

By: Senator(s) Huggins

To: Corrections

SENATE BILL NO. 2750
(As Sent to Governor)

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10 BY PARTICIPANTS OF THE PROGRAM AND WHICH WERE REPEALED BY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 SECTION
12 47-5-1013, MISSISSIPPI CODE OF 1972, TO INCREASE THE MONTHLY FEE
13 THAT IS PAID BY PARTICIPANTS OF THE INTENSIVE SUPERVISION PROGRAM
14 TO THE DEPARTMENT OF CORRECTIONS; TO AMEND REENACTED SECTION
15 47-5-1015, MISSISSIPPI CODE OF 1972, TO EXTEND THE DATE OF REPEAL
16 ON THE REENACTED SECTIONS TO JUNE 30, 2006; TO REQUIRE THAT
17 PARTICIPANTS WHO HAVE BEEN IN THE INTENSIVE SUPERVISION PROGRAM
18 SINCE JULY 1, 2004, WHETHER PLACED INTO THE PROGRAM BEFORE OR
19 AFTER JULY 1, 2004, PAY A \$50.00 MONTHLY SUPERVISION FEE TO THE
20 DEPARTMENT OF CORRECTIONS FOR THEIR SUPERVISION FROM JULY 1, 2004,
21 OR FROM THE DATE THE PARTICIPANT WAS PLACED IN THE PROGRAM AFTER
22 JULY 1, 2004, UNTIL THE COMPLETION OF THE PROGRAM, OR THE
23 EFFECTIVE DATE OF THIS ACT, WHICHEVER OCCURS FIRST; AND FOR
24 RELATED PURPOSES.

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

26 **SECTION 1.** Section 47-7-5, Mississippi Code of 1972, is
27 amended as follows:

28 47-7-5. (1) The State Parole Board, created under former
29 Section 47-7-5, is hereby created, continued and reconstituted and
30 shall be composed of five (5) members. The Governor shall appoint
31 the members with the advice and consent of the Senate. All terms
32 shall be at the will and pleasure of the Governor. Any vacancy
33 shall be filled by the Governor, with the advice and consent of
34 the Senate. The Governor shall appoint a chairman of the board.

35 (2) Any person who is appointed to serve on the board shall
36 possess at least a bachelor's degree or a high school diploma and
37 four (4) years' work experience. Each member shall devote his
38 full time to the duties of his office and shall not engage in any

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

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

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

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

66 (6) The board shall have no authority or responsibility for
67 supervision of offenders granted a release for any reason,
68 including, but not limited to, probation, parole or executive
69 clemency or other offenders requiring the same through interstate
70 compact agreements. The supervision shall be provided exclusively

71 by the staff of the Division of Community Corrections of the
72 department.

73 (7) (a) The Parole Board is authorized to select and place
74 offenders in an electronic monitoring program under the conditions
75 and criteria imposed by the Parole Board. The conditions,
76 restrictions and requirements of Section 47-7-17 and Sections
77 47-5-1001 through 47-5-1015 shall apply to the Parole Board and
78 any offender placed in an electronic monitoring program by the
79 Parole Board.

80 (b) Any offender placed in an electronic monitoring
81 program under this subsection shall pay the program fee provided
82 in Section 47-5-1013. The program fees shall be deposited in the
83 special fund created in Section 47-5-1007.

84 (c) The department shall have absolute immunity from
85 liability for any injury resulting from a determination by the
86 Parole Board that an offender be placed in an electronic
87 monitoring program.

88 (8) (a) The Parole Board shall maintain a central registry
89 of paroled inmates. The Parole Board shall place the following
90 information on the registry: name, address, photograph, crime for
91 which paroled, the date of the end of parole or flat-time date and
92 other information deemed necessary. The Parole Board shall
93 immediately remove information on a parolee at the end of his
94 parole or flat-time date.

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

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

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

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

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

107 47-5-1001. For purposes of Sections 47-5-1001 through
108 47-5-1015, the following words shall have the meaning ascribed
109 herein unless the context shall otherwise require:

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

114 (b) "Correctional field officer" means the supervising
115 probation and parole officer in charge of supervising the
116 offender.

