

# Practitioner Guide to HB 585

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Mississippi Corrections and Criminal Justice Task Force



## An Introduction to House Bill 585

Seeking to repair the long-standing disconnect between the corrections and criminal justice systems and to ensure state taxpayers were getting a good public safety return on their corrections spending, the 2013 Legislature passed, and Governor Phil Bryant signed into law, House Bill 1231 to establish the bipartisan, inter-branch Corrections and Criminal Justice Task Force. The Task Force was charged with developing policy recommendations for consideration by the legislature.

Chaired by Christopher Epps, Mississippi's Commissioner of Corrections, the Task Force included legislators, judges, prosecutors, law enforcement officials, defense attorneys, a county supervisor and other criminal justice stakeholders. Beginning in the summer of 2013, the Task Force spent seven months analyzing Mississippi's sentencing and corrections data and studying evidence-based criminal justice programs, policies, and practices employed in other states.

The Task Force found that Mississippi's prison population had grown by 17 percent in the past decade and by 307 percent in the past 30 years. By June 2013, the state was housing more than 22,600 prisoners and had the second-highest imprisonment rate in the country, trailing only Louisiana. The Task Force also found that, absent policy change, these trends would continue and that Mississippi would need to house an additional 1,990 inmates by 2024. State officials estimated that this growth would cost the state an additional \$266 million in new corrections spending over the next 10 years.

Upon a closer investigation of the data, the Task Force identified four primary drivers of Mississippi's corrections and population growth: (1) a high number of nonviolent offenders – almost three-quarters of admissions to prison in 2012 – were sentenced for nonviolent crimes; (2) more offenders were entering prison for violations of supervision than for new crimes; (3) uncertainty about how long inmates would serve behind bars contributed to a 28 percent increase in sentence lengths over the previous decade; and (4) a high percentage of offenders were being sentenced to prison, as opposed to probation or other alternatives to prison.

Task Force members spent several months examining best practices, as well as proven approaches to sentencing and corrections implemented in other states, and began to craft policy proposals for Mississippi. With a goal of creating a package of policies that would ensure certainty in sentencing and control corrections costs while keeping public safety paramount, the Task Force unanimously forwarded its final report and 19 policy recommendations to the legislature in December of 2013.

Legislation advancing these recommendations—House Bill 585—passed with overwhelming bipartisan support and was signed into law by Governor Phil Bryant on March 31, 2014.

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# Time Served Requirements

## Time Served Requirements

### True Minimums

- Nonviolent offenders must serve at least 25 percent of their court-ordered sentences.
- Violent offenders must serve at least 50 percent of their court-ordered sentences.
- Offenders eligible for earned time or parole remain eligible and will earn time at the same rate but *will not be released prior to meeting these minimum thresholds.*

### Parole Eligibility Fixed at 25 Percent of Court-Ordered Sentence

All parole eligibility dates are set at 25 percent of the court-ordered sentence; offenders no longer have to serve one year of their sentence to become eligible for parole release.

### Time Served Requirements

Sentence Length	Minimum Time to Serve in Prison		
	Nonviolent Offenses	Violent Offenses	Sex Offenses/Habitual Offenders*/Drug Trafficking Offenses*
1 year	3 months	6 months	1 year
2 years	6 months	1 year	2 years
3 years	9 months	18 months	3 years
4 years	12 months	24 months	4 years
5 years	15 months	30 months	5 years
6 years	18 months	36 months	6 years
7 years	21 months	42 months	7 years
8 years	24 months	48 months	8 years
9 years	27 months	54 months	9 years
10 years	30 months	60 months	10 years
15 years	45 months	90 months	15 years
20 years	60 months	120 months	20 years
30 years	90 months	180 months	30 years

\*Offenders serving sentences for drug trafficking (§41-29-139(f)) or as a nonviolent habitual (§99-19-81) are eligible to apply to the original sentencing court for parole eligibility per §47-7-3(g)(iii). See page 12 for additional information.



# Definition of Violence

## Definition of Violence

HB 585 establishes a unified definition of violence to determine: (1) time served requirements; (2) eligibility for parole; (3) eligibility for habitual offender enhancements; and (4) eligibility for pre-trial diversion programs.

