking and verifying pre-sentence jail time;
5. liaising with courts to resolve issues with court documentation that impacts an offender's detention; and
6. providing support through coaching and mentoring records technicians.

Records supervisors are to ensure that all staff members are skilled in basic sentencing calculation practice, which includes the ability to:

1. interpret orders of imprisonment;
2. record warrants and orders of imprisonment;
3. electronically calculate sentences; and
4. comprehend the Records Reference Manual.

Records Technician

Records technicians are responsible for completing and verifying offenders' sentence calculations and ensuring that each calculation is completed in accordance with established practices.

Sentence calculation is a core business function to ensure that the orders of the court are enforced by establishing release and eligibility dates.

An offender's sentence calculation must be correct to ensure that the offender:

- a. is not held in custody or supervised by Community Corrections beyond the period a court ordered; and
- b. is not unlawfully discharged on a date earlier than a court ordered.

Intent and objectives of the sentence calculation process

The intent of a sentence calculation is to correctly record and accurately calculate the offender's:

- a. period of imprisonment;
- b. tentative discharge date;
- c. max discharge date;
- d. ERS date, where applicable; and
- e. parole release or eligibility date, where applicable.

The objectives of the sentence calculation process are to ensure:

- a. an offender is legally detained in accordance with the orders of imprisonment and/or remand warrants, or parole orders; and
- b. relevant legislation is applied to the remand, sentencing, discharge and movement of prisoners.

Underpinning these objectives, staff is required to:

- maintain a record of all sentence-related documents for each offender from the time of the first admission to custody;
- maintain an electronic record of orders of imprisonment, remand warrants; and
- scan all court documents into the offender's electronic record.

Manual calculation

Where applicable, if a sentence calculation is complex, involving multiple sentences and/or variants, the staff calculating the sentence is to complete a manual sentence calculation prior to calculating the sentence in Offender Trak (OT). The manual calculation is to determine:

- a. period of imprisonment;
- b. tentative discharge date;
- c. max discharge date;
- d. ERS date, where applicable;
- e. parole release or eligibility date, where applicable.

A manual calculation also will assist in identifying the calculation of periods of time not served and pre-sentence jail time to be applied against the applicable term of imprisonment.

Complex sentences such as those including multiple terms of imprisonment, various cumulative directions and the application of variants require a detailed "time-line" type calculation.

The manual calculation may be scanned into the offender's file to assist with subsequent review and audit processes.

Verification of sentence calculations

Each sentence calculation must be verified by an auditor. This includes each time a calculation is created or an existing calculation is amended. The verification of a sentence calculation must be completed as soon as possible. When the sentence calculation is completed, if immediate release is indicated, the director of records or designee is to be immediately notified.

The verification of a sentence calculation must ensure that:

- a. a check of all sentence documents is completed to ensure that all data has been correctly entered and that all necessary flags have been activated;
- b. the sentence calculation complies with the orders of the court and that only the applicable terms of imprisonment have been calculated;
- c. all necessary sentence calculation variants have been correctly calculated;
- d. the period of imprisonment has been correctly calculated; and

- e. parole eligibility dates have been correctly recorded.

Filing of orders of imprisonment and sentencing transcripts

All orders of imprisonment are to be placed in the offender's file and should not be removed, except when an original order is returned to court for a correction.

Each order is to be clearly coded in the top right hand corner with the cause number.

These documents are to be scanned and placed in the offender's electronic file.

All documents relating to an offender's sentencing must be scanned to the offender's electronic record. Those documents will include but are not limited to:

1. presentence jail time forms
2. Sentencing orders
3. any document in relation to an offender's appeal
4. any correspondence to or from a court or prosecuting authority in relation to an offender's sentencing
5. any correspondence to or from an MDOC official in relation to an offender's sentencing.

Offense coding

Where the wording of a charge does not directly relate to an approved offense code, staff must refer to the law the charge was made under. If the details are still unclear, the matter is to be referred to the supervisor, sentence computation unit, and then may be referred to the Legal Department through the director or designee.

If the offense constitutes an offense type that is not currently provided for in OT, refer the matter to the supervisor for resolution.

The Records director or designee, in consultation with Management Information System and the Legal Department, will coordinate adding new offense codes in OT.

Training and Support

Records ensures that appropriate standards of training and support are provided to all relevant staff as a consequence of legislative amendment; case law; procedural change; or any identified systemic issues relating to sentence calculation.

Parole

Depending on various factors including criminal history, crime, crime commit date, and sentence, some inmates may be eligible for parole consideration after serving a portion of their sentence. Eligibility, however, does not guarantee parole. Whether or not an inmate is paroled is within the discretion of the Mississippi State Parole Board. A list of all inmates eligible for parole is generated each month and sent to the Parole Board. When considering whether to grant or deny parole, the board considers a multitude of factors including, but not limited to, the following:

- Severity of offense
- Number of offenses committed
- Psychological and/or psychiatric history
- Disciplinary action while incarcerated
- Community support or opposition
- Amount of time served
- Prior misdemeanor or felony conviction(s)
- Policy and/or juvenile record
- History of drug or alcohol abuse
- History of violence
- Whether the offender served in the United States Armed Forces and received an honorable discharge
- Crimes committed while incarcerated
- Escape history
- Participation in rehabilitative programs
- Arrangements for employment and/or residence
- Victims and family members of victims' impact statements

PAROLE ELIGIBILITY FOR OFFENDERS WHO COMMITTED CRIMES PRIOR TO JULY 1, 1995

"The 50% Law"

In general, most offenders sentenced under this law are eligible for parole after serving 25% of their sentence and flat-time their sentence after serving 50%.

An offender must be sentenced to one (1) year or more to be eligible for parole. If the sentence is two (2) years or less, he must serve at least nine (9) months. If the sentence is two (2) to five (5) years, he must serve at least ten (10) months. If the sentence is more than five (5) years but less than thirty (30) years, he must serve at least one (1) year. If the sentence is thirty (30) years or more, he must serve at least ten (10) years.

Exceptions:

1. A habitual offender sentenced under § 99-19-81 or § 99-19-83 must serve his

sentence day for day.

2. A sex offender who committed his/her crime on or after Aug. 23, 1994 must serve his sentence day for day, except a person under the age of 19 convicted under § 97-3-67 is eligible for parole. As of July 1, 1995, all sex crimes became mandatory.
3. A person convicted of armed robbery or attempted armed robbery committed between Jan. 1, 1977 and Oct. 1, 1994 is not eligible for parole or earned time until he has served ten (10 years) of his sentence. As of Oct. 1, 1994, armed robbery and attempted armed robbery sentences became mandatory in their entirety.
4. A person convicted of armed carjacking or drive-by shooting committed on or after Oct. 1, 1994 is not eligible for parole.
5. Person sentenced to life imprisonment under § 99-19-101 for a crime committed on or after July 1, 1994 is not eligible for parole or earned time.

PAROLE ELIGIBILITY FOR OFFENDERS WHO COMMITTED CRIMES ON OR AFTER JULY 1, 1995

Miss. Code Ann. § 47-7-3(1) (h) "The 25% Law"

An offender convicted of a crime committed after June 30, 1995 who has never been convicted of a violent crime may be eligible for parole. An offender must be sentenced to one (1) year or more to be eligible for parole. An offender's initial parole eligibility date can never be less than one (1) year. To be parole eligible, an offender must serve the greater of 25% of his sentence or the following statutory minimums: If the sentence is from one (1) to two (2) years, he must serve at least nine (9) months. If the sentence is two (2) to five (5) years, he must serve at least ten (10) months. If the sentence is more than five (5) years but less than thirty (30) years, he must serve at least one (1) year. If the sentence is thirty (30) years or more, he must serve at least ten (10) years.

