

By: Representative Malone

To: Corrections

HOUSE BILL NO. 1345

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10 BY PARTICIPANTS OF THE PROGRAM AND WHICH WERE REPEALED BY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

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

29 **SECTION 1.** Section 47-7-5, Mississippi Code of 1972, is

30 amended as follows:

31 47-7-5. (1) The State Parole Board, created under former
32 Section 47-7-5, is hereby created, continued and reconstituted and
33 shall be composed of five (5) members. The Governor shall appoint
34 the members with the advice and consent of the Senate. All terms
35 shall be at the will and pleasure of the Governor. Any vacancy
36 shall be filled by the Governor, with the advice and consent of
37 the Senate. The Governor shall appoint a chairman of the board.

38 (2) Any person who is appointed to serve on the board shall
39 possess at least a bachelor's degree or a high school diploma and

40 four (4) years' work experience. Each member shall devote his
41 full time to the duties of his office and shall not engage in any
42 other business or profession or hold any other public office. A
43 member shall not receive compensation or per diem in addition to
44 his salary as prohibited under Section 25-3-38. Each member shall
45 keep such hours and workdays as required of full-time state
46 employees under Section 25-1-98. Individuals shall be appointed
47 to serve on the board without reference to their political
48 affiliations. Each board member, including the chairman, may be
49 reimbursed for actual and necessary expenses as authorized by
50 Section 25-3-41; but a member shall not be reimbursed for travel
51 expenses from his residence to the nearest State Penitentiary.

52 (3) The board shall have exclusive responsibility for the
53 granting of parole as provided by Sections 47-7-3 and 47-7-17 and
54 shall have exclusive authority for revocation of the same. The
55 board shall have exclusive responsibility for investigating
56 clemency recommendations upon request of the Governor.

57 (4) The board, its members and staff, shall be immune from
58 civil liability for any official acts taken in good faith and in
59 exercise of the board's legitimate governmental authority.

60 (5) The budget of the board shall be funded through a
61 separate line item within the general appropriation bill for the
62 support and maintenance of the department. Employees of the
63 department which are employed by or assigned to the board shall
64 work under the guidance and supervision of the board. There shall
65 be an executive secretary to the board who shall be responsible
66 for all administrative and general accounting duties related to
67 the board. The executive secretary shall keep and preserve all
68 records and papers pertaining to the board.

69 (6) The board shall have no authority or responsibility for
70 supervision of offenders granted a release for any reason,
71 including, but not limited to, probation, parole or executive
72 clemency or other offenders requiring the same through interstate

73 compact agreements. The supervision shall be provided exclusively
74 by the staff of the Division of Community Corrections of the
75 department.

76 (7) The Parole Board is authorized to select and place
77 offenders in the Intensive Supervision Program as provided in
78 Section 47-5-1001 et seq.

79 (8) (a) The Parole Board shall maintain a central registry
80 of paroled inmates. The Parole Board shall place the following
81 information on the registry: name, address, photograph, crime for
82 which paroled, the date of the end of parole or flat-time date and
83 other information deemed necessary. The Parole Board shall
84 immediately remove information on a parolee at the end of his
85 parole or flat-time date.

86 (b) When a person is placed on parole, the Parole Board
87 shall inform the parolee of the duty to report to the Parole
88 Officer any change in address ten (10) days before changing
89 address.

90 (c) The Parole Board shall utilize an Internet website
91 or other electronic means to release or publish the information.

92 (d) Records maintained on the registry shall be open to
93 law enforcement agencies and the public and shall be available no
94 later than July 1, 2003.

95 (9) This section shall stand repealed on July 1, 2006.

96 **SECTION 2.** Section 47-5-1001, Mississippi Code of 1972, is
97 reenacted as follows:

98 47-5-1001. For purposes of Sections 47-5-1001 through
99 47-5-1015, the following words shall have the meaning ascribed
100 herein unless the context shall otherwise require:

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

105 (b) "Correctional field officer" means the supervising
106 probation and parole officer in charge of supervising the
107 offender.

