

By: Senator(s) Huggins

To: Corrections

SENATE BILL NO. 2750

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 AND 47-5-1013, MISSISSIPPI CODE OF
 3 1972, WHICH ESTABLISH THE INTENSIVE SUPERVISION PROGRAM AND PERMIT
 4 A COURT TO PLACE AN OFFENDER IN THE PROGRAM AS AN ALTERNATIVE TO
 5 INCARCERATION, PROVIDE RULES AND GUIDELINES FOR OPERATION OF THE
 6 PROGRAM, PROVIDE PAYMENT OF FEES BY PARTICIPANTS OF THE PROGRAM
 7 AND WHICH WERE REPEALED BY OPERATION OF LAW; TO REQUIRE THAT
 8 PARTICIPANTS WHO HAVE BEEN IN THE INTENSIVE SUPERVISION PROGRAM
 9 SINCE JULY 1, 2004, WHETHER PLACED INTO THE PROGRAM BEFORE OR
 10 AFTER JULY 1, 2004, PAY A MONTHLY SUPERVISION FEE TO THE
 11 DEPARTMENT OF CORRECTIONS FOR THEIR SUPERVISION FROM JULY 1, 2004,
 12 OR FROM THE DATE THE PARTICIPANT WAS PLACED IN THE PROGRAM AFTER
 13 JULY 1, 2004, UNTIL THE COMPLETION OF THE PROGRAM, OR THE
 14 EFFECTIVE DATE OF THIS ACT, WHICHEVER OCCURS FIRST; AND FOR
 15 RELATED PURPOSES.

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

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

19 47-5-1001. For purposes of Sections 47-5-1001 through
 20 47-5-1015, the following words shall have the meaning ascribed
 21 herein unless the context shall otherwise require:

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

26 (b) "Correctional field officer" means the supervising
 27 probation and parole officer in charge of supervising the
 28 offender.

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

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

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

35 (f) "Operating capacity" means the total number of
36 state offenders which can be safely and reasonably housed in
37 facilities operated by the department and in local or county jails
38 or other facilities authorized to house state offenders as
39 certified by the department, subject to applicable federal and
40 state laws and rules and regulations.

41 (g) "Participant" means an offender placed into an
42 intensive supervision program.

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

45 47-5-1003. (1) An intensive supervision program may be used
46 as an alternative to incarceration for offenders who are low risk
47 and nonviolent as selected by the department or court. Any
48 offender convicted of a sex crime or a felony violation of Section
49 41-29-139(a)(1) shall not be placed in the program.

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

61 (3) To protect and to ensure the safety of the state's
62 citizens, any offender who violates an order or condition of the
63 intensive supervision program may be arrested by the correctional
64 field officer and placed in the actual custody of the Department

65 of Corrections. Such offender is under the full and complete
66 jurisdiction of the department and subject to removal from the
67 program by the classification hearing officer.

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

76 The courts may not require an offender to complete the
77 intensive supervision program as a condition of probation or
78 post-release supervision.

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

81 47-5-1005. (1) The department shall promulgate rules that
82 prescribe reasonable guidelines under which an intensive
83 supervision program shall operate. These rules shall include, but
84 not be limited to, the following:

85 (a) The participant shall remain within the interior
86 premises or within the property boundaries of his or her residence
87 at all times during the hours designated by the correctional field
88 officer.

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

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

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

95 (iii) Undergoing medical, psychiatric, mental
96 health treatment, counseling or other treatment programs approved
97 for the participant by the court or department;

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

100 (v) Participating in community work release or
101 community service program approved for the participant by the
102 court or department; or

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

105 (2) The department shall select and approve all electronic
106 monitoring devices used under Sections 47-5-1001 through
107 47-5-1015.

108 (3) The department may lease the equipment necessary to
109 implement the intensive supervision program and to contract for
110 the monitoring of such devices. The department is authorized to
111 select the lowest price and best source in contracting for these
112 services.