An offender who has been convicted of any of the following crimes after June 30, 1995 is ineligible for parole:

1. Homicide (Murder or Capital Murder)
2. Robbery (Robbery, Armed Robbery, Armed Carjacking)
3. Drive-by Shooting
4. Manslaughter
5. Sex Crimes (Includes only those offenses listed in Miss. Code Ann. § 45-33-23(g))
6. Arson
7. Burglary of An Occupied Dwelling
8. Aggravated Assault
9. Kidnapping
10. Felonious Abuse of a Vulnerable Adult
11. Sale or manufacture of more than one kilogram of marijuana

12. Felony with an enhanced penalty
13. Drug trafficking
14. Felony child abuse
15. Felony child endangerment under Miss. Code Ann. § 97-5-39(2)(b)
16. Felony child neglect under Miss. Code Ann. § 97-5-39(1)(b) or (c) 17. A Violation of 63-11-30(5) (i.e. Aggravated DUI or DUI Death)

Note #1: Accessory Before the Fact or Attempt to commit any of the above crimes also makes the offender ineligible for parole.

Note #2: A sentence for a violation of § 47-5-198 - sale, possession or use of a controlled substance within a correctional facility - is mandatory per the criminal statute itself; and therefore, not parole-eligible. It is not considered a violent offense; however, and would not prevent an offender from being parole eligible on other charges.

Note #3: A first offender (someone with all the same sentencing dates) convicted on or after Jan. 1, 2000 of a crime committed prior to April 7, 2008 that was not considered violent at the time the crime was committed may be eligible for parole if:

- Felony Child Abuse (Committed prior to March 19, 2002)
- Felony Child Endangerment under Miss. Code Ann. § 97-5-39(2)(b)(Committed prior to April 20, 2005)
- Felony Child Neglect under Miss. Code Ann. § 97-5-39(1)(b) or (c)(Committed prior to April 7, 2008)
- A Violation of 63-11-30(5) (i.e. Aggravated DUI or DUI Death)(Committed prior to May 14, 2004)
- A violation of § 97-29-63, relating to filming another without permission where there is an expectation of privacy, i.e. Invasion of Privacy — Photographing or Filming (Committed prior to July 1, 2007).

OFFENDERS WHO COMMITTED CRIMES ON OR AFTER JULY 1, 1995

"The 85% Law"

Miss. Code Ann. and § 47-5-138

1. All eligible offenders convicted of crimes committed after June 30, 1995 come under "The 85% Law," even those offenders who are eligible for parole after serving 25% of their sentence.
2. Any offender convicted of a crime committed after June 30, 1995 may receive an earned time allowance of four and one-half days (4 1/2) for each thirty (30) days served and the earned time allowance shall not exceed 15% of the inmate's term of sentence.
3. If the earned-release supervision is revoked, the inmate shall serve the remainder of the sentence. But the time the inmate served on earned-release supervision before revocation, shall be applied to reduce his sentence.

Exceptions:

Pursuant to Miss. Code Ann. § 47-5-139, an inmate shall not be eligible for the 15% earned time allowance if the inmate was:

1. sentenced to life imprisonment
2. convicted as a habitual offender
3. convicted of a sex crime
4. convicted of armed robbery or attempted armed robbery
5. convicted of sale, possession or use of a controlled substance within a correctional facility under § 47-5-198

By policy, MDOC no longer releases inmates to ERS if any of the following applies:

1. The offender has not discharged the entire sentence for a conviction of the following crimes:
 - murder, including attempt and accessory before the fact
 - Voyeurism (i.e. Peeping Tom)
 - Invasion of privacy — Photographing or Filming (now able to register as sex offense)
 - Armed carjacking
 - Drive-by shooting

- Failure to register as a sex offender (effective March 1, 2006)
2. The offender has attempted an escape or was convicted of escape.
 3. The offender is serving court-ordered house arrest (ISP).
 4. The offender has an out-of-state or federal detainer.
 5. The offender has been convicted of fleeing law enforcement officer - injury /death.

Calculating ERS Dates

Take the total term of sentence and subtract pre-sentence jail time and then multiply the remainder by .15 to determine the Earned Time Allowance. This Earned Time Allowance is then subtracted from the Maximum Release Date to determine the offender's initial ERS Date.

Example: 3-year sentence = 1,095 days x .15 =164 days off his sentence (These 164 days would be served on ERS.)

If the above offender was in jail for 100 days prior to sentencing:
1,095 days minus 100 days = 995 days x .15 = 149 days off his sentence.

Note: Meritorious Earned Time (MET) and Trusty Earned Time (TET) will reduce an offender's ERS date.

EARNED RELEASE SUPERVISION (ERS) CHART

Sentenced To:	Length of Stay	Reduction
1year	310 days	55 days
2 years	1 year & 256 days	109 days
3 years	2 years & 201 days	164 days
4 years	3 years & 146 days	219 days
5 years	4 years & 91 days	274 days
6 years	5 years & 37 days	328 days
7 years	5 years & 347 days	1 year & 18 days
8 years	6 yeas & 292 days	1 year & 73 days
9 years	7 years & 237 days	1 year & 128 days

10 years	8 years & 183 days	1 year & 182 days
11 years	9 years & 128 days	1 year & 237 days
12 years	10 years & 73 days	1 year & 292 days
13 years	11 years & 18 days	1 year & 347 days
14 years	11 years & 329 days	2 years & 36 days
15 years	12 years & 274 days	2 years & 91 days
16 years	13 years & 219 days	2 years & 146 days
17 years	14 years & 164 days	2 years & 201 days
18 years	15 years & 110 days	2 years & 255 days
19 years	16 years & 55 days	2 years & 310 days
20 years	17 years	3 years
21 years	17 years & 310 days	3 years & 55 days
22 years	18 years 256 days	3 years & 109 days
23 years	19 years & 201 days	3 years & 164 days
24 years	20 years & 146 days	3 years & 219 days
25 years	21 years & 91 days	3 years & 274 days
26 years	22 years & 37 days	3 years & 328 days
27 years	22 years & 347 days	4 years & 18 days
28 years	23 years & 292 days	4 years & 73 days
29 years	24 years & 237 days	4 years & 128 days
30 years	25 years & 183 days	4 years & 182 days

**DATES ON TIME COMPUTATION SHEETS
ON OR AFTER JULY 1, 1995**

BEGIN DATE: Earliest sentencing date less any pre-sentence jail time.

MAXIMUM DISCHARGE DATE: Begin date plus total term of sentence. This is the date of release if the offender has to serve his sentence day for day.

TENTATIVE DISCHARGE DATE a/k/a Conditional Discharge Date or Flat-time Date: Maximum release date less any Meritorious Earned Time (MET), Trusty Earned Time (TET), or Executive Time. (The 15 % Earned Time Allowance is not subtracted from this date and the difference in this date and the ERS date is the amount of time an offender may spend on ERS).

EARNED RELEASE SUPERVISION (ERS) DATE: Maximum release date less 15 % Earned Time Allowance and any MET, TET, or Executive Time.

PAROLE ELIGIBILITY DATE: Generally 25 % of total sentence less any MET or Executive Time. Parole eligibility dates are subject to statutory minimums and an initial parole date cannot be less than one year from the offender's begin date.

Mississippi Department of Corrections												
Inmate Time Sheet												
Offender:						Housing:						
Computation Date: 08/01/2013 08:26									Date Printed: 08/16/2013 16:54			
Sentences:												
DATE	CAUSE/COUNT	OFFENSE	COMMITTED	COUNTY	SERVE	HOUSE	PROBATION	HAB	DEFERRED	OVERRIDE	CONCURRENT	CONSECUTIVE
08/08/13	2007109052/1	3588-POSSESSION OF CONTROLLED SUBSTANCE	03/07/07	Jackson	7Y			N				
<input checked="" type="checkbox"/> First Time Offender												
Pre Trial/Pre Sentence Jail Time:												
FROM	TO	DAYS										
04/22/13	08/08/13	45										
Total Jail Time: 45			Override:									
Computation Details:												
DATE	DESCRIPTION											
08/08/13	2007109052/1 3588-POSSESSION OF CONTROLLED SUBSTANCE 7Y											
08/01/13	Into Trusty Status 07/24/13 IN T/S - COUNTY/STATE WORK PROGRAM											
Summary:												
Begin Date	House Arrest Date	Parole Date	ERS Date	Tentative Discharge	Max Discharge	End Date						
04/22/2013		01/21/2015	04/09/2019	04/20/2020	04/20/2020							
Total Term To Serve: 7Y	Total Earned Time: 1Y 12D	Earned Time Lost: 0D	Total MET Earned: 0D	Total Trusty Time Earned: 0D								

Applying Enhanced Penalty:

For a crime to be marked as having an enhanced penalty, the Sentencing Order (SO) needs to use the term "enhanced"; include an enhanced penalty statute number; include the phrase "within 1500 feet of a park, school, church, etc."; say while in possession of a firearm; or use one of the other enhanced penalty phrases listed below. Also, with drug offenders it could say "as a second or subsequent drug offender." Normally the only time you would use the enhanced penalty modifier is when one of these phrases is not present such as when or if the indictment clearly shows that the offender was charged with an enhancement and the sentence given was more than the maximum that could be imposed without an enhancement or there is some other indicator in the SO. Without more, the mere use of the phrase "as charged in the indictment" is not sufficient to mark a crime as having an enhanced penalty.

