

By: Representatives Malone, Coleman (29th)

To: Penitentiary

HOUSE BILL NO. 1481
(As Passed the House)

1 AN ACT TO AMEND SECTION 47-5-1003, MISSISSIPPI CODE OF 1972,
2 TO DELETE THE PROVISION WHICH RESTRICTS A COURT TO PLACE AN
3 OFFENDER IN THE INTENSIVE SUPERVISION PROGRAM AT THE TIME OF THE
4 INITIAL SENTENCING ONLY; TO REENACT SECTIONS 47-5-1001 THROUGH
5 47-5-1013, MISSISSIPPI CODE OF 1972, WHICH PERMIT A COURT TO PLACE
6 AN OFFENDER IN THE INTENSIVE SUPERVISION PROGRAM AS AN ALTERNATIVE
7 TO INCARCERATION, ESTABLISH RULES AND GUIDELINES FOR OPERATION OF
8 THE INTENSIVE SUPERVISION PROGRAM AND PROVIDE FOR PAYMENT OF FEES
9 BY PARTICIPANTS IN THE INTENSIVE SUPERVISION PROGRAM; TO REENACT
10 AND AMEND SECTION 47-5-1015, MISSISSIPPI CODE OF 1972, TO EXTEND
11 THE REPEALER DATE ON THE REENACTED CODE SECTIONS FROM JUNE 30,
12 2001, TO JUNE 30, 2003; AND FOR RELATED PURPOSES.

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

14 SECTION 1. Section 47-5-1003, Mississippi Code of 1972, is
15 amended as follows:

16 47-5-1003. (1) An intensive supervision program may be used
17 as an alternative to incarceration for offenders who are low risk
18 and nonviolent as selected by the department or court. Any
19 offender convicted of a sex crime or a felony for the sale or
20 manufacture of a controlled substance under the uniform controlled
21 substances law shall not be placed in the program.

22 (2) The court placing an offender in the intensive
23 supervision program may, acting upon the advice and consent of the
24 commissioner * * * and not later than one (1) year after the
25 defendant has been delivered to the custody of the department,
26 suspend the further execution of the sentence and place the
27 defendant on intensive supervision, except when a death sentence
28 or life imprisonment is the maximum penalty which may be imposed
29 or if the defendant has been confined for the conviction of a
30 felony on a previous occasion in any court or courts of the United

31 States and of any state or territories thereof or has been
32 convicted of a felony involving the use of a deadly weapon.

33 (3) To protect and to ensure the safety of the state's
34 citizens, any offender who violates an order or condition of the
35 intensive supervision program shall be arrested by the
36 correctional field officer and placed in the actual custody of the
37 Department of Corrections. Such offender is under the full and
38 complete jurisdiction of the department and subject to removal
39 from the program by the classification committee.

40 (4) When any circuit or county court places an offender in an
41 intensive supervision program, the court shall give notice to the
42 Mississippi Department of Corrections within fifteen (15) days of
43 the court's decision to place the offender in an intensive
44 supervision program. Notice shall be delivered to the central
45 office of the Mississippi Department of Corrections and to the
46 regional office of the department which will be providing
47 supervision to the offender in an intensive supervision program.

48 The courts may not require an offender to complete the
49 intensive supervision program as a condition of probation or
50 post-release supervision.

51 SECTION 2. Section 47-5-1001, Mississippi Code of 1972, is
52 reenacted as follows:

53 47-5-1001. For purposes of Sections 47-5-1001 through
54 47-5-1015, the following words shall have the meaning ascribed
55 herein unless the context shall otherwise require:

56 (a) "Approved electronic monitoring device" means a
57 device approved by the department which is primarily intended to
58 record and transmit information regarding the offender's presence
59 or nonpresence in the home.

60 (b) "Correctional field officer" means the supervising
61 probation and parole officer in charge of supervising the
62 offender.

63 (c) "Court" means a circuit court having jurisdiction
64 to place an offender to the intensive supervision program.

65 (d) "Department" means the Department of Corrections.

66 (e) "House arrest" means the confinement of a person
67 convicted or charged with a crime to his place of residence under
68 the terms and conditions established by the department or court.

69 (f) "Operating capacity" means the total number of
70 state offenders which can be safely and reasonably housed in
71 facilities operated by the department and in local or county jails
72 or other facilities authorized to house state offenders as
73 certified by the department, subject to applicable federal and
74 state laws and rules and regulations.

75 (g) "Participant" means an offender placed into an
76 intensive supervision program.