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

115 47-5-1007. (1) Any participant in the intensive supervision
116 program who engages in employment shall pay a monthly fee to the
117 department for each month such person is enrolled in the program.
118 The department may waive the monthly fee if the offender is a
119 full-time student or is engaged in vocational training. Money
120 received by the department from participants in the program shall
121 be deposited into a special fund which is hereby created in the
122 State Treasury. It shall be used, upon appropriation by the
123 Legislature, for the purpose of helping to defray the costs
124 involved in administering and supervising such program.
125 Unexpended amounts remaining in such special fund at the end of a
126 fiscal year shall not lapse into the State General Fund, and any
127 interest earned on amounts in such special fund shall be deposited
128 to the credit of the special fund.

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

132 (3) The participant shall make the necessary arrangements to
133 allow for correctional officers to visit the participant's place
134 of education or employment at any time, based upon the approval of
135 the educational institution or employer, for the purpose of
136 verifying the participant's compliance with the conditions of his
137 detention.

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

142 (5) The participant shall be responsible for and shall
143 maintain the following:

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

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

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

149 (6) The participant shall obtain approval from the
150 correctional field officer before the participant changes
151 residence.

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

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

157 (9) The participant shall abide by other conditions as set
158 by the department.

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

161 47-5-1009. (1) The department shall have absolute immunity
162 from liability for any injury resulting from a determination by a
163 judge or correctional officer that an offender shall be allowed to
164 participate in the electronic home detention program.

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

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

170 47-5-1011. (1) Before entering an order for commitment for
171 electronic house arrest, the department shall inform the
172 participant and other persons residing in the home of the nature
173 and extent of the approved electronic monitoring devices by doing
174 the following:

175 (a) Securing the written consent of the participant in
176 the program to comply with the rules and regulations of the
177 program.

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

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

186 (2) The participant shall be responsible for the cost of
187 equipment and any damage to such equipment. Any intentional
188 damage, any attempt to defeat monitoring, any committing of a
189 criminal offense or any associating with felons or known
190 criminals, shall constitute a violation of the program.

191 (3) Any person whose residence is utilized in the program
192 shall agree to keep the home drug and alcohol free and to exclude

193 known felons and criminals in order to provide a noncriminal
194 environment.

195 **SECTION 7.** Section 47-5-1013, Mississippi Code of 1972, is
196 reenacted as follows:

197 47-5-1013. Participants enrolled in an intensive supervision
198 program shall be required to:

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

203 (b) Pay restitution and program fees as directed by the
204 department. Program fees shall not be less than Fifty Dollars
205 (\$50.00) nor more than the actual cost of the program. The
206 sentencing judge may charge a program fee of less than Fifty
207 Dollars (\$50.00) in cases of extreme financial hardship, when such
208 judge determines that the offender's participation in the program
209 would provide a benefit to his community. Program fees shall be
210 deposited in the special fund created in Section 47-5-1007.

211 (c) Establish a place of residence at a place approved
212 by the correctional field officer, and not change his residence
213 without the officer's approval. The correctional officer shall be
214 allowed to inspect the place of residence for alcoholic beverages,
215 controlled substances and drug paraphernalia.

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

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

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

224 (g) Meet any other conditions imposed by the court to
225 meet the needs of the offender and limit the risks to the
226 community.

227 **SECTION 8.** (1) The intensive supervision program
228 established in this act is a continuation of the intensive
229 supervision program that existed on June 30, 2004. All actions
230 taken by the Department of Corrections from July 1, 2004, to the
231 effective date of this act which would have been authorized under
232 the prior intensive supervision program are ratified, confirmed
233 and validated.

234 (2) Participants in the intensive supervision program,
235 whether placed into the program before or after July 1, 2004,
236 shall pay a Fifty Dollars (\$50.00) monthly supervision fee to the
237 Mississippi Department of Corrections for their supervision from
238 July 1, 2004, or from the date the participant entered the program
239 after July 1, 2004, until completion of the program, or the
240 effective date of Senate Bill No. 2750, 2005 Regular Session,
241 whichever occurs first.

242 **SECTION 9.** This act shall take effect and be in force from
243 and after its passage.