

By: Representative Ford

To: Penitentiary

HOUSE BILL NO. 778

1       AN ACT TO REENACT SECTIONS 47-5-1101 THROUGH 47-5-1121,  
2 MISSISSIPPI CODE OF 1972, WHICH PROVIDE FOR THE SPECIAL NEEDS  
3 PRISON PROGRAM; TO AMEND SECTION 47-5-1123, MISSISSIPPI CODE OF  
4 1972, TO EXTEND THE REPEALER; AND FOR RELATED PURPOSES.

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

6       **SECTION 1.** Section 47-5-1101, Mississippi Code of 1972, is  
7 reenacted as follows:

8       47-5-1101. Sections 47-5-1101 through 47-5-1123 shall be  
9 cited as the "Special Needs Prison Program of 1994."

10       **SECTION 2.** Section 47-5-1103, Mississippi Code of 1972, is  
11 reenacted as follows:

12       47-5-1103. As used in Sections 47-5-1101 through 47-5-1123,  
13 unless the context otherwise requires:

14               (a) "Commissioner" means the Commissioner of  
15 Corrections.

16               (b) "Contractor" means any private entity entering into  
17 a contractual agreement with the commissioner to provide special  
18 needs facilities or correctional services to inmates under the  
19 custody of the department.

20               (c) "Department" means the Department of Corrections.

21               (d) "Special Needs" means an inmate with diminished  
22 mental or physical health requiring specialized healthcare  
23 facilities or services. This does not include HIV positive  
24 inmates.

25       **SECTION 3.** Section 47-5-1105, Mississippi Code of 1972, is  
26 reenacted as follows:

27        47-5-1105. (1) The commissioner is authorized to enter into  
28 contracts for a special needs correctional facility and services  
29 only as provided in Sections 47-5-1101 through 47-5-1123.

30        (2) No contract shall be entered into unless it offers cost  
31 savings of at least ten percent (10%) to the department.

32        (3) Any inmate sentenced to the custody of the department  
33 identified as having a special need may be eligible to be  
34 incarcerated in a special needs correctional facility in which a  
35 contractor is providing correctional services.

36        (4) The rates and benefits for correctional services shall  
37 be negotiated by the commissioner based upon American Correction  
38 Association Standards, state law and court orders.

39        (5) The special needs facility or the site for a proposed  
40 facility must comply with all local zoning ordinances and  
41 regulations.

42        (6) The department may contract for the construction or  
43 leasing of a special needs facility. Any facility operated by a  
44 private contractor must house medium or maximum security inmates.

45        **SECTION 4.** Section 47-5-1107, Mississippi Code of 1972, is  
46 reenacted as follows:

47        47-5-1107. All facilities that are governed by this chapter  
48 shall be designed, constructed, and at all times maintained and  
49 operated in accordance with the American Correctional Association  
50 Standards in force at the time of contracting, as well as with  
51 subsequent ACA Standards to the extent that they are approved by  
52 the contracting agency. The facility shall meet the percentage of  
53 standards required for accreditation by the American Correctional  
54 Association.

55        In addition, all facilities shall at all times comply with  
56 all federal and state constitutional standards, federal, state and  
57 local laws, and all court orders.

58        **SECTION 5.** Section 47-5-1109, Mississippi Code of 1972, is  
59 reenacted as follows:



60        47-5-1109. The initial contract for the operation of a  
61 facility or for incarceration of prisoners or inmates therein  
62 shall be for a period of not more than five (5) years with an  
63 option to renew for an additional period of two (2) years.  
64 Contracts for construction, purchase, or lease of a facility shall  
65 not exceed a term of fifteen (15) years. Any contract for housing  
66 beyond the initial five (5) years shall be subject to annual  
67 appropriation by the Legislature if public funds are used to  
68 finance the construction.

69        **SECTION 6.** Section 47-5-1111, Mississippi Code of 1972, is  
70 reenacted as follows:

71        47-5-1111. (1) A contractor's employees serving as  
72 "correctional officers" shall be allowed to use force only while  
73 on the grounds of a facility, while transporting inmates, and  
74 while pursuing escapees from a facility.

75        (2) A contractor shall be authorized to use only such  
76 nondeadly force as the circumstances require in the following  
77 situations: to prevent the commission of a felony or misdemeanor,  
78 including escape; to defend oneself or others against physical  
79 assault; to prevent serious damage to property; to enforce  
80 institutional regulations and orders; and to prevent or quell a  
81 riot.

82        (3) A contractor's employees, while performing their  
83 officially assigned duties relating to the custody, control,  
84 transportation, recapture or arrest of any escaped offender  
85 assigned to a contract prison, shall be authorized to use force  
86 and firearms as necessary to pursue and recapture escapees.

87        (4) Private correctional officers who have been  
88 appropriately certified as determined by the contracting agency  
89 and trained pursuant to the provisions of subsection (5) shall  
90 have the right to carry and use firearms and shall exercise such  
91 authority and use deadly force only as a last resort, and then



92 only to prevent an act that could result in death or serious  
93 bodily injury to oneself or to another person.