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

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

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

114 (f) "Operating capacity" means the total number of
115 state offenders which can be safely and reasonably housed in
116 facilities operated by the department and in local or county jails
117 or other facilities authorized to house state offenders as
118 certified by the department, subject to applicable federal and
119 state laws and rules and regulations.

120 (g) "Participant" means an offender placed into an
121 intensive supervision program.

122 **SECTION 3.** Section 47-5-1003, Mississippi Code of 1972, is
123 reenacted and amended as follows:

124 47-5-1003. (1) An intensive supervision program may be used
125 as an alternative to incarceration for offenders who are low risk
126 and nonviolent as selected by the department, Parole Board or
127 court. Any offender convicted of a sex crime or a felony
128 violation of Section 41-29-139(a)(1) shall not be placed in the
129 program.

130 (2) The court placing an offender in the intensive
131 supervision program may, acting upon the advice and consent of the
132 commissioner and not later than one (1) year after the defendant
133 has been delivered to the custody of the department, suspend the
134 further execution of the sentence and place the defendant on
135 intensive supervision, except when a death sentence or life
136 imprisonment is the maximum penalty which may be imposed or if the
137 defendant has been confined for the conviction of a felony on a

138 previous occasion in any court or courts of the United States and
139 of any state or territories thereof or has been convicted of a
140 felony involving the use of a deadly weapon.

141 (3) To protect and to ensure the safety of the state's
142 citizens, any offender who violates an order or condition of the
143 intensive supervision program may be arrested by the correctional
144 field officer and placed in the actual custody of the Department
145 of Corrections. Such offender is under the full and complete
146 jurisdiction of the department and subject to removal from the
147 program by the classification hearing officer.

148 (4) When any circuit or county court places an offender in
149 an intensive supervision program, the court shall give notice to
150 the Mississippi Department of Corrections within fifteen (15) days
151 of the court's decision to place the offender in an intensive
152 supervision program. Notice shall be delivered to the central
153 office of the Mississippi Department of Corrections and to the
154 regional office of the department which will be providing
155 supervision to the offender in an intensive supervision program.

156 The courts may not require an offender to complete the
157 intensive supervision program as a condition of probation or
158 post-release supervision.

159 **SECTION 4.** Section 47-5-1005, Mississippi Code of 1972, is
160 reenacted as follows:

161 47-5-1005. (1) The department shall promulgate rules that
162 prescribe reasonable guidelines under which an intensive
163 supervision program shall operate. These rules shall include, but
164 not be limited to, the following:

165 (a) The participant shall remain within the interior
166 premises or within the property boundaries of his or her residence
167 at all times during the hours designated by the correctional field
168 officer.

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

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

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

175 (iii) Undergoing medical, psychiatric, mental
176 health treatment, counseling or other treatment programs approved
177 for the participant by the court or department;

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

180 (v) Participating in community work release or
181 community service program approved for the participant by the
182 court or department; or

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

185 (2) The department shall select and approve all electronic
186 monitoring devices used under Sections 47-5-1001 through
187 47-5-1015.

188 (3) The department may lease the equipment necessary to
189 implement the intensive supervision program and to contract for
190 the monitoring of such devices. The department is authorized to
191 select the lowest price and best source in contracting for these
192 services.

193 **SECTION 5.** Section 47-5-1007, Mississippi Code of 1972, is
194 reenacted as follows:

195 47-5-1007. (1) Any participant in the intensive supervision
196 program who engages in employment shall pay a monthly fee to the
197 department for each month such person is enrolled in the program.
198 The department may waive the monthly fee if the offender is a
199 full-time student or is engaged in vocational training. Money
200 received by the department from participants in the program shall
201 be deposited into a special fund which is hereby created in the
202 State Treasury. It shall be used, upon appropriation by the
203 Legislature, for the purpose of helping to defray the costs

204 involved in administering and supervising such program.
205 Unexpended amounts remaining in such special fund at the end of a
206 fiscal year shall not lapse into the State General Fund, and any
207 interest earned on amounts in such special fund shall be deposited
208 to the credit of the special fund.

