

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.