94 (5) Private correctional officers shall be trained in the  
95 use of force and the use of firearms, in accordance with ACA  
96 Standards and shall be trained, at the contractor's expense, for  
97 at least the minimum number of hours that public personnel are  
98 currently trained.

99 **SECTION 7.** Section 47-5-1113, Mississippi Code of 1972, is  
100 reenacted as follows:

101 47-5-1113. All employees of a facility operated pursuant to  
102 this chapter must receive, at a minimum, the same quality and  
103 quantity of training as that required by the state, for employees  
104 of public correctional and detention facilities. All training  
105 expenses shall be the responsibility of the contractor.

106 **SECTION 8.** Section 47-5-1115, Mississippi Code of 1972, is  
107 reenacted as follows:

108 47-5-1115. A contract for correctional services shall not be  
109 entered into unless the following requirements are met:

110 (a) The contractor provides an adequate plan of  
111 insurance, specifically including insurance for civil rights  
112 claims, as determined by an independent risk management/actuarial  
113 firm with demonstrated experience in public liability for state  
114 governments. In determining the adequacy of the plan, such firm  
115 shall determine whether:

116 (i) The insurance is adequate to protect the state  
117 from any and all actions by a third party against the contractor  
118 or the state as a result of the contract;

119 (ii) The insurance is adequate to protect the  
120 state against any and all claims arising as a result of any  
121 occurrence during the term of the contract; that is, the insurance  
122 is adequate on an occurrence basis, not on a claims-made basis;

123 (iii) The insurance is adequate to assure the  
124 contractor's ability to fulfill its contract with the state in all



125 respects, and to assure that the contractor is not limited in this  
126 ability because of financial liability which results from  
127 judgments; and

128 (iv) The insurance is adequate to satisfy such  
129 other requirements specified by the independent risk  
130 management/actuarial firm.

131 (b) The sovereign immunity of the state shall not apply  
132 to the contractor. Neither the contractor nor the insurer of the  
133 contractor may plead the defense of sovereign immunity in any  
134 action arising out of the performance of the contract.

135 **SECTION 9.** Section 47-5-1117, Mississippi Code of 1972, is  
136 reenacted as follows:

137 47-5-1117. A plan shall be developed and certified by the  
138 commissioner which demonstrates the method by which the state  
139 would resume control of the prison upon contract termination.  
140 Such plan shall be submitted for review and comment to law  
141 enforcement agencies, the district attorney and circuit judges in  
142 the county in which the prison is located.

143 **SECTION 10.** Section 47-5-1119, Mississippi Code of 1972, is  
144 reenacted as follows:

145 47-5-1119. (1) The commissioner shall monitor any contracts  
146 with prison contractors providing correctional services and shall  
147 report at least annually, or as requested, to the Senate Committee  
148 on Corrections and the House Penitentiary Committee on the  
149 performance of the contractor.

150 (2) The medical director of the department shall be  
151 responsible for monitoring all aspects of the facility. The  
152 medical director may designate a person to assist in monitoring at  
153 the facility, as the medical director determines to be necessary.  
154 The medical director shall be provided an on-site work area, shall  
155 be on-site on a daily basis, and shall have access to all areas of  
156 the facility and to inmates and staff at all times. The  
157 contractor shall provide any and all data, reports and other



158 materials that the medical director determines are necessary to  
159 carry out monitoring responsibilities under this section.

160 **SECTION 11.** Section 47-5-1121, Mississippi Code of 1972, is  
161 reenacted as follows:

162 47-5-1121. No contract for private correctional facilities  
163 or services shall authorize, allow, or imply a delegation of the  
164 authority or responsibility of the state to a prison contractor  
165 to:

166 (a) Classify inmates or place inmates in less  
167 restrictive custody or more restrictive custody;

168 (b) Transfer an inmate, although the contractor may  
169 recommend in writing that the department transfer a particular  
170 inmate;

171 (c) Grant, deny, or revoke sentence credits;

172 (d) Recommend that the parole board either deny or  
173 grant parole, although the contractor may submit written reports  
174 that have been prepared in the ordinary course of business;

175 (e) Develop and implement procedures for calculating  
176 sentence credits or inmate release and parole eligibility dates;

177 (f) Require an inmate to work, except on  
178 department-approved projects; approve the type of work that  
179 inmates may perform; or award or withhold wages or sentence  
180 credits based on the manner in which individual inmates perform  
181 such work; or

182 (g) Determine inmate eligibility for furlough and work  
183 release.

184 **SECTION 12.** Section 47-5-1123, Mississippi Code of 1972, is  
185 amended as follows:

186 47-5-1123. Sections 47-5-1101 through 47-5-1121 shall repeal  
187 July 1, 2003.

188 **SECTION 13.** This act shall take effect and be in force from  
189 and after July 1, 2002.