

By: Representative Ford

To: Penitentiary

HOUSE BILL NO. 557
(As Sent to Governor)

1 AN ACT TO REENACT SECTIONS 47-5-1101, 47-5-1103, 47-5-1105,
2 47-5-1107, 47-5-1109, 47-5-1111, 47-5-1113, 47-5-1115, 47-5-1117,
3 47-5-1119 AND 47-5-1121, MISSISSIPPI CODE OF 1972, WHICH
4 CONSTITUTE THE SPECIAL NEEDS PRISON PROGRAM OF 1994; TO AMEND
5 SECTION 47-5-1123, MISSISSIPPI CODE OF 1972, TO EXTEND FROM JULY
6 1, 1999, TO JULY 1, 2001, THE DATE ON WHICH THE SPECIAL NEEDS
7 PRISON PROGRAM OF 1994 WILL BE REPEALED; AND FOR RELATED PURPOSES.

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

9 SECTION 1. Section 47-5-1101, Mississippi Code of 1972, is
10 reenacted as follows:

11 47-5-1101. Sections 47-5-1101 through 47-5-1123 shall be
12 cited as the "Special Needs Prison Program of 1994."

13 SECTION 2. Section 47-5-1103, Mississippi Code of 1972, is
14 reenacted as follows:

15 47-5-1103. As used in Sections 47-5-1101 through 47-5-1123,
16 unless the context otherwise requires:

17 (a) "Commissioner" means the Commissioner of
18 Corrections.

19 (b) "Contractor" means any private entity entering into
20 a contractual agreement with the commissioner to provide special
21 needs facilities or correctional services to inmates under the
22 custody of the department.

23 (c) "Department" means the Department of Corrections.

24 (d) "Special Needs" means an inmate with diminished
25 mental or physical health requiring specialized healthcare
26 facilities or services. This does not include HIV positive
27 inmates.

28 SECTION 3. Section 47-5-1105, Mississippi Code of 1972, is

29 reenacted as follows:

30 47-5-1105. (1) The commissioner is authorized to enter into
31 contracts for a special needs correctional facility and services
32 only as provided in Sections 47-5-1101 through 47-5-1123.

33 (2) No contract shall be entered into unless it offers cost
34 savings of at least ten percent (10%) to the department.

35 (3) Any inmate sentenced to the custody of the department
36 identified as having a special need may be eligible to be
37 incarcerated in a special needs correctional facility in which a
38 contractor is providing correctional services.

39 (4) The rates and benefits for correctional services shall
40 be negotiated by the commissioner based upon American Correction
41 Association standards, state law and court orders.

42 (5) The special needs facility or the site for a proposed
43 facility must comply with all local zoning ordinances and
44 regulations.

45 (6) The department may contract for the construction or
46 leasing of a special needs facility. Any facility operated by a
47 private contractor must house medium or maximum security inmates.

48 SECTION 4. Section 47-5-1107, Mississippi Code of 1972, is
49 reenacted as follows:

50 47-5-1107. All facilities that are governed by this chapter
51 shall be designed, constructed, and at all times maintained and
52 operated in accordance with the American Correctional Association
53 Standards in force at the time of contracting, as well as with
54 subsequent ACA Standards to the extent that they are approved by
55 the contracting agency. The facility shall meet the percentage of
56 standards required for accreditation by the American Correctional
57 Association.

58 In addition, all facilities shall at all times comply with
59 all federal and state constitutional standards, federal, state and
60 local laws, and all court orders.

61 SECTION 5. Section 47-5-1109, Mississippi Code of 1972, is

62 reenacted as follows:

63 47-5-1109. The initial contract for the operation of a
64 facility or for incarceration of prisoners or inmates therein
65 shall be for a period of not more than five (5) years with an
66 option to renew for an additional period of two (2) years.
67 Contracts for construction, purchase, or lease of a facility shall
68 not exceed a term of fifteen (15) years. Any contract for housing
69 beyond the initial five (5) years shall be subject to annual
70 appropriation by the Legislature if public funds are used to
71 finance the construction.

72 SECTION 6. Section 47-5-1111, Mississippi Code of 1972, is
73 reenacted as follows:

74 47-5-1111. (1) A contractor's employees serving as
75 "correctional officers" shall be allowed to use force only while
76 on the grounds of a facility, while transporting inmates, and
77 while pursuing escapees from a facility.

78 (2) A contractor shall be authorized to use only such
79 nondeadly force as the circumstances require in the following
80 situations: to prevent the commission of a felony or misdemeanor,
81 including escape; to defend oneself or others against physical
82 assault; to prevent serious damage to property; to enforce
83 institutional regulations and orders; and to prevent or quell a
84 riot.

85 (3) A contractor's employees, while performing their
86 officially assigned duties relating to the custody, control,
87 transportation, recapture or arrest of any escaped offender
88 assigned to a contract prison, shall be authorized to use force
89 and firearms as necessary to pursue and recapture escapees.