The following is a list of Enhanced Penalty Statutes. There may be others that are not listed. If there is a term or statute not listed that you believe may be an enhanced penalty, let the records director, the designee or MDOC Legal Department know.

- 41-29-142 — within 1500 feet of a school, church, park, etc...
- 41-29-143 — Distribution of a controlled substance to person under age 21
- 41-29-147 — Second or Subsequent Drug Offender
- 41-29-152 —while in possession of a firearm
- 41-29-313(5) — possession of precursors while in the presence of a child
- 41-29-313(6) — possession of precursors at a hotel or apartment
- 41-29,313(7) — possession of precursors while also in possession of a firearm
- 41-29-313 (8) — possession of precursors on premises that are booby trapped
- 99-19-81 — Habitual Offender
- 99-19-83 — Violent Habitual Offender
- 99-19-301 through 99-19-307 — Hate Crime (felony committed for discriminatory reason)
- 99-19-361 through 99-19-357 — Felony Committed against person 65 or older or victim who is disabled

MISSISSIPPI'S HABITUAL OFFENDER LAWS

A "habitual criminal law" enhances the potential sentence and imposes greater penalties if an offender has a previous criminal record at the time he or she is sentenced. These laws are known as "three strikes" laws. Mississippi has two main habitual offender laws: Maximum term and Life imprisonment.

Maximum term

Section 99-19-81 is the "lighter" of the two habitual statutes, and reads as follows:

"Every person convicted in this state of a felony who shall have been convicted twice previously of any felony or federal crime upon charges separately brought and arising out of separate incidents at different times and who shall have been sentenced to separate terms of one (1) year or more in any state and/or federal penal institution, whether in this state or elsewhere, shall be sentenced to the maximum term of imprisonment prescribed for such felony, and such sentence shall not be reduced or suspended nor shall such person be eligible for parole or probation."

Life imprisonment

Section 99-19-83 is the "tougher" of the two habitual statutes, and reads as follows:

"Every person convicted in this state of a felony who shall have been convicted twice previously of any felony or federal crime upon charges separately brought and arising out of separate incidents at different times and who shall have been sentenced to and served separate terms of one (1) year or more in any state and/or federal penal institution, whether in this state or elsewhere, and where anyone (1) of such felonies shall have been a crime of violence shall be sentenced to life imprisonment, and such sentence shall not be reduced or suspended nor shall such person be eligible for parole or probation."

EXAMPLE: You have two prior convictions, one for felony shoplifting, and the other for possession of marijuana with intent. If you get caught with a firearm, and are convicted of being a felon in possession, if you are indicted under the first statute, you will automatically be sentenced to ten (10) years flat time, or day-for-day, because ten (10 years) is the maximum penalty prescribed for being a felon in possession. Let's change the facts a little: You have two prior convictions, one for felony shoplifting, and one for aggravated assault on a law enforcement officer. If you write a bad check for \$100.00 (a bad check for \$100.00 or more is a felony), then you face life imprisonment, with no opportunity to get out, because the aggravated assault charge would be considered a violent felony.

SENTENCE COMPUTATION LAWS

Miss. Code Ann. § 47-7-3 (Parole)

§ 47-7-3. Parole of prisoners; conditions for eligibility; determination of tentative hearing date; reconsideration of rejected applications after one year on convictions for nonviolent crimes

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

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

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

(c) No one shall be eligible for parole until he shall have served one (1) year of his sentence, unless such person has accrued any meritorious earned time allowances, in which case he shall be eligible for parole if he has served (i) nine (9) months of his sentence or sentences, when his sentence or sentences is two (2) years or less; (ii) ten (10) months of his sentence or sentences when his sentence or sentences is more than two (2) years but no more than five (5) years; and (iii) one (1) year of his sentence or sentences when his sentence or sentences is more than five (5) years;

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

(ii) No person shall be eligible for parole who shall, on or after October 1, 1994, be convicted of robbery, attempted robbery or carjacking as provided in Section 97-3-115 et seq., through the display of a firearm or drive-by shooting as provided in Section 97-3-109. The provisions of this paragraph (d)(ii) shall also apply to any person who shall commit robbery, attempted robbery, carjacking or a drive-by shooting on or after October 1, 1994, through the display of a deadly weapon;

(e) No person shall be eligible for parole who, on or after July 1, 1994, is charged, tried, convicted and sentenced to life imprisonment without eligibility for parole under the provisions of Section 99-19-101;

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

(g) Notwithstanding the provisions of subsection (1)(c), a person who is convicted of aggravated domestic violence shall not be eligible for parole until he shall have served one (1) year of his sentence;

(h) No person shall be eligible for parole who is convicted or whose suspended sentence is revoked after June 30, 1995, except that an offender convicted of only nonviolent crimes after June 30, 1995, may be eligible for parole if the offender meets the requirements in subsection (1) and this paragraph. In addition to other requirements, if an offender is convicted of a drug or driving under the influence felony, the offender must complete a drug and alcohol rehabilitation program prior to parole or the offender may be required to complete a post-release drug and alcohol program as a condition of parole. For purposes of this paragraph, "nonviolent crime" means a felony other than homicide, robbery, manslaughter, sex crimes, arson, burglary of an occupied dwelling, aggravated assault, kidnapping, felonious abuse of vulnerable adults, felonies with enhanced penalties, the sale or manufacture of a controlled substance under the Uniform Controlled Substances Law, felony child abuse, or exploitation or any crime under Section 97-5-33 or Section 97-5-39(2) or 97-5-39(1)(b), 97-5-39(1)(c) or a violation of Section 63-11-30(5). An offender convicted of a violation under Section 41-29-139(a), not exceeding the amounts specified under Section 41-29-139(b), may be eligible for parole. In addition, an offender incarcerated for committing the crime of possession of a controlled substance under the Uniform Controlled Substances Law after July 1, 1995, shall be eligible for parole.

(2) Notwithstanding any other provision of law, an inmate shall not be eligible to receive earned time, good time or any other administrative reduction of time which shall reduce the time necessary to be served for parole eligibility as provided in subsection (1) of this section; however, this subsection shall not apply to the advancement of parole eligibility dates pursuant to the Prison Overcrowding Emergency Powers Act. Moreover, meritorious earned time allowances may be used to reduce the time necessary to be served for parole eligibility as provided in paragraph (c) of subsection (1) of this section.

(3) The State Parole Board shall, by rules and regulations, establish a method of determining a tentative parole hearing date for each eligible offender taken into the custody of the Department of Corrections. The tentative parole hearing date shall be determined within ninety (90) days after the department has assumed custody of the offender. Such tentative parole hearing date shall be calculated by a formula taking into account the offender's age upon first commitment, number of prior incarcerations, prior probation or parole failures, the severity and the violence of the offense committed, employment history, whether the offender served in the United States Armed Forces and has an honorable discharge, and other criteria which in the opinion of the board tend to validly and reliably predict the length of incarceration necessary before the offender can be successfully paroled.

(4) Any inmate within twenty-four (24) months of his parole eligibility date and who meets the criteria established by the classification board shall receive priority for placement in any educational development and job training programs. Any inmate refusing to participate in an educational development or job training program may be ineligible for parole.