77 SECTION 3. Section 47-5-1003, Mississippi Code of 1972, is
78 reenacted as follows:

79 47-5-1003. (1) An intensive supervision program may be used
80 as an alternative to incarceration for offenders who are low risk
81 and nonviolent as selected by the department or court. Any
82 offender convicted of a sex crime or a felony for the sale or
83 manufacture of a controlled substance under the uniform controlled
84 substances law shall not be placed in the program.

85 (2) The court placing an offender in the intensive
86 supervision program may, acting upon the advice and consent of the
87 commissioner at the time of the initial sentencing only, and not
88 later than one (1) year after the defendant has been delivered to
89 the custody of the department, suspend the further execution of
90 the sentence and place the defendant on intensive supervision,
91 except when a death sentence or life imprisonment is the maximum
92 penalty which may be imposed or if the defendant has been confined
93 for the conviction of a felony on a previous occasion in any court
94 or courts of the United States and of any state or territories

95 thereof or has been convicted of a felony involving the use of a
96 deadly weapon.

97 (3) To protect and to ensure the safety of the state's
98 citizens, any offender who violates an order or condition of the
99 intensive supervision program shall be arrested by the
100 correctional field officer and placed in the actual custody of the
101 Department of Corrections. Such offender is under the full and
102 complete jurisdiction of the department and subject to removal
103 from the program by the classification committee.

104 (4) When any circuit or county court places an offender in
105 an intensive supervision program, the court shall give notice to
106 the Mississippi Department of Corrections within fifteen (15) days
107 of the court's decision to place the offender in an intensive
108 supervision program. Notice shall be delivered to the central
109 office of the Mississippi Department of Corrections and to the
110 regional office of the department which will be providing
111 supervision to the offender in an intensive supervision program.

112 The courts may not require an offender to complete the
113 intensive supervision program as a condition of probation or
114 post-release supervision.

115 SECTION 4. Section 47-5-1005, Mississippi Code of 1972, is
116 reenacted as follows:

117 47-5-1005. (1) The department shall promulgate rules that
118 prescribe reasonable guidelines under which an intensive
119 supervision program shall operate. These rules shall include, but
120 not be limited to, the following:

121 (a) The participant shall remain within the interior
122 premises or within the property boundaries of his or her residence
123 at all times during the hours designated by the correctional field
124 officer.

125 (b) Approved absences from the home may include, but
126 are not limited to, the following:

127 (i) Working or employment approved by the court or
128 department and traveling to or from approved employment;

129 (ii) Unemployed and seeking employment approved
130 for the participant by the court or department;

131 (iii) Undergoing medical, psychiatric, mental
132 health treatment, counseling or other treatment programs approved
133 for the participant by the court or department;

134 (iv) Attending an educational institution or a
135 program approved for the participant by the court or department;

136 (v) Participating in community work release or
137 community service program approved for the participant by the
138 court or department; or

139 (vi) For another compelling reason consistent with
140 the public interest, as approved by the court or department.

141 (2) The department shall select and approve all electronic
142 monitoring devices used under Sections 47-5-1001 through
143 47-5-1015.

144 (3) The department may lease the equipment necessary to
145 implement the intensive supervision program and to contract for
146 the monitoring of such devices. The department is authorized to
147 select the lowest price and best source in contracting for these
148 services.

149 SECTION 5. Section 47-5-1007, Mississippi Code of 1972, is
150 reenacted as follows:

151 47-5-1007. (1) Any participant in the intensive supervision
152 program who engages in employment shall pay a monthly fee to the
153 department for each month such person is enrolled in the program.
154 The department may waive the monthly fee if the offender is a
155 full-time student or is engaged in vocational training. Money
156 received by the department from participants in the program shall
157 be deposited into a special fund which is hereby created in the
158 State Treasury. It shall be used, upon appropriation by the
159 Legislature, for the purpose of helping to defray the costs

160 involved in administering and supervising such program.
161 Unexpended amounts remaining in such special fund at the end of a
162 fiscal year shall not lapse into the State General Fund, and any
163 interest earned on amounts in such special fund shall be deposited
164 to the credit of the special fund.

165 (2) The participant shall admit any correctional officer
166 into his residence at any time for purposes of verifying the
167 participant's compliance with the conditions of his detention.

168 (3) The participant shall make the necessary arrangements to
169 allow for correctional officers to visit the participant's place
170 of education or employment at any time, based upon the approval of
171 the educational institution or employer, for the purpose of
172 verifying the participant's compliance with the conditions of his
173 detention.

