

By: Representative Malone

To: Corrections

HOUSE BILL NO. 637

1 AN ACT TO REENACT SECTIONS 47-5-1001, 47-5-1003, 47-5-1005,
2 47-5-1007, 47-5-1009, 47-5-1011, 47-5-1013 AND 47-5-1015,
3 MISSISSIPPI CODE OF 1972, WHICH ESTABLISH THE INTENSIVE
4 SUPERVISION PROGRAM AND PERMIT A COURT TO PLACE AN OFFENDER IN THE
5 PROGRAM AS AN ALTERNATIVE TO INCARCERATION, PROVIDE RULES AND
6 GUIDELINES FOR OPERATION OF THE PROGRAM, PROVIDE PAYMENT OF FEES
7 BY PARTICIPANTS OF THE PROGRAM AND WHICH WERE REPEALED BY
8 OPERATION OF LAW ON JULY 1, 2004; TO AMEND REENACTED SECTION
9 47-5-1013, MISSISSIPPI CODE OF 1972, TO INCREASE THE MONTHLY FEE
10 THAT IS PAID BY PARTICIPANTS OF THE INTENSIVE SUPERVISION PROGRAM
11 TO THE DEPARTMENT OF CORRECTIONS; TO AMEND REENACTED SECTION
12 47-5-1015, MISSISSIPPI CODE OF 1972, TO EXTEND THE DATE OF REPEAL
13 ON THE REENACTED SECTIONS FROM JUNE 30, 2004, TO JUNE 30, 2006; TO
14 REQUIRE THAT PARTICIPANTS WHO HAVE BEEN IN THE INTENSIVE
15 SUPERVISION PROGRAM SINCE JULY 1, 2004, WHETHER PLACED INTO THE
16 PROGRAM BEFORE OR AFTER JULY 1, 2004, PAY A \$50.00 MONTHLY
17 SUPERVISION FEE TO THE DEPARTMENT OF CORRECTIONS FOR THEIR
18 SUPERVISION FROM JULY 1, 2004, OR FROM THE DATE THE PARTICIPANT
19 WAS PLACED IN THE PROGRAM AFTER JULY 1, 2004, UNTIL THE COMPLETION
20 OF THE PROGRAM, OR THE EFFECTIVE DATE OF THIS ACT, WHICHEVER
21 OCCURS FIRST; AND FOR RELATED PURPOSES.

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

23 **SECTION 1.** Section 47-5-1001, Mississippi Code of 1972, is
24 reenacted as follows:

25 47-5-1001. For purposes of Sections 47-5-1001 through
26 47-5-1015, the following words shall have the meaning ascribed
27 herein unless the context shall otherwise require:

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

32 (b) "Correctional field officer" means the supervising
33 probation and parole officer in charge of supervising the
34 offender.

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

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

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

41 (f) "Operating capacity" means the total number of
42 state offenders which can be safely and reasonably housed in
43 facilities operated by the department and in local or county jails
44 or other facilities authorized to house state offenders as
45 certified by the department, subject to applicable federal and
46 state laws and rules and regulations.

47 (g) "Participant" means an offender placed into an
48 intensive supervision program.

49 **SECTION 2.** Section 47-5-1003, Mississippi Code of 1972, is
50 reenacted as follows:

51 47-5-1003. (1) An intensive supervision program may be used
52 as an alternative to incarceration for offenders who are low risk
53 and nonviolent as selected by the department or court. Any
54 offender convicted of a sex crime or a felony violation of Section
55 41-29-139(a)(1) shall not be placed in the program.

56 (2) The court placing an offender in the intensive
57 supervision program may, acting upon the advice and consent of the
58 commissioner and not later than one (1) year after the defendant
59 has been delivered to the custody of the department, suspend the
60 further execution of the sentence and place the defendant on
61 intensive supervision, except when a death sentence or life
62 imprisonment is the maximum penalty which may be imposed or if the
63 defendant has been confined for the conviction of a felony on a
64 previous occasion in any court or courts of the United States and
65 of any state or territories thereof or has been convicted of a
66 felony involving the use of a deadly weapon.

67 (3) To protect and to ensure the safety of the state's
68 citizens, any offender who violates an order or condition of the
69 intensive supervision program may be arrested by the correctional

70 field officer and placed in the actual custody of the Department
71 of Corrections. Such offender is under the full and complete
72 jurisdiction of the department and subject to removal from the
73 program by the classification hearing officer.

74 (4) When any circuit or county court places an offender in
75 an intensive supervision program, the court shall give notice to
76 the Mississippi Department of Corrections within fifteen (15) days
77 of the court's decision to place the offender in an intensive
78 supervision program. Notice shall be delivered to the central
79 office of the Mississippi Department of Corrections and to the
80 regional office of the department which will be providing
81 supervision to the offender in an intensive supervision program.

82 The courts may not require an offender to complete the
83 intensive supervision program as a condition of probation or
84 post-release supervision.

85 **SECTION 3.** Section 47-5-1005, Mississippi Code of 1972, is
86 reenacted as follows:

87 47-5-1005. (1) The department shall promulgate rules that
88 prescribe reasonable guidelines under which an intensive
89 supervision program shall operate. These rules shall include, but
90 not be limited to, the following:

91 (a) The participant shall remain within the interior
92 premises or within the property boundaries of his or her residence
93 at all times during the hours designated by the correctional field
94 officer.

