

REPORT OF CONFERENCE COMMITTEE

MR. SPEAKER AND MADAM PRESIDENT:

We, the undersigned conferees, have had under consideration the amendments to the following entitled BILL:

H. B. No. 778: Special Needs Prison Program; reenact and extend repealer (RP).

We, therefore, respectfully submit the following report and recommendation:

1. That the Senate recede from its Amendment No. 1.

2. That the House and Senate adopt the following amendment:

Amend by striking all after the enacting clause and inserting in lieu thereof the following:

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

17 47-5-1101. Sections 47-5-1101 through 47-5-1123 shall be
18 cited as the "Special Needs Prison Program of 1994."

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

21 47-5-1103. As used in Sections 47-5-1101 through 47-5-1123,
22 unless the context otherwise requires:

23 (a) "Commissioner" means the Commissioner of
24 Corrections.

25 (b) "Contractor" means any private entity entering into
26 a contractual agreement with the commissioner to provide special
27 needs facilities or correctional services to inmates under the
28 custody of the department.

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

30 (d) "Special Needs" means an inmate with diminished
31 mental or physical health requiring specialized healthcare
32 facilities or services. This does not include HIV positive
33 inmates.

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

36 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:

47-5-1109. The initial contract for the operation of a facility or for incarceration of prisoners or inmates therein shall be for a period of not more than five (5) years with an option to renew for an additional period of two (2) years.

73 Contracts for construction, purchase, or lease of a facility shall
74 not exceed a term of fifteen (15) years. Any contract for housing
75 beyond the initial five (5) years shall be subject to annual
76 appropriation by the Legislature if public funds are used to
77 finance the construction.

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

80 47-5-1111. (1) A contractor's employees serving as
81 "correctional officers" shall be allowed to use force only while
82 on the grounds of a facility, while transporting inmates, and
83 while pursuing escapees from a facility.

84 (2) A contractor shall be authorized to use only such
85 nondeadly force as the circumstances require in the following
86 situations: to prevent the commission of a felony or misdemeanor,
87 including escape; to defend oneself or others against physical
88 assault; to prevent serious damage to property; to enforce
89 institutional regulations and orders; and to prevent or quell a
90 riot.

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

96 (4) Private correctional officers who have been
97 appropriately certified as determined by the contracting agency
98 and trained pursuant to the provisions of subsection (5) shall
99 have the right to carry and use firearms and shall exercise such
100 authority and use deadly force only as a last resort, and then
101 only to prevent an act that could result in death or serious
102 bodily injury to oneself or to another person.

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

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

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

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

SECTION 9. Section 47-5-1117, Mississippi Code of 1972, is

reenacted as follows:

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

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

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

(2) The medical director of the department shall be responsible for monitoring all aspects of the facility. The medical director may designate a person to assist in monitoring at the facility, as the medical director determines to be necessary.

The medical director shall be provided an on-site work area, shall be on-site on a daily basis, and shall have access to all areas of the facility and to inmates and staff at all times. The 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. (1) (a) The Department of Corrections may contract with the Bolivar County Regional Facility for a five-year pilot program dedicated to an intensive and comprehensive alcohol and other drug treatment program for not more than two hundred fifty (250) inmates. The Bolivar County Regional Facility shall have the option of canceling the contract for the drug treatment program after giving the Department of Corrections thirty (30) days' notice of its intent to cancel. The program shall be a prison-based treatment program designed to reduce substance abuse by inmates, correct dysfunctional thinking and behavioral patterns, and prepare inmates to make a successful and crime-free readjustment to the community.

(b) The Department of Corrections shall reimburse the Bolivar County Regional Facility at the per diem rate allowed under Section 47-5-933.

(2) (a) An inmate who is within eighteen (18) months of his earned release date or parole date may be placed in the program.

(b) The Department of Corrections shall remove any inmate within seventy-two (72) hours after being notified by the Bolivar County Regional Facility that the inmate is violent or

refuses to participate in the drug treatment program.

(3) The program shall consist, but is not limited to, the following components:

(a) An assessment and placement component using a recidivism needs assessment of the inmates;

(b) An intensive and comprehensive treatment and rehabilitation component which addresses the specific drug or alcohol problem of the inmate. This component shall include relapse prevention strategies, anger management strategies and regimented discipline strategies.

(c) An aftercare post-release component that has a specific transition plan for each inmate. The transition plan must address specific post-release needs such as employment, housing, medical care, relapse prevention and treatment. The plan shall require personnel to assist the inmate with these needs and to assist in finding community-based programs for the inmate. The plan shall require the inmate to be tracked in at least thirty-day intervals to measure compliance with his established transition plan.

(d) A monitoring assessment of recidivism containing post-release history of substance abuse, breaches of trust, arrests, convictions, employment, community functioning, and marital and family interaction.

(4) The department shall file a report annually on the program with specific data on recidivism of inmates including the data required in subsection (3)(d).

(5) The program authorized under this section may be renewed if it meets performance requirements as may be determined by the Legislature.

(6) This section shall repeal on January 1, 2008.

SECTION 14. The following shall be codified as Section 47-5-934, Mississippi Code of 1972:

47-5-934. If a regional facility authorized under Section 47-5-931 experiences a disruption in the housing of state inmates due to a natural disaster in which the Governor has declared a disaster emergency under the laws of this state or the President

253 of the United States has declared an emergency or major disaster
254 to exist in this state, notwithstanding the limitation prescribed
255 in Section 47-5-933, the term of the contract entered into by the
256 Department of Corrections and the board of supervisors of the
257 involved county or counties may be extended for a period not to
258 exceed five (5) years.

259 **SECTION 15.** This act shall take effect and be in force from
260 and after July 1, 2002.

**Further, amend by striking the title in its entirety and
inserting in lieu thereof the following:**

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; TO AUTHORIZE THE DEPARTMENT OF
5 CORRECTIONS TO CONTRACT FOR A PILOT PROGRAM FOR INTENSIVE AND
6 COMPREHENSIVE ALCOHOL AND OTHER DRUG TREATMENT FOR INMATES AT THE
7 BOLIVAR COUNTY REGIONAL FACILITY; TO PLACE CERTAIN RESTRICTIONS ON
8 THE PROGRAM; TO REQUIRE AFTER-CARE MONITORING, SERVICES AND
9 TRANSITION PLAN FOR INMATES; TO REQUIRE RECIDIVISM REPORTS; TO
10 CREATE NEW SECTION 47-5-934, MISSISSIPPI CODE OF 1972, TO
11 AUTHORIZE CONTRACTS FOR THE HOUSING OF STATE INMATES IN REGIONAL
12 FACILITIES TO BE EXTENDED IN THE EVENT SERVICES ARE DISRUPTED DUE
13 TO A NATURAL DISASTER; AND FOR RELATED PURPOSES.

CONFEREES FOR THE HOUSE

X _____
Bennett Malone

X _____
Randy Pierce

X _____
Greg Ward

CONFEREES FOR THE SENATE

X _____
Rob H. Smith

X _____
Sampson Jackson II

X _____
William W. Canon