

By: Representatives Malone, Coleman (29th)

To: Penitentiary

HOUSE BILL NO. 1481
(As Sent to Governor)

1 AN ACT TO AMEND SECTION 47-5-1003, MISSISSIPPI CODE OF 1972,
2 TO DELETE THE PROVISION WHICH RESTRICTS A COURT TO PLACE AN
3 OFFENDER IN THE INTENSIVE SUPERVISION PROGRAM AT THE TIME OF THE
4 INITIAL SENTENCING ONLY; TO REENACT SECTIONS 47-5-1001 AND
5 47-7-1005 THROUGH 47-5-1013, MISSISSIPPI CODE OF 1972, WHICH
6 PERMIT A COURT TO PLACE AN OFFENDER IN THE INTENSIVE SUPERVISION
7 PROGRAM AS AN ALTERNATIVE TO INCARCERATION, ESTABLISH RULES AND
8 GUIDELINES FOR OPERATION OF THE INTENSIVE SUPERVISION PROGRAM AND
9 PROVIDE FOR PAYMENT OF FEES BY PARTICIPANTS IN THE INTENSIVE
10 SUPERVISION PROGRAM; TO REENACT AND AMEND SECTION 47-5-1015,
11 MISSISSIPPI CODE OF 1972, TO EXTEND THE REPEALER DATE ON THE
12 REENACTED CODE SECTIONS FROM JUNE 30, 2001, TO JUNE 30, 2003; TO
13 AMEND SECTION 47-7-47, MISSISSIPPI CODE OF 1972, TO REVISE THE
14 RESTRICTIONS FOR PLACEMENT OF INMATES IN THE EARNED PROBATION
15 PROGRAM; AND FOR RELATED PURPOSES.

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

17 SECTION 1. Section 47-5-1003, Mississippi Code of 1972, is
18 amended as follows:

19 47-5-1003. (1) An intensive supervision program may be used
20 as an alternative to incarceration for offenders who are low risk
21 and nonviolent as selected by the department or court. Any
22 offender convicted of a sex crime or a felony violation of Section
23 41-29-139(a)(1) shall not be placed in the program.

24 (2) The court placing an offender in the intensive
25 supervision program may, acting upon the advice and consent of the
26 commissioner * * * and not later than one (1) year after the
27 defendant has been delivered to the custody of the department,
28 suspend the further execution of the sentence and place the
29 defendant on intensive supervision, except when a death sentence
30 or life imprisonment is the maximum penalty which may be imposed
31 or if the defendant has been confined for the conviction of a
32 felony on a previous occasion in any court or courts of the United

33 States and of any state or territories thereof or has been
34 convicted of a felony involving the use of a deadly weapon.

35 (3) To protect and to ensure the safety of the state's
36 citizens, any offender who violates an order or condition of the
37 intensive supervision program shall be arrested by the
38 correctional field officer and placed in the actual custody of the
39 Department of Corrections. Such offender is under the full and
40 complete jurisdiction of the department and subject to removal
41 from the program by the classification committee.

42 (4) When any circuit or county court places an offender in
43 an intensive supervision program, the court shall give notice to
44 the Mississippi Department of Corrections within fifteen (15) days
45 of the court's decision to place the offender in an intensive
46 supervision program. Notice shall be delivered to the central
47 office of the Mississippi Department of Corrections and to the
48 regional office of the department which will be providing
49 supervision to the offender in an intensive supervision program.

50 The courts may not require an offender to complete the
51 intensive supervision program as a condition of probation or
52 post-release supervision.

53 SECTION 2. Section 47-5-1001, Mississippi Code of 1972, is
54 reenacted as follows:

55 47-5-1001. For purposes of Sections 47-5-1001 through
56 47-5-1015, the following words shall have the meaning ascribed
57 herein unless the context shall otherwise require:

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

62 (b) "Correctional field officer" means the supervising
63 probation and parole officer in charge of supervising the
64 offender.

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

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

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

71 (f) "Operating capacity" means the total number of
72 state offenders which can be safely and reasonably housed in
73 facilities operated by the department and in local or county jails
74 or other facilities authorized to house state offenders as
75 certified by the department, subject to applicable federal and
76 state laws and rules and regulations.

77 (g) "Participant" means an offender placed into an
78 intensive supervision program.

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. Section 47-5-1015, Mississippi Code of 1972, is
228 reenacted and amended as follows:

229 47-5-1015. Sections 47-5-1001 through 47-5-1015 shall stand
230 repealed after June 30, 2003.

231 SECTION 9. Section 47-7-47, Mississippi Code of 1972, is
232 amended as follows:

233 47-7-47. (1) The judge of any circuit court may place an
234 offender on a program of earned probation after a period of
235 confinement as set out herein and the judge may seek the advice of
236 the commissioner and shall direct that the defendant be under the
237 supervision of the department.

238 (2) (a) Any circuit court or county court may, upon its own
239 motion, acting upon the advice and consent of the
240 commissioner * * * not earlier than thirty (30) days nor later
241 than one (1) year after the defendant has been delivered to the
242 custody of the department, to which he has been sentenced, suspend
243 the further execution of the sentence and place the defendant on
244 earned probation, except when a death sentence or life
245 imprisonment is the maximum penalty which may be imposed or if the
246 defendant has been confined two (2) or more times for the
247 conviction of a felony on a previous occasion in any court or
248 courts of the United States and of any state or territories
249 thereof or has been convicted of a felony involving the use of a
250 deadly weapon.

251 (b) The authority granted in this subsection shall be
252 exercised by the judge who imposed sentence on the defendant, or
253 his successor.

254 (c) The time limit imposed by paragraph (a) of this
255 subsection is not applicable to those defendants sentenced to the
256 custody of the department prior to April 14, 1977. Persons who

257 are convicted of crimes that carry mandatory sentences shall not
258 be eligible for earned probation.

259 (3) When any circuit or county court places an offender on
260 earned probation, the court shall give notice to the Mississippi
261 Department of Corrections within fifteen (15) days of the court's
262 decision to place the offender on earned probation. Notice shall
263 be delivered to the central office of the Mississippi Department
264 of Corrections and to the regional office of the department which
265 will be providing supervision to the offender on earned probation.

266 (4) If the court places any person on probation or earned
267 probation, the court may order the person, as a condition of
268 probation, to a period of confinement and treatment at a private
269 or public agency or institution, either within or without the
270 state, which treats emotional, mental or drug-related problems.
271 Any person who, as a condition of probation, is confined for
272 treatment at an out-of-state facility shall be supervised pursuant
273 to Section 47-7-71, and any person confined at a private agency
274 shall not be confined at public expense. Time served in any such
275 agency or institution may be counted as time required to meet the
276 criteria of subsection (2)(a).

277 (5) If the court places any person on probation or earned
278 probation, the court may order the person to make appropriate
279 restitution to any victim of his crime or to society through the
280 performance of reasonable work for the benefit of the community.

281 (6) If the court places any person on probation or earned
282 probation, the court may order the person, as a condition of
283 probation, to submit, as provided in Section 47-5-601, to any type
284 of breath, saliva or urine chemical analysis test, the purpose of
285 which is to detect the possible presence of alcohol or a substance
286 prohibited or controlled by any law of the State of Mississippi or
287 the United States.

288 SECTION 10. This act shall take effect and be in force from
289 and after July 1, 2001.