

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:



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

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

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

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

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

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

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

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

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

SECTION 5. Section 47-5-1109, Mississippi Code of 1972, is 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



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

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

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

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

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

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

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

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

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

(iii) The insurance is adequate to assure the
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



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

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

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

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

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

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

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

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

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

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

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

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

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