Miss. Code Ann. § 47-5-138 (Earned Release Supervision)

§ 47-5-138. Earned time allowances; earned-release supervision; promulgations of rules and regulations; forfeiture generally; release of offender; phase-out of earned time release

(1) The department may promulgate rules and regulations to carry out an earned time allowance program based on the good conduct and performance of an inmate. An inmate is eligible to receive an earned time allowance of one-half (1/2) of the period of confinement imposed by the court except those inmates excluded by law. When an inmate is committed to the custody of the department, the department shall determine a conditional earned time release date by subtracting the earned time allowance from an inmate's term of sentence. This subsection does not apply to any sentence imposed after June 30, 1995.

(2) An inmate may forfeit all or part of his earned time allowance for a serious violation of rules. No forfeiture of the earned time allowance shall be effective except upon approval of the commissioner or his designee, and forfeited earned time may not be restored.

(3) (a) For the purposes of this subsection, "final order" means an order of a state or federal court that dismisses a lawsuit brought by an inmate while the inmate was in the custody of the Department of Corrections as frivolous, malicious or for failure to state a claim upon which relief could be granted.

(b) On receipt of a final order, the department shall forfeit:

(i) Sixty (60) days of an inmate's accrued earned time if the department has received one (1) final order as defined herein;

(ii) One hundred twenty (120) days of an inmate's accrued earned time if the department has received two (2) final orders as defined herein;

(iii) One hundred eighty (180) days of an inmate's accrued earned time if the department has received three (3) or more final orders as defined herein.

(c) The department may not restore earned time forfeited under this subsection.

(4) An inmate who meets the good conduct and performance requirements of the earned time allowance program may be released on his conditional earned time release date.

(5) For any sentence imposed after June 30, 1995, an inmate may receive an earned time allowance of four and one-half (4-1/2) days for each thirty (30) days served if the department determines that the inmate has complied with the good conduct and performance requirements of the earned time allowance program. The earned time allowance under this subsection shall not exceed fifteen percent (15%) of an inmate's term of sentence; however, beginning July 1, 2006, no person under the age of twenty-one (21) who has committed a nonviolent offense, and who is under the jurisdiction of the Department of Corrections, shall be subject to the fifteen percent (15%) limitation for earned time allowances as described in this subsection (5).

(6) Any inmate, who is released before the expiration of his term of sentence under this section, shall be placed under earned-release supervision until the expiration of the term of sentence. The inmate shall

retain inmate status and remain under the jurisdiction of the department. The period of earned-release supervision shall be conducted in the same manner as a period of supervised parole. The department shall develop rules, terms and conditions for the earned-release supervision program. The commissioner shall designate the appropriate hearing officer within the department to conduct revocation hearings for inmates violating the conditions of earned-release supervision.

(7) If the earned-release supervision is revoked, the inmate shall serve the remainder of the sentence, but the time the inmate served on earned-release supervision before revocation, shall be applied to reduce his sentence.

Miss. Code Ann. § 47-5-138.1 (Trusty Status)

§ 47-5-138.1. Trustees authorized to accumulate additional earned time; certain offenders in trusty status ineligible for time allowance

(1) In addition to any other administrative reduction of sentence, an offender in trusty status as defined by the classification board of the Department of Corrections may be awarded a trusty time allowance of thirty (30) days' reduction of sentence for each thirty (30) days of participation during any calendar month in an approved program while in trusty status, including satisfactory participation in education or instructional programs, satisfactory participation in work projects and satisfactory participation in any special incentive program.

(2) An offender in trusty status shall not be eligible for a reduction of sentence under this section if:

(a) The offender was sentenced to life imprisonment;

(b) The offender was convicted as an habitual offender under Sections 99-19-81 through 99-19-87;

(c) The offender was convicted of a sex crime;

(d) The offender has not served the mandatory time required for parole eligibility, as prescribed under Section 47-7-3, for a conviction of robbery or attempted robbery through the display of a deadly weapon, carjacking through the display of a deadly weapon or a drive-by shooting;

(e) The offender was convicted of possession with the intent to deliver or sell a controlled substance under Section 41-29-139; or

(f) The offender was convicted of trafficking in controlled substances under Section 41-29-139.

Miss. Code Ann. § 47-5-139 (Earned Time Eligibility)

§ 47-5-139. Certain inmates ineligible for earned time allowance; commutation to be based on total term of sentences; forfeiture of earned time in event of escape

(1) An inmate shall not be eligible for the earned time allowance if:

(a) The inmate was sentenced to life imprisonment; but an inmate, except an inmate sentenced to life imprisonment for capital murder, who has reached the age of sixty-five (65) or older and who has served

at least fifteen (15) years may petition the sentencing court for conditional release;

(b) The inmate was convicted as a habitual offender under Sections 99-19-81 through 99-19-87;

(c) The inmate has forfeited his earned time allowance by order of the commissioner;

(d) The inmate was convicted of a sex crime; or

(e) The inmate has not served the mandatory time required for parole eligibility for a conviction of robbery or attempted robbery with a deadly weapon.

(2) An offender under two (2) or more consecutive sentences shall be allowed commutation based upon the total term of the sentences.

(3) All earned time shall be forfeited by the inmate in the event of escape and/or aiding and abetting an escape. The commissioner may restore all or part of the earned time if the escapee returns to the institution voluntarily, without expense to the state, and without act of violence while a fugitive from the facility.

(4) Any officer or employee who shall willfully violate the provisions of this section and be convicted therefor shall be removed from office or employment.

Miss. Code Ann. § 47-5-142 (Meritorious Earned Time)

§ 47-5-142. Meritorious earned time

(1) In order to provide incentive for offenders to achieve positive and worthwhile accomplishments for their personal benefit or the benefit of others, and in addition to any other administrative reductions of the length of an offender's sentence, any offender shall be eligible, subject to the provisions of this section, to receive meritorious earned time as distinguished from earned time for good conduct and performance.

(2) Subject to approval by the commissioner of the terms and conditions of the program or project, meritorious earned time may be awarded for the following: (a) successful completion of educational or instructional programs; (b) satisfactory participation in work projects; and (c) satisfactory participation in any special incentive program.

(3) The programs and activities through which meritorious earned time may be received shall be published in writing and posted in conspicuous places at all facilities of the department and such publication shall be made available to all offenders in the custody of the department.

(4) The commissioner shall make a determination of the number of days of reduction of sentence which may be awarded an offender as meritorious earned time for participation in approved programs or projects; the number of days shall be determined by the commissioner on the basis of each particular program or project.

(5) No offender shall be awarded any meritorious earned time while assigned to the maximum security facilities for disciplinary purposes.

(6) All meritorious earned time shall be forfeited by the offender in the event of escape and/or aiding and abetting an escape.

(7) Any officer or employee of the department who shall willfully violate the provisions of this section and be convicted therefor shall be removed from office or employment.

(8) An offender may forfeit all or any part of his meritorious earned time allowance for just cause upon the written order of the commissioner or his designee. Any meritorious earned time allowance forfeited under this section shall not be restored nor shall it be re-earned by the offender.

Time Computation Changes over the Years

SB 2175		
Effective July 1, 1995	Population 11, 049	Expenditures 119,322,080
Eliminated parole and good time for any offender with an offense date on or after the effective date. Permitted non-mandatory offenders to earn 4.5 days per month toward an earned release supervision date (ERS). <i>(Non-mandatory offenders previously received an earned time allowance of up to 50% of their term to serve).</i>		

DCOZSR20 – June 30, 1994

HB 1113		
Effective April 16, 1999	Population 16, 705	Expenditures 236,461,650
Offenders may be awarded a trusty time allowance of ten (10) days reduction of sentence for each thirty (30) days of participation in approved work programs while in trusty status.		

DCOZSR20 – June 30, 1999

SB 3028		
Effective July 1, 2001 Retroactive to January 1, 2000	Population 18,288	Expenditures 258,187,522
Extended parole eligibility to include all first time non-violent offenders. Required drug offenders and felony DUI offenders to go through A&D prior to being paroled.		

