

STATE OF MISSISSIPPI



JIM HOOD  
ATTORNEY GENERAL

OPINIONS  
DIVISION

September 21, 2018

Honorable Joseph H. Loper, Jr.  
Circuit Court Judge  
55 East Quinn Street  
Ackerman, MS 39735

Re: Parole Eligibility

Dear Judge Loper:

Attorney General Jim Hood is in receipt of your request for an official opinion, and it has been assigned to me for research and reply.

### Background and Issues Presented

Your request states:

My office is inundated with petitions from inmates requesting that I authorize them for parole consideration. Consequently, I would like to have an official opinion from your office concerning the interpretation of Miss. Code Ann. Section 47-7-3(1)(g)(iii). It provides as follows:

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

Miss. Code Ann. Section 47-7-3(a) provides as follows: "No prisoner convicted as confirmed and habitual criminal under the provisions of Sections 99-19-81 through 99-19-87 shall be eligible for parole."

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It seems to me that the only individuals that are allowed to seek parole authorization pursuant to Miss. Code Ann. Section 47-7-3(1)(g)(iii), are individuals that have been sentenced as habitual offenders for committing non-violent crimes. However, based on the large number of requests that I receive from inmates that do not fall under that category, I am interested in knowing how the statute is being interpreted by your office and by the parole board. Consequently, please provide me with an official opinion from your office defining which offenders are allowed to seek authorization for parole pursuant to Miss. Code Ann. Section 47-7-3(1)(g)(iii).

### Response

While this office cannot provide a comprehensive listing of offenders entitled to seek judicial authorization under Miss. Code Ann. Section 47-7-3(1)(g)(iii) specifically, we can generally provide our interpretation. Section 47-7-3(1)(a) of the Mississippi Code provides:

(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; . . . (Emphasis added).

Paragraph (1) of Section 47-7-3 provides the general requirements and parameters that entitle a person to be considered for parole. Paragraph 1(a) is an exception to the general rule of Paragraph (1) and states that “[n]o prisoner convicted as a confirmed and habitual criminal under [specified laws] . . . shall be eligible for parole . . .” Thus, under a combined reading of Paragraphs (1) and (1)(a), an offender sentenced as an “habitual” criminal would not be eligible for parole.

Notwithstanding the foregoing, however, Section 47-7-3(g)(iii) provides a limited exception to the prohibition of Section 47-7-3(1)(a) against parole consideration for habitual criminals. Section 47-7-3(g)(iii) provides:

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

Miss. Code Ann. Section 47-7-3 (as amended)(emphasis added). Paragraph (g)(iii), thus, provides that notwithstanding the prohibition against paroling habitual offenders under Paragraph (1)(a), "any offender" not convicted of a crime under Section 97-3-2 may be considered for parole if certain time-served requirements are met and the appropriate judge authorizes parole consideration. Section 99-19-83 provides for mandatory sentencing of habitual offenders who have committed violent crimes identified in Section 97-3-2. Section 99-19-81, however, allows for sentencing of habitual offenders who have not committed crimes of violence under Section 97-3-2. Thus, an offender could be sentenced as an habitual offender but not have committed a crime under Section 97-3-2. Under these circumstances, such a person would come within the provisions of Paragraph (g)(iii); and upon authorization by the appropriate judge, such offender would be eligible for parole consideration.

To summarize, it is the opinion of this office that an habitual offender sentenced under Section 99-19-81<sup>1</sup> who has not committed a violent crime under Section 97-3-2 and who obtains authorization by the appropriate judge is eligible for parole consideration.

If this office can be of further assistance, do not hesitate to contact us.

Very truly yours,

JIM HOOD, ATTORNEY GENERAL

By:



Emiko Hemleben  
Special Assistant Attorney General

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<sup>1</sup> We note that Section 99-19-81 contains a provision that "such sentence [imposed under this section] shall not be reduced or suspended **nor shall such person be eligible for parole** or probation." Given that Section 47-7-3(g)(iii) provides a limited exception to the prohibition of Section 47-7-3(1)(a) which bans parole for persons sentenced under Section 99-19-81, we read the parole consideration granted under Section 47-7-3(g)(iii) as the controlling statute.