90 (4) Private correctional officers who have been
91 appropriately certified as determined by the contracting agency
92 and trained pursuant to the provisions of subsection (5) shall
93 have the right to carry and use firearms and shall exercise such
94 authority and use deadly force only as a last resort, and then

95 only to prevent an act that could result in death or serious
96 bodily injury to oneself or to another person.

97 (5) Private correctional officers shall be trained in the
98 use of force and the use of firearms, in accordance with ACA
99 Standards and shall be trained, at the contractor's expense, at
100 the facilities that train public prison and jail personnel for at
101 least the minimum number of hours that public personnel are
102 currently trained.

103 SECTION 7. Section 47-5-1113, Mississippi Code of 1972, is
104 reenacted as follows:

105 47-5-1113. All employees of a facility operated pursuant to
106 this chapter must receive, at a minimum, the same quality and
107 quantity of training as that required by the state, for employees
108 of public correctional and detention facilities. All training
109 expenses shall be the responsibility of the contractor.

110 SECTION 8. Section 47-5-1115, Mississippi Code of 1972, is
111 reenacted as follows:

112 47-5-1115. A contract for correctional services shall not be
113 entered into unless the following requirements are met:

114 (a) The contractor provides an adequate plan of
115 insurance, specifically including insurance for civil rights
116 claims, as determined by an independent risk management/actuarial
117 firm with demonstrated experience in public liability for state
118 governments. In determining the adequacy of the plan, such firm
119 shall determine whether:

120 (i) The insurance is adequate to protect the state
121 from any and all actions by a third party against the contractor
122 or the state as a result of the contract;

123 (ii) The insurance is adequate to protect the
124 state against any and all claims arising as a result of any
125 occurrence during the term of the contract; that is, the insurance
126 is adequate on an occurrence basis, not on a claims-made basis;

127 (iii) The insurance is adequate to assure the

128 contractor's ability to fulfill its contract with the state in all
129 respects, and to assure that the contractor is not limited in this
130 ability because of financial liability which results from
131 judgments; and

132 (iv) The insurance is adequate to satisfy such
133 other requirements specified by the independent risk
134 management/actuarial firm.

135 (b) The sovereign immunity of the state shall not apply
136 to the contractor. Neither the contractor nor the insurer of the
137 contractor may plead the defense of sovereign immunity in any
138 action arising out of the performance of the contract.

139 SECTION 9. Section 47-5-1117, Mississippi Code of 1972, is
140 reenacted as follows:

141 47-5-1117. A plan shall be developed and certified by the
142 commissioner which demonstrates the method by which the state
143 would resume control of the prison upon contract termination.
144 Such plan shall be submitted for review and comment to law
145 enforcement agencies, the district attorney and circuit judges in
146 the county in which the prison is located.

147 SECTION 10. Section 47-5-1119, Mississippi Code of 1972, is
148 reenacted as follows:

149 47-5-1119. (1) The commissioner shall monitor any contracts
150 with prison contractors providing correctional services and shall
151 report at least annually, or as requested, to the Senate Committee
152 on Corrections and the House Penitentiary Committee on the
153 performance of the contractor.

154 (2) The medical director of the department shall be
155 responsible for monitoring all aspects of the facility. The
156 medical director may designate a person to assist in monitoring at
157 the facility, as the medical director determines to be necessary.

158 The medical director shall be provided an on-site work area,
159 shall be on-site on a daily basis, and shall have access to all
160 areas of the facility and to inmates and staff at all times. The

161 contractor shall provide any and all data, reports and other
162 materials that the medical director determines are necessary to
163 carry out monitoring responsibilities under this section.

164 SECTION 11. Section 47-5-1121, Mississippi Code of 1972, is
165 reenacted as follows:

166 47-5-1121. No contract for private correctional facilities
167 or services shall authorize, allow, or imply a delegation of the
168 authority or responsibility of the state to a prison contractor
169 to:

170 (a) Classify inmates or place inmates in less
171 restrictive custody or more restrictive custody;

172 (b) Transfer an inmate, although the contractor may
173 recommend in writing that the department transfer a particular
174 inmate;

175 (c) Grant, deny, or revoke sentence credits;

176 (d) Recommend that the parole board either deny or
177 grant parole, although the contractor may submit written reports
178 that have been prepared in the ordinary course of business;

179 (e) Develop and implement procedures for calculating
180 sentence credits or inmate release and parole eligibility dates;

181 (f) Require an inmate to work, except on
182 department-approved projects; approve the type of work that
183 inmates may perform; or award or withhold wages or sentence
184 credits based on the manner in which individual inmates perform
185 such work; or

186 (g) Determine inmate eligibility for furlough and work
187 release.

188 SECTION 12. Section 47-5-1123, Mississippi Code of 1972, is
189 amended as follows:

190 47-5-1123. Sections 47-5-1101 through 47-5-1121 shall repeal
191 July 1, 2001.

192 SECTION 13. This act shall take effect and be in force from
193 and after July 1, 1999.