Daily Inmate Population Report – July 1, 2001

HB 686		
Effective April 28, 2004	Population 21,125	Expenditures 289,195,791
Implemented 30 for 30 trusty time for eligible offenders in approved programs		

Daily Inmate Population Report – April 28, 2004

SB 2136		
Effective April 7, 2008	Population 22,646	Expenditures 348,089,410
Extended parole eligibility to all non-violent offenders irrespective of his first time offender status. Extended parole eligibility for certain drug sale offenders.		

Daily Inmate Population Report – April 7, 2008

SB 2039		
Effective March 9, 2009	Population 22,629	Expenditures 346,962,403

Removed the caps on meritorious earned time (MET)

Daily Inmate Population Report – March 9, 2009

SB 2880		
Effective April 7, 2009	Population 22,523	Expenditures 346,962,403

Made those convicted of sale and manufacture of a controlled substance eligible for house arrest. (Previously the only drug crimes eligible for house arrest were simple possession and precursor offenses).

Daily Inmate Population Report – April 7, 2009

HB 1136		
Effective July 1, 2010	Population 20,925	Expenditures 331,962,200

Allowed trusty earned time allowance for sale and manufacture of controlled substance but not possession with intent to deliver or sell.

Daily Inmate Population Report – July 1, 2010

HB 371 & HB 372		
Effective April 26, 2012	Population 21,880	Expenditures 339,823,231

- If the earned release was revoked, the inmate shall serve the remainder of sentence, but the time the inmate served on earned release supervision before revocation shall be applied to reduce his sentence.
- If parole revoked, the inmate shall serve the remainder of sentence, but the time the inmate served on parole before revocation shall be applied to reduce his sentence.

Daily Inmate Population Report – April 27, 2012

INTENSIVE SUPERVISION PROGRAM

47-5-1003 INTENSIVE SUPERVISION PROGRAM (HOUSE ARREST): ELIGIBILITY

(1) An intensive supervision program may be used as an alternative to incarceration for offenders who are low risk and nonviolent as selected by the department or court.

To be eligible for ISP, an offender must meet all of the following MDOC SOP# 40.01.01 criteria:

- Must be within 15 months of his/her earliest release date (e.g. Discharge, Parole, or ERS).
- If the parole date makes an offender eligible, confirm that he was not sentenced with an Enhanced Penalty Code, which makes him ineligible for parole. (List of codes is attached)
- Offender must have completed any Court ordered and/or MDOC ordered treatment or education programs (A&D; GED; etc.).
- Must have an approved residence.
 - ✓ Case Manager will get residence plan from inmate and call the head of household to confirm address, phone numbers and that the inmate can live there.
 - ✓ ISP Coordinator will have residence investigated and community attitudes gathered.

An offender is ineligible if any of the following applies:

- The offender is currently charged with, or currently incarcerated for a violent offense or a felony involving the use of a deadly weapon.
- The offender was previously convicted of, is currently charged with, or is currently incarcerated for a sex crime. If the offense for which an offender was convicted involved a sexual violation or sexual intention, the offender is also not eligible.
- The offender was convicted on a previous occasion in any court or courts of the United States and any state or territory thereof for a felony that included confinement.
- The offender was sentenced under 97-3-104 (Sexual penetration of an incarcerated offender).
- The offender committed a crime under MS Code 63-11-30 (DUI Death; DUI Maiming & DUI Manslaughter) on or after May 14, 2004.
- The offender has been found guilty of an assaultive RVR within the last six months.
- The offender has been found guilty of an RVR for possession of a cell phone or related contraband within the last six months.

RECENT APPELLATE CASES AFFECTING RECORDS DIVISION

Recent cases handed down by the state Supreme Court and the Court of Appeals are affecting how the Records Division should calculate certain offenders' time and parole eligibility.

Kenneth W. Keys v. State, 67 So. 3d 758 (Miss. 2011)

Keys had a 1987 life sentence for murder. He was eligible for parole after ten (10) years of that sentence. He was granted parole on the murder sentence.

While on parole, he was charged with simple assault of a police officer. His parole on the murder sentence was revoked, so he came back and resumed serving time.

He was subsequently convicted of the simple assault charge. He was sentenced to five years to be served consecutive to the murder sentence. Simple assault of a police officer is not eligible for parole.

Keys claimed he was still eligible for parole on the murder sentence. The Mississippi Supreme Court agreed.

The court said an offender's consecutive sentence shall commence at the termination of the imprisonment for the preceding sentence. Since an offender begins a consecutive sentence at the termination of the imprisonment for the prior sentence, and not at the termination of the entire sentence, Keys should still be eligible for parole on his murder sentence.

If the Parole Board should ever grant him parole on the murder sentence, that would end his imprisonment for that sentence and he would immediately begin serving the consecutive sentence for simple assault of a police officer.

Effect of *Keys* on Records Division

If an offender has a sentence that is parole eligible, and subsequently gets a sentence for a crime that is not eligible and that ineligible sentence is ordered to be served consecutive to the eligible sentence, then that offender must keep his parole eligibility date on his first sentence. If the Parole Board grants parole on the first sentence the offender is not to be released. He is to begin serving the non-eligible consecutive sentence immediately.

Roy Lee Ray v. State, 104 So. 3d 171 (Miss. Court of App. 2012)

Ray was convicted in 1994 in Louisiana of a crime which MDOC concluded would have been a violent crime had it been committed in Mississippi. He completed his sentence for that crime. He then got convicted in 2010 of a non-violent crime and was sentenced to serve a term in MDOC's custody.

Because he had a crime committed before July 1, 1995 that MDOC considered violent, he was classified as a violent offender and not given a parole eligibility date on the post July 1, 1995 non-violent crime.

The Court of Appeals said this was a mistaken interpretation of the parole eligibility status. Section 47-7-3 (1) (h) does not mention crimes committed before July 1, 1995, therefore an offender cannot be classified as violent based on the nature of a crime committed before July 1, 1995.

Since Ray's post July 1, 1995 criminal history did not contain a violent crime, it was ordered that he receive a parole eligibility date on his controlled substance sentence.

Effect of *Ray* on Records Division

For any offender sentenced since Section 47-7-3 (1) (h) was amended to allow offenders with more than one felony conviction to be eligible for parole, Records cannot consider any pre July 1, 1995 crimes in determining whether that offender is violent for parole eligibility purposes.

Cases Affecting Time to Serve for Intensive Supervision Violators

Eldridge Johnson v. State, 77 So. 3d 1152 (Miss. Ct. App. 2012)

Johnson pled guilty to false pretense on November 7, 2008. The Circuit Court of Forrest County sentenced Johnson to ten (10) years in the custody of MDOC, two of which were to be served under the Intensive Supervision Program (ISP). If Johnson did not successfully complete the ISP, he was to serve the entire 10-year sentence in general population, under the terms of the sentencing order. Should Johnson successfully complete the ISP, the remaining eight of his 10 years were to be suspended and he would be placed on post-release supervision.

Johnson violated terms of his ISP and his time to serve was loaded, according to the sentencing order.

Johnson claims his reclassification from ISP status to custody status by the MDOC classification hearing officer effectively terminated the circuit court's eight-year conditional sentence to post-release supervision.

The Court agreed with Johnson and stated that a revocation hearing must be held to determine whether he had violated a condition of the eight-year suspended portion of his sentence. The Court clarified that only the sentencing court, not MDOC, can revoke probation, post-release supervision, or a suspended sentence.

Effect of *Johnson* on Records Division

Sentencing orders from all offenders returned from ISP need to be reviewed closely to ensure the proper sentence duration is loaded. MDOC does not have the authority to revoke and return an offender past the duration of ISP, as stated in the sentencing order, unless the sentencing court has entered an order revoking the suspended portion of a sentence.

Alphonso Jones v. State, 97 So. 3d 1254 (Miss. Ct. App. 2012)

Jones was sentenced to serve two (2) years of his sentence on ISP. The remainder of the sentence was to be on post-release supervision, if Jones successfully served his two (2) years house arrest. The

sentencing court also said, if Jones violated during house arrest, he would serve the entire sentence in MDOC custody.