HB 585 creates a set of crimes which are violent and can never be considered nonviolent no matter the circumstances (with an exception for statutory rape). Additionally, sentencing judges can classify any crime with a maximum sentence of 5 or more years as a violent crime if the facts of the case show that the defendant used physical force, or made a credible attempt or threat of physical force against another person as part of the criminal act.

Violent Crimes	Section
Driving under the influence that results in death or injury	§63-11-30(5) and §63-11-30(12)(d)
Murder and attempted murder	§97-1-7(2); §97-3-19; §97-3-23 and §97-3-25
Aggravated assault and aggravated domestic violence	§97-3-7(2)(a) and (b) and §97-3-7(4)(a)
Manslaughter	§97-3-27; §97-3-29; §97-3-31; §97-3-33; §97-3-35; §97-3-39; §97-3-41; §97-3-43; §97-3-45 and §97-3-47
Killing of an unborn child	§97-3-37(2)(a) and §97-3-37(2)(b)
Kidnapping	§97-3-53
Human trafficking	§97-3-54.1
Poisoning	§97-3-61
Rape	§97-3-65 and §97-3-71
Robbery	§97-3-73 and §97-3-79
Sexual battery	§97-3-95
Drive-by shooting or bombing	§97-3-109
Carjacking	§97-3-117
Felonious neglect, abuse or battery of a child	§97-5-39
Burglary of a dwelling	§97-17-23 and §97-17-37
Use of explosives or weapons of mass destruction	§97-37-25
Statutory rape*	§97-3-65(1) (Violent classification is rebuttable on a hearing by a judge).
Exploitation of a child	§97-5-33
Gratification of lust	§97-5-23
Shooting into a dwelling	§97-37-29



# Eligibility for Sentencing Alternatives

## Eligibility for Sentencing Alternatives

Sentence Alternative	Previous Law	Current Law
<b>Non-adjudicated probation</b>	<p>Any misdemeanor or felony eligible unless the offender:</p> <ul style="list-style-type: none"> <li>▪ Has previously received a non-adjudicated sentence;</li> <li>▪ Has a prior felony conviction; or</li> <li>▪ Is charged with:                             <ul style="list-style-type: none"> <li>○ Fraud by a public official;</li> <li>○ Commercial drug offense except for any marijuana offense of less than 1 ounce; or</li> <li>○ Implied consent offense.</li> </ul> </li> </ul>	<p>Any misdemeanor or felony eligible unless the offender:</p> <ul style="list-style-type: none"> <li>➤ Has previously received non-adjudicated probation for the same crime as current charge; or</li> <li>➤ Is charged with:                             <ul style="list-style-type: none"> <li>○ A violent offense;</li> <li>○ Fraud by a public official;</li> <li>○ Drug trafficking.</li> </ul> </li> </ul>
<b>Probation</b>	<p>Any misdemeanor or felony eligible unless the offender:</p> <ul style="list-style-type: none"> <li>➤ Has a prior felony conviction; or</li> <li>➤ Is convicted of an offense where the maximum sentence is death or life in prison.</li> </ul>	<p>Any misdemeanor or felony eligible unless the offender:</p> <ul style="list-style-type: none"> <li>➤ Is convicted of an offense where the maximum sentence is death or life in prison.</li> <li>➤ Offenses that specifically exclude probation as a sentence</li> </ul>
<b>Intensive Supervision Program</b>	<p>Any felony eligible unless the offender:</p> <ul style="list-style-type: none"> <li>➤ Has served prior prison sentence;</li> <li>➤ Has a prior conviction for a sex offense or a felony involving the use of a deadly weapon; or</li> <li>➤ Is convicted of:                             <ul style="list-style-type: none"> <li>○ An offense with the maximum sentence is death or life in prison; or</li> <li>○ A sex offense.</li> </ul> </li> </ul> <p>Additionally, offenders must be deemed “low risk” and “nonviolent” by the court.</p>	<p>Any felony eligible unless the offender:</p> <ul style="list-style-type: none"> <li>➤ Has a prior conviction for a sex offense; or</li> <li>➤ Is convicted of:                             <ul style="list-style-type: none"> <li>○ A violent offense;</li> <li>○ A sex offense; or</li> <li>○ An offense where the maximum sentence is death or life in prison.</li> </ul> </li> </ul>
<b>Drug Court</b>	<p>Any felony eligible unless the offender:</p> <ul style="list-style-type: none"> <li>➤ Has a prior violent offense conviction;</li> <li>➤ Is convicted of:                             <ul style="list-style-type: none"> <li>○ A violent offense;</li> <li>○ Burglary of an occupied dwelling, DUI resulting in death;</li> <li>○ A commercial drug offense; or</li> </ul> </li> <li>➤ Has other pending criminal proceedings alleging commission of a crime of violence.</li> </ul>	<p>Any felony eligible unless the offender:</p> <ul style="list-style-type: none"> <li>➤ Has a prior violent offense conviction within 10 years;</li> <li>➤ Is charged with:                             <ul style="list-style-type: none"> <li>○ A violent offense;</li> <li>○ Burglary of an occupied dwelling, burglary using explosives, DUI resulting in death;</li> <li>○ Drug trafficking; or</li> </ul> </li> <li>➤ Has other pending criminal proceedings alleging commission of a crime of violence.</li> </ul>