174 (4) The participant shall acknowledge and participate with
175 the approved electronic monitoring device as designated by the
176 department at any time for the purpose of verifying the
177 participant's compliance with the conditions of his detention.

178 (5) The participant shall be responsible for and shall
179 maintain the following:

180 (a) A working telephone line in the participant's home;

181 (b) A monitoring device in the participant's home, or
182 on the participant's person or both; and

183 (c) A monitoring device in the participant's home and
184 on the participant's person in the absence of a telephone.

185 (6) The participant shall obtain approval from the
186 correctional field officer before the participant changes
187 residence.

188 (7) The participant shall not commit another crime during
189 the period of home detention ordered by the court or department.

190 (8) Notice shall be given to the participant that violation
191 of the order of home detention shall subject the participant to
192 prosecution for the crime of escape as a felony.

193 (9) The participant shall abide by other conditions as set
194 by the department.

195 SECTION 6. Section 47-5-1009, Mississippi Code of 1972, is
196 reenacted as follows:

197 47-5-1009. (1) The department shall have absolute immunity
198 from liability for any injury resulting from a determination by a
199 judge or correctional officer that an offender shall be allowed to
200 participate in the electronic home detention program.

201 (2) The Department of Audit shall annually audit the records
202 of the department to ensure compliance with Sections 47-5-1001
203 through 47-5-1015.

204 SECTION 7. Section 47-5-1011, Mississippi Code of 1972, is
205 reenacted as follows:

206 47-5-1011. (1) Before entering an order for commitment for
207 electronic house arrest, the department shall inform the
208 participant and other persons residing in the home of the nature
209 and extent of the approved electronic monitoring devices by doing
210 the following:

211 (a) Securing the written consent of the participant in
212 the program to comply with the rules and regulations of the
213 program.

214 (b) Advising adult persons residing in the home of the
215 participant at the time an order or commitment for electronic
216 house arrest is entered and asking such persons to acknowledge the
217 nature and extent of approved electronic monitoring devices.

218 (c) Insuring that the approved electronic devices are
219 minimally intrusive upon the privacy of other persons residing in
220 the home while remaining in compliance with Sections 47-5-1001
221 through 47-5-1015.

222 (2) The participant shall be responsible for the cost of
223 equipment and any damage to such equipment. Any intentional
224 damage, any attempt to defeat monitoring, any committing of a

225 criminal offense or any associating with felons or known
226 criminals, shall constitute a violation of the program.

227 (3) Any person whose residence is utilized in the program
228 shall agree to keep the home drug and alcohol free and to exclude
229 known felons and criminals in order to provide a noncriminal
230 environment.

231 SECTION 8. Section 47-5-1013, Mississippi Code of 1972, is
232 reenacted as follows:

233 47-5-1013. Participants enrolled in an intensive supervision
234 program shall be required to:

235 (a) Maintain employment if physically able, or
236 full-time student status at an approved school or vocational
237 trade, and make progress deemed satisfactory to the correctional
238 field officer, or both, or be involved in supervised job searches.

239 (b) Pay restitution and program fees as directed by the
240 department. Program fees shall not be less than Fifty Dollars
241 (\$50.00) nor more than the actual cost of the program. The
242 sentencing judge may charge a program fee of less than Fifty
243 Dollars (\$50.00) in cases of extreme financial hardship, when such
244 judge determines that the offender's participation in the program
245 would provide a benefit to his community. Program fees shall be
246 deposited in the special fund created in Section 47-5-1007.

247 (c) Establish a place of residence at a place approved
248 by the correctional field officer, and not change his residence
249 without the officer's approval. The correctional officer shall be
250 allowed to inspect the place of residence for alcoholic beverages,
251 controlled substances and drug paraphernalia.

252 (d) Remain at his place of residence at all times
253 except to go to work, to attend school, to perform community
254 service and as specifically allowed in each instance by the
255 correctional field officer.

256 (e) Allow administration of drug and alcohol tests as
257 requested by the field officer.

258 (f) Perform not less than ten (10) hours of community
259 service each month.

260 (g) Meet any other conditions imposed by the court to
261 meet the needs of the offender and limit the risks to the
262 community.

263 SECTION 9. Section 47-5-1015, Mississippi Code of 1972, is
264 reenacted and amended as follows:

265 47-5-1015. Sections 47-5-1001 through 47-5-1015 shall stand
266 repealed after June 30, 2003.

267 SECTION 10. This act shall take effect and be in force from
268 and after July 1, 2001.