

By: Representative Warren

To: Corrections; County
Affairs

HOUSE BILL NO. 768

1 AN ACT TO REENACT SECTIONS 47-5-901 THROUGH 47-5-909,
2 MISSISSIPPI CODE OF 1972, WHICH PROVIDE FOR CONDITIONS UNDER WHICH
3 STATE OFFENDERS MAY SERVE SENTENCES IN COUNTY JAILS; TO AMEND
4 SECTION 47-5-911, MISSISSIPPI CODE OF 1972, TO EXTEND THE DATE OF
5 REPEAL ON THOSE REENACTED SECTIONS FROM JULY 1, 2007, TO JULY 1,
6 2009; AND FOR RELATED PURPOSES

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

8 **SECTION 1.** Section 47-5-901, Mississippi Code of 1972, is
9 reenacted as follows:

10 47-5-901. (1) Any person committed, sentenced or otherwise
11 placed under the custody of the Department of Corrections, on
12 order of the sentencing court and subject to the other conditions
13 of this subsection, may serve all or any part of his sentence in
14 the county jail of the county wherein such person was convicted if
15 the Commissioner of Corrections determines that physical space is
16 not available for confinement of such person in the state
17 correctional institutions. Such determination shall be promptly
18 made by the Department of Corrections upon receipt of notice of
19 the conviction of such person. The commissioner shall certify in
20 writing that space is not available to the sheriff or other
21 officer having custody of the person. Any person serving his
22 sentence in a county jail shall be classified in accordance with
23 Section 47-5-905.

24 (2) If state prisoners are housed in county jails due to a
25 lack of capacity at state correctional institutions, the
26 Department of Corrections shall determine the cost for food and
27 medical attention for such prisoners. The cost of feeding and
28 housing offenders confined in such county jails shall be based on
29 actual costs or contract price per prisoner. In order to maximize

30 the potential use of county jail space, the Department of
31 Corrections is encouraged to negotiate a reasonable per day cost
32 per prisoner, which in no event may exceed Twenty Dollars (\$20.00)
33 per day per offender.

34 (3) Upon vouchers submitted by the board of supervisors of
35 any county housing persons due to lack of space at state
36 institutions, the Department of Corrections shall pay to such
37 county, out of any available funds, the actual cost of food, or
38 contract price per prisoner, not to exceed Twenty Dollars (\$20.00)
39 per day per offender, as determined under subsection (2) of this
40 section for each day an offender is so confined beginning the day
41 that the Department of Corrections receives a certified copy of
42 the sentencing order and will terminate on the date on which the
43 offender is released or otherwise removed from the custody of the
44 county jail. The department shall pay the cost for medical
45 attention for prisoners at an amount no greater than the
46 reimbursement rate based on the Mississippi Medicaid reimbursement
47 rate. This limitation applies to all medical care services,
48 durable and nondurable goods, prescription drugs and medications.
49 Such payment shall be placed in the county general fund and shall
50 be expended only for food and medical attention for such persons.
51 The Department of Corrections shall not pay a county for offenders
52 housed in county jails pending a probation or parole revocation
53 hearing.

54 (4) A person, on order of the sentencing court, may serve
55 not more than twenty-four (24) months of his sentence in a county
56 jail if the person is classified in accordance with Section
57 47-5-905 and the county jail is an approved county jail for
58 housing state inmates under federal court order. The sheriff of
59 the county shall have the right to petition the Commissioner of
60 Corrections to remove the inmate from the county jail. The county
61 shall be reimbursed in accordance with subsection (2).

62 (5) The Attorney General of the State of Mississippi shall
63 defend the employees of the Department of Corrections and
64 officials and employees of political subdivisions against any
65 action brought by any person who was committed to a county jail
66 under the provisions of this section.

67 (6) This section does not create in the Department of
68 Corrections, or its employees or agents, any new liability,
69 express or implied, nor shall it create in the Department of
70 Corrections any administrative authority or responsibility for the
71 construction, funding, administration or operation of county or
72 other local jails or other places of confinement which are not
73 staffed and operated on a full-time basis by the Department of
74 Corrections. The correctional system under the jurisdiction of
75 the Department of Corrections shall include only those facilities
76 fully staffed by the Department of Corrections and operated by it
77 on a full-time basis.