Jones violated ISP and was placed in general population. His time sheet was recalculated in compliance with the sentencing order to show him serving the entire sentence.

When Jones appealed, the Court of Appeals held that the sentencing court did not have authority to prospectively revoke the post-release supervision portion of his sentence for conduct (ISP violation) that occurred while he was in MDOC's custody and before he was released to post-release supervision. The Court of Appeals also said the sentencing court did not have jurisdiction over Jones while he was in MDOC's custody serving the house arrest portion of his sentence.

The Court of Appeals said that upon the ISP violation, MDOC should have removed Jones from ISP and placed him in the general population for the remainder of the two (2) years he was sentenced to ISP. At the end of the two (2) years he should be released to post-release supervision. If he later violated the conditions of the post-release supervision, the sentencing court would have jurisdiction to revoke all, or part, of the portion of the sentence that still remains at the time of that violation.

Effect of *Jones* on Records

When an offender violates the terms of ISP and is removed from ISP into general population, his time to serve is the remainder of the ISP term, not the entire sentence.

Attorney General's Opinion for Burglary of a Residence

STATE OF MISSISSIPPI



JIM HOOD
ATTORNEY GENERAL

**OPINIONS
DIVISION**

August 23, 2013

Mr. Christopher B. Epps
Mississippi Department of Corrections
723 North President Street
Jackson, MS 39202

Re: Parole Eligibility

Dear Commissioner Epps:

Attorney General Jim Hood has received your request for an opinion and has assigned it to me for research and reply. In sum, your question is whether offenders convicted of 97-17-23 should be denied eligibility for parole.

In response, prior to 1996, Section 97-17-19 provided that breaking and entering any dwelling house with intent to commit a crime was burglary and Section 97-17-21 provided that breaking and entering any dwelling house with intent to commit a crime when a human being is inside is burglary. One statute was used to charge offenders who committed burglary of an unoccupied dwelling while the other statute was used to charge offenders who committed burglary of an occupied dwelling. Both of these statutes were repealed in 1996 and Section 97-17-23 was amended to include both forms of burglary of a dwelling, occupied or otherwise.

Mississippi Code Annotated Section 47-7-3 provides for parole eligibility and states in part:

No person shall be eligible for parole ... except that an offender convicted of only nonviolent crimes after June 30, 1995, may be eligible for parole if the offender meets the requirements in subsection (1) and this paragraph. ... For the purposes of this paragraph, "nonviolent crime" means a felony other than homicide, robbery, manslaughter, sex crimes, arson, burglary of an occupied dwelling, aggravated assault, kidnapping," (Emphasis added.)

In 2001, the legislature amended 47-7-3 to exclude certain offenses from parole eligibility. The specific offense of "burglary of an occupied dwelling" was one of the felonies that were excluded from being eligible for parole. However, by implication, the offense of "burglary of an unoccupied dwelling" is not excluded from parole eligibility.

Mr. Christopher B. Epps
August 23, 2013
Page 2

It is the opinion of this office that offenders who were convicted of 97-17-23 are parole eligible unless there was a person present in the dwelling at the time of the burglary. Any individual convicted of non-residential burglary or burglary of a dwelling that is unoccupied at the time of the offense would be eligible for parole. The judgment of conviction should include appropriate language indicating whether the dwelling was occupied during the commission of the crime.

Sincerely,

JIM HOOD, ATTORNEY GENERAL

By: 
David K. Scott 
Special Assistant Attorney General

OFFICIAL OPINION

Glossary of Legal Terms

Adjudication

A decision or sentence imposed by a judge.

Affidavit

A written statement made under oath.

Affirmed

Upheld, as in a ruling from the court of appeals that the lower court's decision is correct and will stand as rendered by the lower court.

Amicus curiae

Latin for "friend of the court;" advice formally offered to the court in a brief filed by an entity interested in, but not a party to, the case.

Appeal

A request made after trial, usually by the losing party, that a higher court reviews the decision to determine if it was correct. To make such a request is "to appeal" or "to take an appeal." One who appeals is called the "appellant;" the other party is the "appellee."

Appeal Bond

Money paid to the court while making an appeal to cover costs and damages to the other party, if the appeal is not successful.

Arrest

When a person is taken into custody by a law enforcement officer and charged with a crime.

Bail

The release, prior to trial, of a person accused of a crime, under specified conditions designed to ensure a person's appearance in court when required; also can refer to the amount of bond money posted as a financial condition of pretrial release.

Capital offense

A crime punishable by death.

Certify

To testify in writing; to make known or establish as a fact.

Clerk of court

The court officer who oversees administrative functions, especially managing the flow of cases through the court.

Concurrent sentence

Prison term for two or more offenses to be served at the same time, rather than one after the other. Example: Two five-year sentences and one three-year sentence, if served concurrently, result in a maximum five years behind bars.

Consecutive sentence

Prison term for two or more offenses to be served one after the other. Example: Two five-year sentences and one three-year sentence, if served consecutively, result in a maximum of 13 years behind bars.

Conviction

A judgment of guilt against a criminal defendant.

Court

Government entity authorized to resolve legal disputes. Judges sometimes use "court" to refer to themselves in the third person, as in "The court has read the briefs."

Count

An allegation in an indictment or information charging a defendant with a crime. An indictment or information may contain allegations that the defendant committed more than one crime. Each allegation of a crime is referred to as a count.

De facto

Latin, meaning "in fact" or "actually;" something that exists in fact but not as a matter of law.

Defendant

In criminal cases, the person accused.

De jure

Latin, meaning "in law;" something that exists by operation of law.

De novo

Latin, meaning "anew." A trial de novo is a new trial. Appellate review de novo implies no deference to the trial judge's ruling.

Dismissal with prejudice

Court action that prevents an identical lawsuit from being filed later.

Dismissal without prejudice

Court action that allows the later filing.

Dispose

Ending a legal case or a judicial proceeding.

Disposition

The manner in which a case is settled or resolved.

Docket

A log containing the complete history of each case in the form of brief chronological entries summarizing the court proceedings.

Due process

In criminal law, the constitutional guarantee that a defendant will receive a fair and an impartial trial.

En banc

French, meaning "on the bench;" all judges of an appellate court sitting together to hear a case, as opposed to the routine disposition by panels of three judges. In the 9th Circuit, an en banc panel consists of 11 randomly selected judges.

Evidence

Information presented in testimony or in documents that is used to persuade the fact finder (judge or jury) to decide the case in favor of one side or the other.

Exclusionary rule

Doctrine that says evidence obtained in violation of a criminal defendant's constitutional or statutory rights is not admissible at trial.

Exculpatory evidence

Evidence indicating that a defendant did not commit the crime.

Expungement

The process of legally destroying, obliterating or striking out records or information in files, computers and other depositories relating to criminal charges.

Felony

A crime, usually punishable by at least one year in prison.

Finding

The court's or jury's decision on issues of fact.

Grand jury

A body of 16-23 citizens who listen to evidence of criminal allegations, as presented by prosecutors, and determine whether there is probable cause to believe an individual committed an offense.

Habeas corpus

Latin, meaning "you have the body." A writ of habeas corpus generally is a judicial order forcing law enforcement authorities to produce a prisoner they are holding and to justify the prisoner's continued confinement.

Incarceration

Confinement to a state or federal correctional institute or prison.

Indictment

A formal charge issued by a grand jury stating there is enough evidence that the defendant committed the crime to justify having a trial; used primarily for felonies.

Information

A formal accusation by a government attorney that the defendant committed a crime.

Judge

An official of the judicial branch who hears or decides lawsuits brought before courts. Used generically, the term "judge" may also refer to all judicial officers, including Supreme Court justices.

Jurisdiction

The legal authority of a court to hear and decide a certain type of case. It also is used as a synonym for venue, meaning the geographic area over which the court can hear or decide cases.

Jurisprudence

The study of law and the structure of the legal system.

Jury

The group of persons selected to hear the evidence in a trial and render a verdict.

Misdemeanor

An offense punishable by one year or less of imprisonment.

Mittimus Judgment

Also called a Mitt, the formal document prepared by the court clerk to present a convicted criminal defendant to the Department of Correction for incarceration.

