

By: Representative Watson

To: Corrections;
Appropriations

HOUSE BILL NO. 406

1 AN ACT TO REENACT SECTIONS 47-5-1101 THROUGH 47-5-1121,
2 MISSISSIPPI CODE OF 1972, WHICH CREATE THE SPECIAL NEEDS PRISON
3 PROGRAM; TO AMEND SECTION 47-5-1123, MISSISSIPPI CODE OF 1972, TO
4 EXTEND THE REPEAL DATE ON THOSE REENACTED SECTIONS FROM JULY 1,
5 2004, TO JULY 1, 2006; AND FOR RELATED PURPOSES.

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

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

9 47-5-1101. Sections 47-5-1101 through 47-5-1123 shall be
10 cited as the "Special Needs Prison Program of 1994."

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

13 47-5-1103. As used in Sections 47-5-1101 through 47-5-1123,
14 unless the context otherwise requires:

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

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

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

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

26 **SECTION 3.** Section 47-5-1105, Mississippi Code of 1972, is
27 reenacted as follows:



28 47-5-1105. (1) The commissioner is authorized to enter into
29 contracts for a special needs correctional facility and services
30 only as provided in Sections 47-5-1101 through 47-5-1123.

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

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

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

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

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

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

48 47-5-1107. All facilities that are governed by this chapter
49 shall be designed, constructed, and at all times maintained and
50 operated in accordance with the American Correctional Association
51 Standards in force at the time of contracting, as well as with
52 subsequent ACA Standards to the extent that they are approved by
53 the contracting agency. The facility shall meet the percentage of
54 standards required for accreditation by the American Correctional
55 Association.

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

59 **SECTION 5.** Section 47-5-1109, Mississippi Code of 1972, is
60 reenacted as follows:



61 47-5-1109. The initial contract for the operation of a
62 facility or for incarceration of prisoners or inmates therein
63 shall be for a period of not more than five (5) years with an
64 option to renew for an additional period of two (2) years.
65 Contracts for construction, purchase, or lease of a facility shall
66 not exceed a term of fifteen (15) years. Any contract for housing
67 beyond the initial five (5) years shall be subject to annual
68 appropriation by the Legislature if public funds are used to
69 finance the construction.

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

72 47-5-1111. (1) A contractor's employees serving as
73 "correctional officers" shall be allowed to use force only while
74 on the grounds of a facility, while transporting inmates, and
75 while pursuing escapees from a facility.

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

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

88 (4) Private correctional officers who have been
89 appropriately certified as determined by the contracting agency
90 and trained pursuant to the provisions of subsection (5) shall
91 have the right to carry and use firearms and shall exercise such
92 authority and use deadly force only as a last resort, and then



93 only to prevent an act that could result in death or serious
94 bodily injury to oneself or to another person.

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

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

102 47-5-1113. All employees of a facility operated pursuant to
103 this chapter must receive, at a minimum, the same quality and
104 quantity of training as that required by the state, for employees
105 of public correctional and detention facilities. All training
106 expenses shall be the responsibility of the contractor.

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

109 47-5-1115. A contract for correctional services shall not be
110 entered into unless the following requirements are met:

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

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

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

124 (iii) The insurance is adequate to assure the
125 contractor's ability to fulfill its contract with the state in all



126 respects, and to assure that the contractor is not limited in this
127 ability because of financial liability which results from
128 judgments; and

129 (iv) The insurance is adequate to satisfy such
130 other requirements specified by the independent risk
131 management/actuarial firm.

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

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

138 47-5-1117. A plan shall be developed and certified by the
139 commissioner which demonstrates the method by which the state
140 would resume control of the prison upon contract termination.
141 Such plan shall be submitted for review and comment to law
142 enforcement agencies, the district attorney and circuit judges in
143 the county in which the prison is located.

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

146 47-5-1119. (1) The commissioner shall monitor any contracts
147 with prison contractors providing correctional services and shall
148 report at least annually, or as requested, to the Senate Committee
149 on Corrections and the House Penitentiary Committee on the
150 performance of the contractor.

151 (2) The medical director of the department shall be
152 responsible for monitoring all aspects of the facility. The
153 medical director may designate a person to assist in monitoring at
154 the facility, as the medical director determines to be necessary.
155 The medical director shall be provided an on-site work area, shall
156 be on-site on a daily basis, and shall have access to all areas of
157 the facility and to inmates and staff at all times. The
158 contractor shall provide any and all data, reports and other



159 materials that the medical director determines are necessary to
160 carry out monitoring responsibilities under this section.

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

163 47-5-1121. No contract for private correctional facilities
164 or services shall authorize, allow, or imply a delegation of the
165 authority or responsibility of the state to a prison contractor
166 to:

167 (a) Classify inmates or place inmates in less
168 restrictive custody or more restrictive custody;

169 (b) Transfer an inmate, although the contractor may
170 recommend in writing that the department transfer a particular
171 inmate;

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

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

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

178 (f) Require an inmate to work, except on
179 department-approved projects; approve the type of work that
180 inmates may perform; or award or withhold wages or sentence
181 credits based on the manner in which individual inmates perform
182 such work; or

183 (g) Determine inmate eligibility for furlough and work
184 release.

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

187 47-5-1123. Sections 47-5-1101 through 47-5-1121 shall stand
188 repealed on July 1, 2006.

189 **SECTION 13.** This act shall take effect and be in force from
190 and after July 1, 2004.

