

By: Representative Ford

To: Penitentiary

HOUSE BILL NO. 466

1 AN ACT TO REENACT SECTIONS 47-5-1101 THROUGH 47-5-1121,  
 2 MISSISSIPPI CODE OF 1972, WHICH ESTABLISHES THE SPECIAL NEEDS  
 3 PRISON PROGRAM OF 1994, PROVIDE FOR THE CONTRACTING OF SPECIAL  
 4 NEEDS FACILITIES, ELIGIBILITY OF INMATES, STANDARDS FOR DESIGN AND  
 5 OPERATION OF FACILITIES, PLACES, TERM LIMITS ON CONTRACTS FOR  
 6 OPERATION OF THE FACILITIES AND PROVIDES RESTRICTIONS UPON THE USE  
 7 OF FORCE AND FIREARMS; TO AMEND SECTION 47-5-1123, MISSISSIPPI  
 8 CODE OF 1972, TO EXTEND THE DATE OF THE REPEALER ON THE REENACTED  
 9 CODE SECTIONS FROM JULY 1, 2001, TO JULY 1, 2002; AND FOR RELATED  
 10 PURPOSES.

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

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

14 47-5-1101. Sections 47-5-1101 through 47-5-1123 shall be  
 15 cited as the "Special Needs Prison Program of 1994."

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

18 47-5-1103. As used in Sections 47-5-1101 through 47-5-1123,  
 19 unless the context otherwise requires:

20 (a) "Commissioner" means the Commissioner of  
 21 Corrections.

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

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

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

31 SECTION 3. Section 47-5-1105, Mississippi Code of 1972, is  
32 reenacted as follows:

33 47-5-1105. (1) The commissioner is authorized to enter into  
34 contracts for a special needs correctional facility and services  
35 only as provided in Sections 47-5-1101 through 47-5-1123.

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

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

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

45 (5) The special needs facility or the site for a proposed  
46 facility must comply with all local zoning ordinances and  
47 regulations.

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

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

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

61 In addition, all facilities shall at all times comply with  
62 all federal and state constitutional standards, federal, state and  
63 local laws, and all court orders.

64 SECTION 5. Section 47-5-1109, Mississippi Code of 1972, is  
65 reenacted as follows:

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

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

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

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

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

93 (4) Private correctional officers who have been  
94 appropriately certified as determined by the contracting agency  
95 and trained pursuant to the provisions of subsection (5) shall  
96 have the right to carry and use firearms and shall exercise such

97 authority and use deadly force only as a last resort, and then  
98 only to prevent an act that could result in death or serious  
99 bodily injury to oneself or to another person.

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

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

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

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

115 47-5-1115. A contract for correctional services shall not be  
116 entered into unless the following requirements are met:

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

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

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

130                   (iii) The insurance is adequate to assure the  
131 contractor's ability to fulfill its contract with the state in all  
132 respects, and to assure that the contractor is not limited in this  
133 ability because of financial liability which results from  
134 judgments; and

135                   (iv) The insurance is adequate to satisfy such  
136 other requirements specified by the independent risk  
137 management/actuarial firm.

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

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

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

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

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

157           (2) The medical director of the department shall be  
158 responsible for monitoring all aspects of the facility. The  
159 medical director may designate a person to assist in monitoring at  
160 the facility, as the medical director determines to be necessary.  
161 The medical director shall be provided an on-site work area, shall  
162 be on-site on a daily basis, and shall have access to all areas of

163 the facility and to inmates and staff at all times. The  
164 contractor shall provide any and all data, reports and other  
165 materials that the medical director determines are necessary to  
166 carry out monitoring responsibilities under this section.

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

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

173 (a) Classify inmates or place inmates in less  
174 restrictive custody or more restrictive custody;

175 (b) Transfer an inmate, although the contractor may  
176 recommend in writing that the department transfer a particular  
177 inmate;

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

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

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

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

189 (g) Determine inmate eligibility for furlough and work  
190 release.

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

193 47-5-1123. Sections 47-5-1101 through 47-5-1121 shall repeal  
194 July 1, 2002.

195           SECTION 13. This act shall take effect and be in force from  
196 and after July 1, 2001.