

By: Representative Ford

To: Penitentiary

HOUSE BILL NO. 778  
(As Sent to Governor)

1 AN ACT TO REENACT SECTIONS 47-5-1101 THROUGH 47-5-1121,  
2 MISSISSIPPI CODE OF 1972, WHICH PROVIDE FOR THE SPECIAL NEEDS  
3 PRISON PROGRAM; TO AMEND SECTION 47-5-1123, MISSISSIPPI CODE OF  
4 1972, TO EXTEND THE REPEALER; TO AUTHORIZE THE DEPARTMENT OF  
5 CORRECTIONS TO CONTRACT FOR A PILOT PROGRAM FOR INTENSIVE AND  
6 COMPREHENSIVE ALCOHOL AND OTHER DRUG TREATMENT FOR INMATES AT THE  
7 BOLIVAR COUNTY REGIONAL FACILITY; TO PLACE CERTAIN RESTRICTIONS ON  
8 THE PROGRAM; TO REQUIRE AFTER-CARE MONITORING, SERVICES AND  
9 TRANSITION PLAN FOR INMATES; TO REQUIRE RECIDIVISM REPORTS; TO  
10 CREATE NEW SECTION 47-5-934, MISSISSIPPI CODE OF 1972, TO  
11 AUTHORIZE CONTRACTS FOR THE HOUSING OF STATE INMATES IN REGIONAL  
12 FACILITIES TO BE EXTENDED IN THE EVENT SERVICES ARE DISRUPTED DUE  
13 TO A NATURAL DISASTER; 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 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, for  
106 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, 2003.

197           **SECTION 13.** (1) (a) The Department of Corrections may  
198 contract with the Bolivar County Regional Facility for a five-year  
199 pilot program dedicated to an intensive and comprehensive alcohol  
200 and other drug treatment program for not more than two hundred  
201 fifty (250) inmates. The Bolivar County Regional Facility shall  
202 have the option of canceling the contract for the drug treatment  
203 program after giving the Department of Corrections thirty (30)  
204 days' notice of its intent to cancel. The program shall be a  
205 prison-based treatment program designed to reduce substance abuse  
206 by inmates, correct dysfunctional thinking and behavioral  
207 patterns, and prepare inmates to make a successful and crime-free  
208 readjustment to the community.

209           (b) The Department of Corrections shall reimburse the  
210 Bolivar County Regional Facility at the per diem rate allowed  
211 under Section 47-5-933.

212           (2) (a) An inmate who is within eighteen (18) months of his  
213 earned release date or parole date may be placed in the program.

214           (b) The Department of Corrections shall remove any  
215 inmate within seventy-two (72) hours after being notified by the  
216 Bolivar County Regional Facility that the inmate is violent or  
217 refuses to participate in the drug treatment program.

218           (3) The program shall consist, but is not limited to, the  
219 following components:

220           (a) An assessment and placement component using a  
221 recidivism needs assessment of the inmates;

222           (b) An intensive and comprehensive treatment and  
223 rehabilitation component which addresses the specific drug or  
224 alcohol problem of the inmate. This component shall include



225 relapse prevention strategies, anger management strategies and  
226 regimented discipline strategies.

227           (c) An aftercare post-release component that has a  
228 specific transition plan for each inmate. The transition plan  
229 must address specific post-release needs such as employment,  
230 housing, medical care, relapse prevention and treatment. The plan  
231 shall require personnel to assist the inmate with these needs and  
232 to assist in finding community-based programs for the inmate. The  
233 plan shall require the inmate to be tracked in at least thirty-day  
234 intervals to measure compliance with his established transition  
235 plan.

236           (d) A monitoring assessment of recidivism containing  
237 post-release history of substance abuse, breaches of trust,  
238 arrests, convictions, employment, community functioning, and  
239 marital and family interaction.

240           (4) The department shall file a report annually on the  
241 program with specific data on recidivism of inmates including the  
242 data required in subsection (3)(d).

243           (5) The program authorized under this section may be renewed  
244 if it meets performance requirements as may be determined by the  
245 Legislature.

246           (6) This section shall repeal on January 1, 2008.

247           **SECTION 14.** The following shall be codified as Section  
248 47-5-934, Mississippi Code of 1972:

249           47-5-934. If a regional facility authorized under Section  
250 47-5-931 experiences a disruption in the housing of state inmates  
251 due to a natural disaster in which the Governor has declared a  
252 disaster emergency under the laws of this state or the President  
253 of the United States has declared an emergency or major disaster  
254 to exist in this state, notwithstanding the limitation prescribed  
255 in Section 47-5-933, the term of the contract entered into by the  
256 Department of Corrections and the board of supervisors of the





257 involved county or counties may be extended for a period not to  
258 exceed five (5) years.

259         **SECTION 15.** This act shall take effect and be in force from  
260 and after July 1, 2002.