78 (7) An offender returned to a county for post-conviction
79 proceedings shall be subject to the provisions of Section 99-19-42
80 and the county shall not receive the per day allotment for such
81 offender after the time prescribed for returning the offender to
82 the Department of Corrections as provided in Section 99-19-42.

83 **SECTION 2.** Section 47-5-903, Mississippi Code of 1972, is
84 reenacted as follows:

85 47-5-903. (1) A person committed, sentenced or otherwise
86 placed under the custody of the Department of Corrections, on
87 order of the sentencing court, may serve his sentence in the
88 county jail of the county where convicted if all of the following
89 conditions are complied with:

90 (a) The person must be classified in accordance with
91 Section 47-5-905;

92 (b) The person must not be classified as in need of
93 close supervision;

94 (c) The sheriff of the county where the person will
95 serve his sentence must request in writing that the person be
96 allowed to serve his sentence in that county jail;

97 (d) After the person is classified and returned to the
98 county, the county shall assume the full and complete
99 responsibility for the care and expenses of housing such person;

100 and

101 (e) The county jail must be an approved county jail for
102 housing state inmates under federal court order.

103 (2) This section does not apply to inmates housed in county
104 jails due to lack of space at state correctional facilities. The
105 department shall not reimburse the county for the expense of
106 housing an inmate under this section.

107 (3) The Attorney General of the State of Mississippi shall
108 defend the employees of the Department of Corrections and
109 officials and employees of political subdivisions against any
110 action brought by any person who was committed to a county jail
111 under the provisions of this section.

112 (4) The state, the Department of Corrections, and its
113 employees or agents, shall not be liable to any person or entity
114 for an inmate held in a county jail under this section.

115 **SECTION 3.** Section 47-5-905, Mississippi Code of 1972, is
116 reenacted as follows:

117 47-5-905. (1) All persons placed under the custody of the
118 Department of Corrections shall be processed at a reception and
119 diagnostic center of the Department of Corrections and then be
120 assigned to an appropriate correctional facility for a complete
121 and thorough classification, not to exceed ninety (90) days,
122 unless the department determines that a person can be properly
123 processed and classified at the county jail in accordance with the
124 department's classification plan.

125 (2) The Department of Corrections shall develop a plan for
126 the processing and classification of inmates in county jails and
127 shall implement the plan by January 1, 1993.

128 **SECTION 4.** Section 47-5-907, Mississippi Code of 1972, is
129 reenacted as follows:

130 47-5-907. The sheriff of any county in this state shall have
131 the right to petition the Commissioner of the Department of
132 Corrections to remove a state inmate from the county jail in such
133 county to the State Penitentiary. The commissioner shall remove
134 such inmate from such county jail if the sheriff of such county
135 sets forth just cause in his petition indicating why an inmate
136 should be removed from such county jail to the State Penitentiary.

137 Just cause is established if such sheriff can sufficiently
138 prove that such inmate has a dangerous behavior or sufficiently
139 prove that there is no available or suitable medical facility
140 where such inmate can be provided suitable medical services. The
141 commissioner shall respond in writing to the petition no later
142 than thirty (30) days after the receipt of such petition. If the
143 petition to remove such inmate is denied by the commissioner, such
144 sheriff and his agents shall have from the date of denial absolute
145 immunity from liability for any injury resulting from subsequent
146 behavior or from medical consequences regarding such inmate,
147 provided that such injury resulted from conditions which were set
148 forth in such petition.

149 **SECTION 5.** Section 47-5-909, Mississippi Code of 1972, is
150 reenacted as follows:

151 47-5-909. It is the policy of the Legislature that all
152 inmates be removed from county jails as early as practicable.
153 Sections 47-5-901 through 47-5-907 are temporary measures to help
154 alleviate the immediate operating capacity limitations at
155 correctional facilities and are not permanent measures to be
156 included in the long-term operating capacity of the correctional
157 system.

158 **SECTION 6.** Section 47-5-911, Mississippi Code of 1972, is
159 amended as follows:

160 47-5-911. Sections 47-5-901 through 47-5-911 shall stand
161 repealed on July 1, 2009.

162 **SECTION 7.** This act shall take effect and be in force from
163 and after July 1, 2007.