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

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

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

123 (f) "Operating capacity" means the total number of
124 state offenders which can be safely and reasonably housed in
125 facilities operated by the department and in local or county jails
126 or other facilities authorized to house state offenders as
127 certified by the department, subject to applicable federal and
128 state laws and rules and regulations.

129 (g) "Participant" means an offender placed into an
130 intensive supervision program.

131 **SECTION 3.** Section 47-5-1003, Mississippi Code of 1972, is
132 reenacted as follows:

133 47-5-1003. (1) An intensive supervision program may be used
134 as an alternative to incarceration for offenders who are low risk
135 and nonviolent as selected by the department or court. Any

136 offender convicted of a sex crime or a felony violation of Section
137 41-29-139(a)(1) shall not be placed in the program.

138 (2) The court placing an offender in the intensive
139 supervision program may, acting upon the advice and consent of the
140 commissioner and not later than one (1) year after the defendant
141 has been delivered to the custody of the department, suspend the
142 further execution of the sentence and place the defendant on
143 intensive supervision, except when a death sentence or life
144 imprisonment is the maximum penalty which may be imposed or if the
145 defendant has been confined for the conviction of a felony on a
146 previous occasion in any court or courts of the United States and
147 of any state or territories thereof or has been convicted of a
148 felony involving the use of a deadly weapon.

149 (3) To protect and to ensure the safety of the state's
150 citizens, any offender who violates an order or condition of the
151 intensive supervision program may be arrested by the correctional
152 field officer and placed in the actual custody of the Department
153 of Corrections. Such offender is under the full and complete
154 jurisdiction of the department and subject to removal from the
155 program by the classification hearing officer.

156 (4) When any circuit or county court places an offender in
157 an intensive supervision program, the court shall give notice to
158 the Mississippi Department of Corrections within fifteen (15) days
159 of the court's decision to place the offender in an intensive
160 supervision program. Notice shall be delivered to the central
161 office of the Mississippi Department of Corrections and to the
162 regional office of the department which will be providing
163 supervision to the offender in an intensive supervision program.

164 The courts may not require an offender to complete the
165 intensive supervision program as a condition of probation or
166 post-release supervision.

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

169 47-5-1005. (1) The department shall promulgate rules that
170 prescribe reasonable guidelines under which an intensive
171 supervision program shall operate. These rules shall include, but
172 not be limited to, the following:

173 (a) The participant shall remain within the interior
174 premises or within the property boundaries of his or her residence
175 at all times during the hours designated by the correctional field
176 officer.

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

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

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

183 (iii) Undergoing medical, psychiatric, mental
184 health treatment, counseling or other treatment programs approved
185 for the participant by the court or department;

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

188 (v) Participating in community work release or
189 community service program approved for the participant by the
190 court or department; or

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

193 (2) The department shall select and approve all electronic
194 monitoring devices used under Sections 47-5-1001 through
195 47-5-1015.

196 (3) The department may lease the equipment necessary to
197 implement the intensive supervision program and to contract for
198 the monitoring of such devices. The department is authorized to
199 select the lowest price and best source in contracting for these
200 services.

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

203 47-5-1007. (1) Any participant in the intensive supervision
204 program who engages in employment shall pay a monthly fee to the
205 department for each month such person is enrolled in the program.
206 The department may waive the monthly fee if the offender is a
207 full-time student or is engaged in vocational training. Money
208 received by the department from participants in the program shall
209 be deposited into a special fund which is hereby created in the
210 State Treasury. It shall be used, upon appropriation by the
211 Legislature, for the purpose of helping to defray the costs
212 involved in administering and supervising such program.
213 Unexpended amounts remaining in such special fund at the end of a
214 fiscal year shall not lapse into the State General Fund, and any
215 interest earned on amounts in such special fund shall be deposited
216 to the credit of the special fund.

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

220 (3) The participant shall make the necessary arrangements to
221 allow for correctional officers to visit the participant's place
222 of education or employment at any time, based upon the approval of
223 the educational institution or employer, for the purpose of
224 verifying the participant's compliance with the conditions of his
225 detention.