Moot

Not subject to a court ruling because the controversy has not actually arisen or has ended.

Motion

A request by a litigant to a judge for a decision on an issue relating to the case.

Motion in Limine

A pretrial motion requesting the court to prohibit the other side from presenting, or even referring to, evidence on matters said to be so highly prejudicial that no steps taken by the judge can prevent the jury from being unduly influenced.

Nolle prosequi

No prosecution; a disposition of a criminal case where the prosecutor agrees to drop the case against the defendant but keeps the right to reopen the case and prosecute. The nolle is entered on the court record and the defendant is released from custody.

Nolo contendere

No contest. A plea of nolo contendere has the same effect as a plea of guilty, as far as the criminal sentence is concerned, but may not be considered as an admission of guilt.

Opinion

A judge's written explanation of his or her decision. Because a case may be heard by three or more judges in the court of appeals, the opinion in appellate decisions can take several forms. If all the judges completely agree on the result, one judge will write the opinion for all. If all the judges do not agree, the formal decision will be based upon the view of the majority, and one member of the majority will write the opinion. The judges who did not agree with the majority may write separately in dissenting or concurring opinions to present their views. A dissenting opinion disagrees with the majority opinion because of the reasoning and/or the principles of law the majority used to decide the case. A concurring opinion agrees with the decision of the majority opinion, but offers further comment or clarification or even an entirely different reason for reaching the same result. Only the majority opinion can serve as binding precedent in future cases.

Order

A written direction of a court or judge to do or refrain from doing certain acts.

Per curiam

Latin, meaning "for the court." In appellate courts, the word often refers to an unsigned opinion.

Petit jury (or trial jury)

A group of citizens who hear the evidence presented by both sides at trial and determine the facts in dispute.

Plea

In a criminal case, the defendant's statement of "guilty" or "not guilty" to the charges.

Plea Bargain

The agreement a defendant makes with the prosecutor to avoid a trial. It usually involves pleading guilty to lesser charges in exchange for a lighter sentence.

Precedent

A court decision in an earlier case with facts and legal issues similar to a dispute currently before a court. Judges will generally "follow precedent" - meaning they use the principles established in earlier cases to decide new cases with similar facts and legal issues.

Pro se

Serving as one's own lawyer.

Prosecute

To charge someone with a crime.

Pro tem

Temporary.

Remand

Send back.

Restitution

Money ordered to be paid by the defendant to the victim to reimburse the victim for the costs of the crime. Or, it means generally making good or giving the equivalent for any loss, damage or injury caused by a person's actions.

Reverse

The act of a court setting aside the decision of a lower court. A reversal is often accompanied by a remand to the lower court for further proceedings.

Revocation Hearing

A hearing before a judge to determine whether a person has violated the conditions of probation. If there is a finding that a violation has occurred, the judge may impose all or part of the original sentence.

Sentence

The punishment ordered by a court for a defendant convicted of a crime.

Sentencing guidelines

A set of rules and principles established by the United States Sentencing Commission that trial judges use to determine the sentence for a convicted defendant.

Statute

A law passed by a legislature.

Statute of limitations

The time within which a lawsuit must be filed or a criminal prosecution must begin. The deadline can vary, depending on the type of civil case or the crime charged.

Sua sponte

Latin, meaning "of its own will." The word often refers to a court taking an action in a case without being asked to do so by either side.

Subpoena

A command, issued under a court's authority, to a witness to appear and give testimony.

Subpoena duces tecum

A command to a witness to appear and produce documents.

Substance abuse treatment

A court-imposed special condition that requires an individual to undergo testing and treatment for abuse of illegal drugs, prescription drugs, or alcohol. Treatment may include inpatient or outpatient counseling and detoxification.

Supervised release

Term of supervision served after a person is released from prison. The court imposes supervised release during sentencing in addition to the sentence of imprisonment. Unlike parole, supervised release does not replace a portion of the sentence of imprisonment but is in addition to the time spent in prison.

Testimony

Evidence presented, usually orally, by witnesses during trials or before grand juries.

Time Served

A sentence of incarceration equal to the amount of time a defendant has already spent in state custody awaiting disposition of the case.

Transcript

A written, word-for-word record of what was said, either in a proceeding such as a trial, or during some other formal conversation, such as a hearing or an oral deposition.

Uphold

To agree. The appellate court agrees with the lower court's decision and allows it to stand.

Venue

The geographic area in which a court has jurisdiction. A change of venue is a transfer of a case from one judicial district to another.

Verdict

The decision of a jury or a judge that determines the guilt or innocence of a criminal defendant.

Warrant

Court authorization, most often for law enforcement officers, to conduct a search or to make an arrest.

Witness

A person called upon by either side to give testimony before the court or jury.

Writ

A written court order directing a person to take, or refrain from taking, a certain act.

Writ of certiorari

An order issued by the U.S. Supreme Court directing the lower court to transmit records for a case it will hear on appeal.

FAQs

Q. What crimes are considered sex offenses?

The following is a list of registerable sex offenses. There may be others that are not listed, so if anyone runs across a term or statute not listed that you believe may be an enhanced penalty, let the records director, the designee or MDOC Legal Department know.

A. Pursuant to Miss. Code Ann. § 45-33-23 the following crimes are registerable sex offenses:

1. Section 97-3-53 - **Kidnapping**, if the victim was below the age of eighteen (18);
2. Section 97-3-65 - **Statutory Rape**, however, conviction or adjudication under Section 97-3-65(1)(a) on or after July 1, 1998, when the offender was eighteen (18) years of age or younger at the time of the alleged offense, shall not be a registerable sex offense;
3. Section 97-3-71 - **Rape and assault with intent to ravish**;
4. Section 97-3-95 - **Sexual Battery**; however, conviction or adjudication under Section 97-3-95(1)(c) on or after July 1, 1998, when the offender was eighteen (18) years of age or younger at the time of the alleged offense, shall not be a registerable sex offense;
5. Section 97-5-5 - **Enticing a child for concealment, prostitution or marriage**;
6. Section 97-5-23 - **Touching of a child, mentally defective or incapacitated person or physically helpless person for lustful purposes**;
7. Section 97-5-27 - **Dissemination of sexually oriented material to children**;
8. Section 97-5-33 - **Exploitation of children** (this includes child pornography);
9. Section 97-5-41 - **Carnal knowledge of a stepchild, adopted child or child of a cohabiting partner**;
10. Section 97-29-59 - **Unnatural intercourse**;
11. Section 97-1-7 **Attempt to commit any of the above-referenced offenses**;
12. Section 97-29-3 **Adultery or fornication between teacher and student**;
13. Section 97-29-59 – **Unnatural Intercourse**;
14. Section 43-47-18 — **Sexual Abuse of a Vulnerable person**;
15. Section 97-3-51.1(1)(c) — **Procuring Sexual Servitude of a Minor and Section 97-3-54.3 relating to aiding, abetting or conspiring to violate 97-3-54.1(1)(c)**;
16. Section 97-29-61(2) – **Voyeurism when the victim is a child under sixteen (16) years of age**;
17. Section 97-29-63 – **Relating to filming another without permission where there is an expectation of privacy, i.e. Invasion of Privacy — Photographing or Filming** (Effective July

- 1, 2007);
18. Section 97-29-45 (1)(a)– **relating to obscene electronic communication** (Effective July 1, 2011)
 19. 97-3-104 - **relating to the crime of sexual activity between law enforcement, correctional or custodial personnel and prisoners** (Effective July 1, 2011)
 20. 97-5-39 (1)(c)- **relating to contributing to the neglect the delinquency of a child, felonious abuse or battery of a child, if the victim was sexually abused** (Effective July 1, 2011)
 21. Section 97-1-7 – **relating to attempt to commit any of the above referenced offenses;**
 22. Any other offense resulting in a conviction in another jurisdiction, whether state, federal or military, which, if committed in this state, would be deemed to be such a crime without regard to its designation elsewhere;
 23. Any offense resulting in a conviction in another jurisdiction, whether state, federal or military, for which registration is required in the jurisdiction where the conviction was had;
 24. Any conviction of conspiracy to commit, accessory to commission, or attempt to commit any offense listed in this section. (Conspiracy is effective July 1, 2007; Attempt and accessory before the fact have always been included.); and
 25. Capital murder when one of the above described offenses is the underlying crime.