# Property Offenses

## Property Offenses

Property Crime	Previous Law (Years)	Current Law (Years)	
<b>Shoplifting</b>			
\$500 or less	Misdemeanor, up to 6 months in jail	Misdemeanor, presumptive probation* or up to 6 months in jail	
3 <sup>rd</sup> and sub, \$500 or less	0-5		
\$500 to \$1000	0 – 10		
3 <sup>rd</sup> or sub, \$500 to \$1000			0-3
<b>Larceny</b>			
<b>Grand Larceny/Petit Larceny/Larceny; theft of rental property/Malicious Mischief/Receiving Stolen Property</b>			
\$500 or less	Misdemeanor, up to 6 months in jail	Misdemeanor, presumptive probation* or up to 6 months in jail	
\$500 to \$1000	0 – 10		
3 <sup>rd</sup> or sub, \$500 to \$1,000			0 – 3
\$1000 to \$5000			0 – 5
\$5000 to \$25000			0 – 10
\$25000 or more			0 – 20
<b>Larceny; established place of worship</b>			
\$500 or less	Misdemeanor, up to 1 year in jail	Misdemeanor, presumptive probation* or up to 1 year in jail	
\$500 to \$1000	0 – 10		
3 <sup>rd</sup> or sub, \$500 to \$1000			0 – 3
\$1000 to \$25000			0 – 10
\$25000 or more			0 – 20
<b>Larceny; under lease or rental agreement</b>			
\$250 or less	Misdemeanor, up to 6 months in jail	Misdemeanor, presumptive probation* or up to 6 months in jail	
\$250 to \$1000	0-3		
3 <sup>rd</sup> and sub, \$500 to \$1000			0 – 3
\$1000 or more			0 – 5
<b>Motor Vehicle Theft</b>			
\$1000 or less	0-10	Misdemeanor, presumptive probation* or up to 6 months in jail	
\$1000-\$5000		0-5	
\$5000 to \$25000		0-10	
\$25,000 or more		0-20	
2 <sup>nd</sup> and sub, \$1000 or less	0- 15	0 -3	
2 <sup>nd</sup> and sub, \$1000 to \$5000		0-10	
2 <sup>nd</sup> and sub, \$5000 to \$25000		0-20	
2 <sup>nd</sup> and sub, \$25000 or more		0-40	

*Cont.*

Property Crime	Previous Law (Years)	Current Law (Years)
<b>Defacing Public Property</b>		
\$300 or less	Misdemeanor, up to 1 year in jail	Misdemeanor, presumptive probation* or up to 1 year in jail
\$300 to \$500	0 – 5	0 – 5
\$500 to \$5000		0 – 10
\$5000 to \$25000		0 – 20
\$25000 or more		
<b>Forgery /Counterfeiting/ Embezzlement /Computer Fraud/Offense Against Computer Users, Computer Equipment and Intellectual Property</b>		
\$500 or less	Misdemeanor, up to 6 months in jail	Misdemeanor, presumptive probation* or up to 6 months in jail
\$500 to \$1000	0 – 10	0 – 3
3 <sup>rd</sup> or sub, \$500 to \$1,000		0 – 5
\$1000 to \$5000		0 – 10
\$5000 to \$25000		0 – 20
\$25000 or more		

**New Crime: Fraud Enterprise**

HB 585 also creates the crime of fraud enterprise, defined as an organization of two or more people who engage in the conduct of or are associated for the purpose of effectuating the transfer or sale of merchandise, services or information that has a pecuniary value that causes a loss to the victim. Fraud enterprise (also known as organized theft) is punishable by imprisonment for up to 20 years.

