

By: Representatives Malone, Coleman (29th)

To: Penitentiary

HOUSE BILL NO. 1450
(As Sent to Governor)

1 AN ACT TO AMEND SECTION 47-5-1111, MISSISSIPPI CODE OF 1972,
2 TO DELETE THE PROVISION THAT REQUIRES PRIVATE CORRECTIONAL
3 OFFICERS TO BE TRAINED AT THE FACILITIES THAT TRAIN PUBLIC PRISON
4 AND JAIL PERSONNEL; TO REENACT SECTIONS 47-5-1101 THROUGH
5 47-5-1121, MISSISSIPPI CODE OF 1972, WHICH ESTABLISHES THE SPECIAL
6 NEEDS PRISON PROGRAM OF 1994, PROVIDE FOR THE CONTRACTING OF
7 SPECIAL NEEDS FACILITIES, ELIGIBILITY OF INMATES, STANDARDS FOR
8 DESIGN AND OPERATION OF FACILITIES, PLACES, TERM LIMITS ON
9 CONTRACTS FOR OPERATION OF THE FACILITIES AND PROVIDES
10 RESTRICTIONS UPON THE USE OF FORCE AND FIREARMS; TO AMEND SECTION
11 47-5-1123, MISSISSIPPI CODE OF 1972, TO EXTEND THE DATE OF THE
12 REPEALER ON THE REENACTED CODE SECTIONS FROM JULY 1, 2001, TO JULY
13 1, 2002; AND FOR RELATED PURPOSES.

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

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

17 47-5-1101. Sections 47-5-1101 through 47-5-1123 shall be
18 cited as the "Special Needs Prison Program of 1994."

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

21 47-5-1103. As used in Sections 47-5-1101 through 47-5-1123,
22 unless the context otherwise requires:

23 (a) "Commissioner" means the Commissioner of
24 Corrections.

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

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

30 (d) "Special Needs" means an inmate with diminished
31 mental or physical health requiring specialized healthcare

32 facilities or services. This does not include HIV positive
33 inmates.

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

36 47-5-1105. (1) The commissioner is authorized to enter into
37 contracts for a special needs correctional facility and services
38 only as provided in Sections 47-5-1101 through 47-5-1123.

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

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

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

48 (5) The special needs facility or the site for a proposed
49 facility must comply with all local zoning ordinances and
50 regulations.

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

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

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

64 In addition, all facilities shall at all times comply with
65 all federal and state constitutional standards, federal, state and
66 local laws, and all court orders.

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

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

78 SECTION 6. Section 47-5-1111, Mississippi Code of 1972, is
79 reenacted and amended as follows:

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

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

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

96 (4) Private correctional officers who have been
97 appropriately certified as determined by the contracting agency
98 and trained pursuant to the provisions of subsection (5) shall
99 have the right to carry and use firearms and shall exercise such
100 authority and use deadly force only as a last resort, and then
101 only to prevent an act that could result in death or serious
102 bodily injury to oneself or to another person.

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

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

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

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

117 47-5-1115. A contract for correctional services shall not be
118 entered into unless the following requirements are met:

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

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

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

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

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

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

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

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

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

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

159 (2) The medical director of the department shall be
160 responsible for monitoring all aspects of the facility. The

161 medical director may designate a person to assist in monitoring at
162 the facility, as the medical director determines to be necessary.
163 The medical director shall be provided an on-site work area, shall
164 be on-site on a daily basis, and shall have access to all areas of
165 the facility and to inmates and staff at all times. The
166 contractor shall provide any and all data, reports and other
167 materials that the medical director determines are necessary to
168 carry out monitoring responsibilities under this section.

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

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

175 (a) Classify inmates or place inmates in less
176 restrictive custody or more restrictive custody;

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

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

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

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

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

191 (g) Determine inmate eligibility for furlough and work
192 release.

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

195 47-5-1123. Sections 47-5-1101 through 47-5-1121 shall repeal
196 July 1, 2002.

197 SECTION 13. This act shall take effect and be in force from
198 and after July 2, 2001.