HOUSE BILL NO. 785

AN ACT TO REENACT SECTIONS 47-5-1101 THROUGH 47-5-1121, MISSISSIPPI CODE OF 1972, WHICH PROVIDE FOR THE SPECIAL NEEDS PRISON PROGRAM; TO AMEND SECTION 47-5-1123, MISSISSIPPI CODE OF 1972, TO EXTEND THE REPEALER ON SUCH SECTIONS OF LAW; AND FOR RELATED PURPOSES.

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

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

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

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

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

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

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

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

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

SECTION 3. Section 47-5-1105, Mississippi Code of 1972, is reenacted as follows:
47-5-1105. (1) The commissioner is authorized to enter into contracts for a special needs correctional facility and services only as provided in Sections 47-5-1101 through 47-5-1123.

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

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

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

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

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

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

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

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

SECTION 5. Section 47-5-1109, Mississippi Code of 1972, is reenacted as follows:
47-5-1109. The initial contract for the operation of a facility or for incarceration of prisoners or inmates therein shall be for a period of not more than five (5) years with an option to renew for an additional period of two (2) years.

Contracts for construction, purchase, or lease of a facility shall not exceed a term of fifteen (15) years. Any contract for housing beyond the initial five (5) years shall be subject to annual appropriation by the Legislature if public funds are used to finance the construction.

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

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

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

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

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

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

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

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

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

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

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

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

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

(iii) The insurance is adequate to assure the contractor's ability to fulfill its contract with the state in all
respects, and to assure that the contractor is not limited in this
ability because of financial liability which results from
judgments; and
(iv) The insurance is adequate to satisfy such
other requirements specified by the independent risk
management/actuarial firm.

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

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

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

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

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

(2) The medical director of the department shall be
responsible for monitoring all aspects of the facility. The
medical director may designate a person to assist in monitoring at
the facility, as the medical director determines to be necessary.
The medical director shall be provided an on-site work area, shall
be on-site on a daily basis, and shall have access to all areas of
the facility and to inmates and staff at all times. The
contractor shall provide any and all data, reports and other
materials that the medical director determines are necessary to
carry out monitoring responsibilities under this section.

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

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

(a) Classify inmates or place inmates in less
restrictive custody or more restrictive custody;
(b) Transfer an inmate, although the contractor may
recommend in writing that the department transfer a particular
inmate;
(c) Grant, deny, or revoke sentence credits;
(d) Recommend that the parole board either deny or
grant parole, although the contractor may submit written reports
that have been prepared in the ordinary course of business;
(e) Develop and implement procedures for calculating
sentence credits or inmate release and parole eligibility dates;
(f) Require an inmate to work, except on
department-approved projects; approve the type of work that
inmates may perform; or award or withhold wages or sentence
credits based on the manner in which individual inmates perform
such work; or
(g) Determine inmate eligibility for furlough and work
release.

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

47-5-1123. Sections 47-5-1101 through 47-5-1121 shall repeal
July 1, 2004.

**SECTION 13.** This act shall take effect and be in force from
and after July 1, 2003.