**Presumptive Probation**

HB 585 institutes presumptive probation for most property crimes under \$1,000, establishing probation supervision for up to one year as the appropriate punishment unless the court finds substantial and compelling reasons why the offender cannot be safely and effectively supervised in the community, is not amenable to community-based treatment, or poses a significant risk to public safety.

If the judge does not make one of the above three findings, then the court shall suspend the sentence of imprisonment and impose a period of probation not exceeding one year.



# Drug Offenses

## Drug Offenses

Substance	Previous Law		Current Law	
	Amount	Sentence Range* (Years)	Amount	Sentence Range* (Years)
<b>Marijuana</b>				
<b>Possession</b>	Less than 30g	Misdemeanor	No change to existing penalty	
	30g to less than 250g	Misdemeanor, up to 1 year in jail; 0 –3 if charged as a felony		
	250g to 500g	2 – 8		
	500g to 1kg	4 – 16		
	1kg to 5kg	6 – 24		
	5kg or more	10 – 30		
<b>Possession w/Intent, Sale, Distribution</b>	Less than 30g	0 – 3	No change to existing penalty	
	30g to less than 1kg ( <i>first time offender eligible only</i> )	0 – 20	30g to less than 1kg ( <i>first time offender eligible only</i> )	0 – 5
	30g or more	0 – 30	30g to less than 1 kg	0 – 10 ←
			1 kg or more	See trafficking
<b>Trafficking**</b>	<i>3 commercial drug offenses occurring within 12 months</i>	30 to life	1kg or more	10 – 40
<b>Schedule I and II substances</b>				
<b>Possession</b>	Less than .1g or 1 dosage unit	Misdemeanor, up to 1 year; 1-4 if charged as felony	Less than .1g	Misdemeanor up to 1 year
	.1g to less than 2g	2 – 8	.1g to less than 2g	0 – 3
	2g to less than 10g	4 – 16	2g to less than 10g	0 – 8
	10g to less than 30g	6 – 24	10g to less than 30g	3 – 20
	30g or more	10 – 30	30g or more	See trafficking
<b>Possession w/Intent, Sale, Distribution, Manufacturing</b>	Any amount	0 – 30	Less than 2g	0 – 8
			2g to less than 10 g	3 – 20
			10g to less than 30g	5 – 30
			30g or more	See trafficking
<b>Trafficking**</b>	<i>3 commercial drug offenses occurring within 12 months</i>	30 to life	30g to 200g	10 – 40
<b>Aggravated Trafficking (NEW CRIME)**</b>	None		200g or more	25 to life

Note from Andre: . Several of us have tried to find this in the Law and cannot. I think there is no sentencing range for sale/PWI of 30g - kg of marijuana for a second or subsequent offense. First offense is lowered from 20 years to 5 but because of other changes to weights in the ranges applied to (a) & (b) there is no sentence for the second offender. The practical result is rather bizarre: a first offender selling a half pound (about 225 grams) would face 5 years but a second offender could only be sentenced under simple possession (subsection (c)) and face no more than 3 years.

\* Sentence ranges for second and subsequent convictions are doubled.

\*\*Offenders convicted under the trafficking statute are ineligible for parole, trusty earn time, and earned release supervision. See note about trafficking safety valves on page 9.

Cont.