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

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

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

101 (iii) Undergoing medical, psychiatric, mental
102 health treatment, counseling or other treatment programs approved
103 for the participant by the court or department;

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

106 (v) Participating in community work release or
107 community service program approved for the participant by the
108 court or department; or

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

111 (2) The department shall select and approve all electronic
112 monitoring devices used under Sections 47-5-1001 through
113 47-5-1015.

114 (3) The department may lease the equipment necessary to
115 implement the intensive supervision program and to contract for
116 the monitoring of such devices. The department is authorized to
117 select the lowest price and best source in contracting for these
118 services.

119 **SECTION 4.** Section 47-5-1007, Mississippi Code of 1972, is
120 reenacted as follows:

121 47-5-1007. (1) Any participant in the intensive supervision
122 program who engages in employment shall pay a monthly fee to the
123 department for each month such person is enrolled in the program.
124 The department may waive the monthly fee if the offender is a
125 full-time student or is engaged in vocational training. Money
126 received by the department from participants in the program shall
127 be deposited into a special fund which is hereby created in the
128 State Treasury. It shall be used, upon appropriation by the
129 Legislature, for the purpose of helping to defray the costs
130 involved in administering and supervising such program.
131 Unexpended amounts remaining in such special fund at the end of a
132 fiscal year shall not lapse into the State General Fund, and any

133 interest earned on amounts in such special fund shall be deposited
134 to the credit of the special fund.

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

138 (3) The participant shall make the necessary arrangements to
139 allow for correctional officers to visit the participant's place
140 of education or employment at any time, based upon the approval of
141 the educational institution or employer, for the purpose of
142 verifying the participant's compliance with the conditions of his
143 detention.

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

148 (5) The participant shall be responsible for and shall
149 maintain the following:

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

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

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

155 (6) The participant shall obtain approval from the
156 correctional field officer before the participant changes
157 residence.

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

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

163 (9) The participant shall abide by other conditions as set
164 by the department.

165 **SECTION 5.** Section 47-5-1009, Mississippi Code of 1972, is
166 reenacted as follows:

167 47-5-1009. (1) The department shall have absolute immunity
168 from liability for any injury resulting from a determination by a
169 judge or correctional officer that an offender shall be allowed to
170 participate in the electronic home detention program.

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

174 **SECTION 6.** Section 47-5-1011, Mississippi Code of 1972, is
175 reenacted as follows:

176 47-5-1011. (1) Before entering an order for commitment for
177 electronic house arrest, the department shall inform the
178 participant and other persons residing in the home of the nature
179 and extent of the approved electronic monitoring devices by doing
180 the following:

181 (a) Securing the written consent of the participant in
182 the program to comply with the rules and regulations of the
183 program.

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

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

192 (2) The participant shall be responsible for the cost of
193 equipment and any damage to such equipment. Any intentional
194 damage, any attempt to defeat monitoring, any committing of a
195 criminal offense or any associating with felons or known
196 criminals, shall constitute a violation of the program.

197 (3) Any person whose residence is utilized in the program
198 shall agree to keep the home drug and alcohol free and to exclude
199 known felons and criminals in order to provide a noncriminal
200 environment.

201 **SECTION 7.** Section 47-5-1013, Mississippi Code of 1972, is
202 reenacted and amended as follows:

203 47-5-1013. Participants enrolled in an intensive supervision
204 program shall be required to:

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

209 (b) Pay restitution and program fees as directed by the
210 department. Program fees shall not be less than Seventy-Five
211 Dollars (\$75.00) nor more than the actual cost of the program.
212 The sentencing judge may charge a program fee of less than
213 Seventy-Five Dollars (\$75.00) in cases of extreme financial
214 hardship, when such judge determines that the offender's
215 participation in the program would provide a benefit to his
216 community. Program fees shall be deposited in the special fund
217 created in Section 47-5-1007.

218 (c) Establish a place of residence at a place approved
219 by the correctional field officer, and not change his residence
220 without the officer's approval. The correctional officer shall be
221 allowed to inspect the place of residence for alcoholic beverages,
222 controlled substances and drug paraphernalia.

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

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

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

231 (g) Meet any other conditions imposed by the court to
232 meet the needs of the offender and limit the risks to the
233 community.

234 **SECTION 8.** Section 47-5-1015, Mississippi Code of 1972, is
235 reenacted and amended as follows:

236 47-5-1015. Sections 47-5-1001 through 47-5-1015 shall stand
237 repealed after June 30, 2006.

238 **SECTION 9.** Participants who have been in the intensive
239 supervision program since July 1, 2004, whether placed into the
240 program before or after July 1, 2004, shall pay a Fifty Dollars
241 (\$50.00) monthly supervision fee to the Mississippi Department of
242 Corrections for their supervision from July 1, 2004, or from the
243 date the participant entered the program after July 1, 2004, until
244 completion of the program, or the effective date of House Bill No.
245 _____, 2005 Regular Session, or whichever occurs first. From and
246 after the passage of House Bill No. _____, 2005 Regular Session,
247 all participants of the intensive supervision program shall pay
248 the fee as established in Section 47-5-1013.

249 **SECTION 10.** Except for the increase in the monthly fee that
250 is to be paid by participants of the intensive supervision
251 program, under Section 47-5-1013, after the effective date of this
252 act, the intensive supervision program, which is established in
253 Sections 1 through 8 of this act, is a continuation of the
254 intensive supervision program that existed on June 30, 2004.

255 **SECTION 11.** This act shall take effect and be in force from
256 and after its passage.