Q. What is trusty earned time?

A. Pursuant to Miss. Code Ann. § 47-5-138.1, trusty earned time is a reduction in sentence which may be granted in addition to any other administrative reduction in sentence to an offender in trusty status as defined by the classification board of the Department of Corrections.

Q. How much is the trusty earned time allowance?

A. From and after April 28, 2004, a trusty earned time allowance of thirty (30) days reduction of sentence may be granted for each thirty (30) days of participation in an approved program while in trusty status. Prior to April 28, 2004, the trusty earned time allowance was ten (10) days reduction of sentence for each thirty (30) days of participation in an approved program while in trusty status.

Q. When is the trusty earned time allowance deducted from an offender's sentence?

A. A thirty (30) day reduction in sentence is posted once every thirty (30) days, as earned.

Q. Who is ineligible for the 30/30 trusty earned time allowance?

A. Pursuant to Miss. Code Ann. § 47-5-138.1, an offender shall not be eligible for a reduction in sentence under this section if:

- (a) The offender was sentenced to life imprisonment;
- (b) The offender was convicted as a habitual offender under Sections 99-19-81 through 99-19-87;
- (c) The offender was convicted of a sex crime;
- (d) The offender has not served the mandatory time required for parole eligibility, as prescribed under Section 47-7-3, for a conviction of robbery or attempted robbery through the display of a deadly weapon, carjacking through the display of a deadly weapon or a drive-by shooting;
- (e) The offender was convicted of violating Section 41-29-139(a) and sentenced under Section 41-29-139(b) or 41-29-139(f). (This includes sell, delivery, barter, transfer, produce, manufacture, distribute, dispense, possession with intent, or trafficking.) (Does not include simple possession, paraphernalia, or precursor offenses); or
- (f) The offender was convicted of trafficking in controlled substances under Section 41-29-139.

MDOC policy also excludes the following from receiving 30/30 trusty time:

- (g) Offenders convicted of attempted murder or accessory before the fact to murder (effective 4/20/2005); and
- (h) Offenders convicted of failure to register as a sex offender (effective 3/1/2006).

Q. What is Meritorious Earned Time (MET)?

A. Pursuant to Miss. Code Ann. § 47-5-142, meritorious earned time is an administrative reduction of sentence that may be awarded to eligible offenders at a maximum rate of 10 days per month for successful participation in approved educational, vocational, religious, and work programs. Inmates may not earn both MET and trusty time for the same program. Offenders serving habitual or mandatory sentences are not eligible for MET.

Q. What is the Intensive Supervision Program (ISP)?

A. Also known as house arrest, ISP is a program whereby inmates are allowed to live at home while being electronically monitored by MDOC.

Q. Who is ineligible for ISP?

- An offender convicted of a sex crime;
- An offender convicted of a crime where death or life imprisonment is the maximum penalty which may be imposed;
- An offender convicted of a felony involving the use of a deadly weapon;
- An offender convicted of a felony committed after having been confined for a previous felony conviction; and
- An offender who is not low risk or nonviolent, as selected by the court or MDOC

Q. May an offender on ISP leave the State of Mississippi?

A. No, an offender on ISP is considered an inmate, and therefore, may not leave Mississippi. The only exception is in a case of a medical emergency and such travel has been approved by the Commissioner of the Department of Corrections, or his designee, or by circuit court order for medical purposes. See Miss. Code Ann. § 47-5-1005(1) (c).

Q. Who can place an offender on ISP?

A. The sentencing court or MDOC.

Q. When does MDOC consider an offender for placement on ISP?

A. Pursuant to MDOC policy, an eligible offender within 15 months of his earliest release date may be reviewed for placement on ISP.

Q. What is Conditional Medical Release?

A. Pursuant to Miss. Code Ann. § 47-7-4, it is a type of conditional supervised release available to certain inmates suffering from a significant permanent physical medical condition with no possibility of recovery.

Q. What is considered a significant permanent physical medical condition with no possibility of recovery?

A. A condition that is incapacitating, totally disabling, and/or terminal in nature. Examples would be, but are not limited to the following:

- Cancer diagnosis appropriate for hospice care;
- End-stage lung disease;
- End-stage (New York Heart Association Class III) heart failure;
- End-stage liver disease (Childs-Pugh Class III);
- End-stage AIDS;

- Advanced Alzheimer's disease; and
- Severe, progressive neurological disease, including paraplegia, quadriplegia.

Q. Who is ineligible for Conditional Medical Release?

A.

- An offender who is not suffering from a significant permanent physical medical condition with no possibility of recovery.
- An offender who has never been convicted of a sex crime
- An offender convicted of a violent crime who has served less than one (1) year of his sentence
- An offender suffering from a medical condition or disease that is chronic, but stable, and is being addressed by ongoing medical intervention or therapy.

Q. Who has the authority to place an offender on Conditional Medical Release?

A. The commissioner of the MDOC on the recommendation of the MDOC medical director.

Q. May an offender sentenced to probation in Mississippi live in another state?

A. Yes, but only under the terms and conditions of the Interstate Compact for Adult Offender Supervision. Offenders on house arrest (ISP) or Earned Release Supervision (ERS) may not live or work in another state.

Q. What is the Interstate Compact for Adult Offender Supervision?

A. A formal agreement between member states which governs the transfer and supervision of adult offenders (i.e. probationers and parolees) who request to live in a state other than the state of conviction.

Q. Who is eligible to transfer under the Interstate Compact?

A. At the discretion of the sending state (state of conviction), any offender who has three months or more or an indefinite period of supervision remaining shall be eligible for transfer of supervision to a receiving state under the compact. The receiving state shall accept transfer, if the offender, pursuant to a valid plan of supervision:

- is in substantial compliance with the terms of supervision in the sending state;
- is a resident of the receiving state; or
- has resident family in the receiving state who has indicated a willingness and ability to assist as specified in the plan of supervision; and
- can obtain employment in the receiving state or has a visible means of support.

A receiving state, for good cause shown, may consent to the transfer of supervision of an offender who does not otherwise qualify for transfer of supervision.

Q. How can an offender request transfer to another state?

A. Probationers and parolees may submit an application for transfer to another state by contacting their correctional field officer, correctional case manager, or parole releasing authorities. Several compact forms must be completed, and an application fee of \$50.00 must be submitted at the time the transfer is requested. A sending state shall not allow an offender under supervision in the sending state to relocate to a receiving state without the receiving state's acceptance of the transfer of supervision, except that a sending state may grant a temporary travel permit to an offender who was living in the receiving state at the time of sentencing. This exception is not applicable to offenders released to supervision from prison.

Q. Who has jurisdiction to revoke probation?

A. The sentencing court.

Q. Who has jurisdiction to revoke Post Release Supervision?

A. The sentencing court.

Q. Who has jurisdiction to remove an offender from ISP (house arrest)?

A. MDOC.

Note: Unless there is an amended order or revocation order stating otherwise, if the sentencing order states the amount of time that the offender is to serve should the offender violate the conditions of ISP, the revised sentence computation will be the ISP time stated in the sentencing order.

Example: The offender is sentenced to 10 years, said sentence is suspended and the offender is to serve one (1) year on ISP. Should the offender violate, then the offender without further orders of the court, MDOC is to place the offender in general population to serve the entire sentence. In reworking the sentence computation, the offender is to be loaded in OT to serve the 1 year sentence. **(Unless there is an amended order or revocation order stating otherwise)**

Q. Who has jurisdiction to revoke an offender on Earned Release Supervision (ERS)?

A. MDOC.

Q. Who has jurisdiction to revoke Parole?

A. The Mississippi State Parole Board.

CONTACT INFORMATION

Mississippi Department of Corrections

Central Office

723 North President Street

Jackson, MS 39202

(601) 359-5600

Records Department

421 W. Pascagoula Street

Jackson, MS 39202

(601) 933-2889

RecordsDirector@mdoc.state.ms.us