Substance	Previous Law		Current Law	
	Amount	Sentence Range* (Years)	Amount	Sentence Range* (Years)
<b>Schedule III and IV substances</b>				
Possession	Less than 50g	Misdemeanor, up to 1 year	No change to existing penalty	
	50g to less than 150g	1-4		
	150g to less than 300g	2-8		
	300g to less than 500g	4-16		
	500g or more	6-24	500g or more	See trafficking
Possession w/Intent, Sale, Distribution	Any amount	0-20	Less than 2g	0-8
			2g to less than 10g	
			10g to less than 30g	0-15
Trafficking**	3 commercial drug offenses occurring within 12 months	30 to life	500g or more	10-40
<b>Schedule V substances</b>				
Possession	Less than 50g	Misdemeanor, up to 1 year	No change to existing penalty	
	50g to less than 150g	1-4		
	150g to less than 300g	2-8		
	300g to less than 500g	4-16		
	500g or more	6-24	300g to less than 500g	4-16
Possession w/Intent, Sale, Distribution	Any Amount	0-10	500g or more	See trafficking
			Less than 2g	0-1
			2g to less than 10g	0-5
			10g to less than 30g	0-10
Trafficking**	3 commercial drug offenses occurring within 12 months	30 to life	500g or more	10-40

\* Sentence ranges for second and subsequent convictions are doubled.

\*\*Offenders convicted under the trafficking statute are ineligible for parole, trusty earn time, and earned release supervision. See note about trafficking safety valves below.

### Trafficking Safety Valves

The court may impose a lower sentence than the minimum required as a condition of a trafficking or aggravated trafficking conviction if the judge finds that:

- a. The offender was not a leader of the criminal enterprise;
- b. The offender did not use violence or a weapon during the crime;
- c. The offense did not result in a death or serious bodily injury of a person not a party to the criminal enterprise; and
- d. The interests of justice are not served by the imposition of the prescribed mandatory sentence.

If the judge finds these factors present he or she may impose an alternative sentence of imprisonment that is no less than 25 percent of the prescribed sentence.

### Possession of Precursor Drugs

Substance/Amount	Previous Law (Years)	Current Law (Years)
Possession of precursor drug or chemical	0-30	0-8
Possession of precursor drug or chemical AND 2g or less of a controlled substance*		0-8
Possession of precursor drug or chemicals AND 2g to 10g of a controlled substance*		0-10
Possession of precursor drug or chemical AND 10g to 30g of a controlled substance*		3-20
Possession of precursor drug or chemical AND 30g or more of a controlled substance*		

\*Controlled substance must be a substance that can be manufactured using the precursor drugs or chemicals possessed.



# Parole Eligibility

## Parole Eligibility

### Enhancements

The following enhancements are no longer ineligible for parole:

Enhancement	Code Section
Distribution of a controlled substance within 1500 feet of a school, church, park, ballpark, public gymnasium, youth center or movie theatre	§41-29-142
Distribution of a controlled substance to person or persons under age 21	§41-29-145
Second or subsequent offense under the Uniform Controlled Substances Law	§41-29-147
Offense under the Uniform Controlled Substances Law committed while in the possession of a firearm	§41-29-152
Possession of precursors while in the presence of a child	§41-29-313(5)
Possession of precursors while at a hotel or apartment	§41-29-313(6)
Possession of precursors while in possession of a firearm	§41-29-313(7)
Possession of precursors on premises that are booby trapped	§41-29-313(8)
Felony committed for discriminatory reason (hate crime)	§99-19-301 through 99-19-307
Felony committed against person 65 or older or victim who is disabled	§99-19-361 through 99-19-357

### Changes in Eligibility by Offense

Offense	Code Section	Previous Law	Current Law
<b>Previously eligible offenses that are ineligible under current law</b>			
Strong arm carjacking	§97-3-117(2)	Parole	No Parole
Burglary of a dwelling*	§97-17-23(1)	Parole	No Parole
Shooting into a dwelling	§97-37-29	Parole	No Parole
<b>Previously ineligible offenses that are eligible under current law</b>			
Abuse of a vulnerable adult	§ 43-47-1(3)	No Parole	Parole
Arson	§97-17-1, 5, 7, 9	No Parole	Parole
Sale or manufacture of more than one kilogram of marijuana*	§41-29-139(b)(1)	No Parole	Parole*

\*Prior to the passage of HB 585, burglaries of unoccupied dwellings were granted parole dates. HB 585 renders all residential burglaries – occupied or not – parole ineligible.