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

212 (3) The participant shall make the necessary arrangements to
213 allow for correctional officers to visit the participant's place
214 of education or employment at any time, based upon the approval of
215 the educational institution or employer, for the purpose of
216 verifying the participant's compliance with the conditions of his
217 detention.

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

222 (5) The participant shall be responsible for and shall
223 maintain the following:

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

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

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

229 (6) The participant shall obtain approval from the
230 correctional field officer before the participant changes
231 residence.

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

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

237 (9) The participant shall abide by other conditions as set
238 by the department.

239 **SECTION 6.** Section 47-5-1009, Mississippi Code of 1972, is
240 reenacted and amended as follows:

241 47-5-1009. (1) The department shall have absolute immunity
242 from liability for any injury resulting from a determination by a
243 judge * * * correctional officer or the Parole Board that an
244 offender shall be allowed to participate in the electronic home
245 detention program.

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

249 **SECTION 7.** Section 47-5-1011, Mississippi Code of 1972, is
250 reenacted as follows:

251 47-5-1011. (1) Before entering an order for commitment for
252 electronic house arrest, the department shall inform the
253 participant and other persons residing in the home of the nature
254 and extent of the approved electronic monitoring devices by doing
255 the following:

256 (a) Securing the written consent of the participant in
257 the program to comply with the rules and regulations of the
258 program.

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

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

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

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

272 (3) Any person whose residence is utilized in the program
273 shall agree to keep the home drug and alcohol free and to exclude
274 known felons and criminals in order to provide a noncriminal
275 environment.

276 **SECTION 8.** Section 47-5-1013, Mississippi Code of 1972, is
277 reenacted and amended as follows:

278 47-5-1013. Participants enrolled in an intensive supervision
279 program shall be required to:

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

284 (b) Pay restitution and program fees as directed by the
285 department. Program fees shall not be less than Seventy-Five
286 Dollars (\$75.00) nor more than the actual cost of the program.
287 The sentencing judge may charge a program fee of less than
288 Seventy-Five Dollars (\$75.00) in cases of extreme financial
289 hardship, when such judge determines that the offender's
290 participation in the program would provide a benefit to his
291 community. Program fees shall be deposited in the special fund
292 created in Section 47-5-1007.

293 (c) Establish a place of residence at a place approved
294 by the correctional field officer, and not change his residence
295 without the officer's approval. The correctional officer shall be
296 allowed to inspect the place of residence for alcoholic beverages,
297 controlled substances and drug paraphernalia.

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

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

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

306 (g) Meet any other conditions imposed by the court to
307 meet the needs of the offender and limit the risks to the
308 community.

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

311 47-5-1015. Sections 47-5-1001 through 47-5-1015 shall stand
312 repealed after June 30, 2006.

313 **SECTION 10.** Participants who have been in the intensive
314 supervision program since July 1, 2004, whether placed into the
315 program before or after July 1, 2004, shall pay a Fifty Dollars
316 (\$50.00) monthly supervision fee to the Mississippi Department of
317 Corrections for their supervision from July 1, 2004, or from the
318 date the participant entered the program after July 1, 2004, until
319 completion of the program, or the effective date of House Bill No.
320 1345, 2005 Regular Session, or whichever occurs first. From and
321 after the passage of House Bill No. 1345, 2005 Regular Session,
322 all participants of the intensive supervision program shall pay
323 the fee as established in Section 47-5-1013.

324 **SECTION 11.** Except for the increase in the monthly fee that
325 is to be paid by participants of the intensive supervision
326 program, under Section 47-5-1013, after the effective date of this
327 act, the intensive supervision program, which is established in
328 Sections 2 through 9 of this act, is a continuation of the
329 intensive supervision program that existed on June 30, 2004.

330 **SECTION 12.** This act shall take effect and be in force from
331 and after its passage.