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

230 (5) The participant shall be responsible for and shall
231 maintain the following:

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

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

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

237 (6) The participant shall obtain approval from the
238 correctional field officer before the participant changes
239 residence.

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

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

245 (9) The participant shall abide by other conditions as set
246 by the department.

247 **SECTION 6.** Section 47-5-1009, Mississippi Code of 1972, is
248 reenacted as follows:

249 47-5-1009. (1) The department shall have absolute immunity
250 from liability for any injury resulting from a determination by a
251 judge or correctional officer that an offender shall be allowed to
252 participate in the electronic home detention program.

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

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

258 47-5-1011. (1) Before entering an order for commitment for
259 electronic house arrest, the department shall inform the
260 participant and other persons residing in the home of the nature
261 and extent of the approved electronic monitoring devices by doing
262 the following:

263 (a) Securing the written consent of the participant in
264 the program to comply with the rules and regulations of the
265 program.

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

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

274 (2) The participant shall be responsible for the cost of
275 equipment and any damage to such equipment. Any intentional
276 damage, any attempt to defeat monitoring, any committing of a
277 criminal offense or any associating with felons or known
278 criminals, shall constitute a violation of the program.

279 (3) Any person whose residence is utilized in the program
280 shall agree to keep the home drug and alcohol free and to exclude
281 known felons and criminals in order to provide a noncriminal
282 environment.

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

285 47-5-1013. Participants enrolled in an intensive supervision
286 program shall be required to:

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

291 (b) Pay restitution and program fees as directed by the
292 department. Program fees shall not be less than Seventy-five
293 Dollars (\$75.00) per month. The sentencing judge may charge a
294 program fee of less than Seventy-five Dollars (\$75.00) per month
295 in cases of extreme financial hardship, when such judge determines
296 that the offender's participation in the program would provide a
297 benefit to his community. Program fees shall be deposited in the
298 special fund created in Section 47-5-1007.

299 (c) Establish a place of residence at a place approved
300 by the correctional field officer, and not change his residence
301 without the officer's approval. The correctional officer shall be
302 allowed to inspect the place of residence for alcoholic beverages,
303 controlled substances and drug paraphernalia.

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

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

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

312 (g) Meet any other conditions imposed by the court to
313 meet the needs of the offender and limit the risks to the
314 community.

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

317 47-5-1015. Sections 47-5-1001 through 47-5-1015 shall stand
318 repealed after June 30, 2006.

319 **SECTION 10.** (1) Participants who have been in the intensive
320 supervision program since July 1, 2004, whether placed into the
321 program before or after July 1, 2004, shall pay a Fifty Dollar
322 (\$50.00) monthly supervision fee to the Mississippi Department of
323 Corrections for their supervision from July 1, 2004, or from the
324 date the participant entered the program after July 1, 2004, until
325 completion of the program, or the effective date of Senate Bill
326 No. 2750, 2005 Regular Session, or whichever occurs first. From
327 and after the passage of Senate Bill No. 2750, 2005 Regular
328 Session, all participants of the intensive supervision program
329 shall pay the fee as established in Section 47-5-1013.

330 (2) The Department of Corrections shall use its best effort
331 to collect the monthly supervision fees in arrearage under this
332 section.

333 (3) A participant's failure to pay the monthly fees in
334 arrearage shall not be deemed a violation of a condition of the
335 program, and the participant shall not be removed from the program
336 for failure to pay the monthly fees in arrearage.

337 (4) This section shall not apply to any fees incurred after
338 the passage of Senate Bill No. 2750, 2005 Regular Session.

339 (5) Any arrearage remaining under this section at the end of
340 the offender's participation in the program shall automatically be
341 reduced to a civil judgment and upon notice by the Department of
342 Corrections shall be recorded with the circuit court clerk in the
343 county wherein the participant resides. The Department of
344 Corrections and/or the district attorney shall use best efforts to
345 collect the judgment.

346 **SECTION 11.** The intensive supervision program established in
347 this act is a continuation of the intensive supervision program
348 that existed on June 30, 2004. All actions taken by the
349 Department of Corrections from July 1, 2004, to the effective date
350 of this act which would have been authorized under the prior
351 intensive supervision program are ratified, confirmed and
352 validated.

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