\*\*Offenders sentenced for trafficking marijuana, defined as the possession of one kilogram or more, are ineligible for parole. However, judges can depart from sentencing an offender under the trafficking statute if certain findings are made. See note about trafficking safety valves on page 9..



# Specialty Parole Provisions

## Specialty Parole Provisions

### **Geriatric Parole**

HB 585 establishes geriatric parole for offenders who meet the following requirements:

- At least 60 years old and has been incarcerated for at least 10 years.
- Has served at least one-fourth of the sentence imposed by the court.
- Not sentenced as a habitual offender under sections §99-19-81 through §99-19-87.
- Not sentenced for a crime of violence under section §97-3-2.
- Not sentenced for an offense that specifically prohibits parole release.
- Not sentenced for trafficking controlled substances under section §41-29-139(f).
- Not sentenced for a sex crime.

### **Nonviolent Retroactive Parole Eligibility**

Any offender incarcerated for a nonviolent offense who has served at least 25 percent of his sentence but is otherwise ineligible for parole can now petition the sentencing judge for parole eligibility. If the judge approves the request for parole consideration, the offender will be referred to the parole board for a hearing.

Offenders eligible to petition the sentencing judge for parole consideration under this provision include nonviolent habitual offenders and nonviolent offenders sentenced under an enhancement, including offenders currently in prison.



# Technical Violations of Community Supervision

## Technical Violations of Community Supervision Conditions

HB 585 made a number of changes to how field officers, as well as courts and the parole board, can respond to technical violations of community supervision by probationers, parolees, or offenders on post-release supervision. Technical violations are defined as any violation of the conditions of community supervision except a new criminal conviction. Technical violations include arrests.

### **Graduated Sanctions**

Currently, MDOC field officers have only two options in responding to technical violations: ignore the conduct or initiate a revocation to prison. HB 585 gives field officers the authority to impose intermediate sanctions in response to technical violations prior to initiating a formal revocation. In determining the sanction to be imposed, field officers are required to take into account the frequency and severity of the violation, as well as the offender's risk level. These sanctions range from mandatory community service work and increased reporting requirements to electronic monitoring and short jail stays up to 2 days (with a maximum of 4 days in jail over a one-month period).

MDOC field officers are also authorized to respond to positive behavior with incentives such as a verbal or written recognition or reduced reporting requirements. Additionally, offenders who complete a month of supervision without any violations are eligible to earn credits equal to the number of days in that month (i.e. 30 for 30). Any earned discharge credits earned will be applied to an offender's sentence discharge date.

HB 585 requires MDOC field officers to notify the sentencing court any time they impose an intermediate sanction. Notification must include the type of sanction imposed. When the technical violation is an arrest for a new criminal offense, the field officer must notify the court within forty-eight (48) hours of becoming aware of the arrest. Additionally, the Department of Corrections is required to notify the sentencing court or the parole board when an offender on supervision is within 60 days of discharge from supervision.

### **Revocations**

HB 585 changes how courts and the parole board can impose revocations for technical violations of community supervision, including: (1) timelines from arrest to revocation hearing and (2) available sentences. These laws only apply to technical violations (including arrest) and do not apply to revocations for new criminal convictions.

*Timelines:* Parolees who are detained awaiting revocation hearings for a technical violation of their community supervision can only be held in jail for a maximum of 21 days. Probationers and offenders on post-release supervision who detained awaiting revocation hearings can only be held in jail for a maximum of 30 days. If the revocation hearing is not held in the required timeframe, the offender must be released from custody.

*Sentencing:* Revocations by courts or the parole board are limited to the below terms:

- On the first revocation, judges and the parole board may sentence to a term of no more than 90 days in a Technical Violation Center (TVC) or Restitution Center.
- On the second revocation, judges and the parole board may sentence to a term of no more than 120 days in a TVC or Restitution Center.
- On the third revocation, judges or the parole board may sentence to either term of no more than 180 days in a TVC or Restitution Center or up to the remainder of the sentence in prison.
- On subsequent revocations, judges or the parole board may send offenders to prison for up to the remainder of the sentence.

Technical Violation Centers (TVC's) are secure centers, separate from the general prison population, designed to address those underlying factors leading to technical violations, including substance abuse. Revocation terms served in TVC's or Restitution Centers may not be reduced and the violator must serve the full term imposed.