

By: Representative Malone

To: Corrections;
Appropriations

HOUSE BILL NO. 1131

1 AN ACT TO AMEND SECTION 47-5-103, MISSISSIPPI CODE OF 1972,
2 TO PROVIDE THAT THE DESIGNEE OR DESIGNEES OF THE COMMISSIONER OF
3 CORRECTIONS SHALL APPROVE OR DISAPPROVE EACH CLASSIFICATION MADE
4 BY THE CLASSIFICATION HEARING OFFICER; TO AMEND SECTION 47-5-193,
5 MISSISSIPPI CODE OF 1972, TO PROVIDE THAT IT IS UNLAWFUL FOR ANY
6 PERSON TO FURNISH AN OFFENDER UNAUTHORIZED ELECTRONIC DEVICES THAT
7 SEND OR RECEIVE MESSAGES; TO PROVIDE THAT IT IS UNLAWFUL FOR ANY
8 PERSON TO TAKE UNAUTHORIZED ELECTRONIC DEVICES THAT SEND OR
9 RECEIVE MESSAGES ONTO PROPERTY BELONGING TO THE DEPARTMENT OF
10 CORRECTIONS; TO AMEND SECTION 97-3-104, MISSISSIPPI CODE OF 1972,
11 TO CLARIFY THE PROHIBITION REGARDING CARNAL KNOWLEDGE OF AN
12 OFFENDER BY CORRECTIONAL OFFICERS; TO AUTHORIZE THE GOVERNOR TO
13 EXECUTE THE INTERSTATE COMPACT FOR ADULT OFFENDER SUPERVISION; TO
14 PRESCRIBE ITS PURPOSE; TO DEFINE CERTAIN TERMS; TO ESTABLISH THE
15 COMPACT COMMISSION AND PRESCRIBE ITS POWERS AND DUTIES; TO CREATE
16 A STATE COUNCIL FOR INTERSTATE ADULT OFFENDER SUPERVISION AND
17 PRESCRIBE ITS POWERS AND DUTIES; TO PROVIDE FOR THE ORGANIZATION
18 AND OPERATION OF THE INTERSTATE COMMISSION; TO AUTHORIZE THE
19 DEPARTMENT OF CORRECTIONS TO CHARGE A FEE FOR OFFENDERS WHO APPLY
20 FOR TRANSFER UNDER THE INTERSTATE COMPACT FOR ADULT OFFENDER
21 SUPERVISION; TO BRING FORWARD SECTION 47-7-71, MISSISSIPPI CODE OF
22 1972, WHICH AUTHORIZES THE EXECUTION OF THE UNIFORM ACT FOR
23 OUT-OF-STATE PAROLEE SUPERVISION; TO BRING FORWARD SECTION
24 47-7-73, MISSISSIPPI CODE OF 1972, WHICH REQUIRES THE DEPARTMENT
25 OF CORRECTIONS TO NOTIFY COUNTY AND MUNICIPAL LAW ENFORCEMENT
26 AGENCIES IN A COUNTY WHEN A PERSON IS PLACED ON PROBATION OR
27 RELEASED ON PAROLE AND RESIDES IN THE COUNTY UNDER THE UNIFORM ACT
28 FOR OUT-OF-STATE PAROLEE SUPERVISION; TO BRING FORWARD SECTION
29 47-7-47, MISSISSIPPI CODE OF 1972, WHICH AUTHORIZES CIRCUIT AND
30 COUNTY COURTS TO PLACE OFFENDERS IN THE EARNED PROBATION PROGRAM;
31 AND FOR RELATED PURPOSES.

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

33 **SECTION 1.** Section 47-5-103, Mississippi Code of 1972, is
34 amended as follows:

35 47-5-103. (1) The classification hearing officer shall be
36 responsible for assigning a classification to each offender within
37 forty (40) days after the offender's commitment to the custody of
38 the department. The classification shall determine the offender's
39 work duties, living quarters, educational, vocational or other
40 rehabilitation programs, and privileges to be accorded the
41 offender while in custody of the department. The classification

42 hearing officer, in assigning classifications, shall consider the
43 offender's age, offense and surrounding circumstances, the
44 complete record of the offender's criminal history including
45 records of law enforcement agencies or of a youth court regarding
46 that offender's juvenile criminal history, family background,
47 education, practical or employment experience, interests and
48 abilities as evidenced by mental and psychological examination and
49 knowledge obtained by the classification hearing officer in
50 personal interview with the offender. The classification hearing
51 officer shall use the above criteria to assign each offender a
52 classification which will serve and enhance the best interests and
53 general welfare of the offender. The designee or designees of the
54 commissioner shall approve or disapprove each classification. The
55 classification hearing officer shall provide the State Parole
56 Board with a copy of the classification assigned to each offender
57 in the custody of the department who is eligible for parole.

58 (2) The classification board, consisting of the
59 commissioner, or his designee, deputy commissioner of institutions
60 and the director of offender services may change an action of the
61 classification or disciplinary hearing officer if the board makes
62 a determination that the action of the hearing officer was not
63 supported by sufficient factual information. The commissioner, in
64 emergency situations, may suspend the classification of an
65 offender or offenders for a period of not exceeding fifteen (15)
66 days to relieve the emergency situation. The classification of
67 each offender may be reviewed by a classification hearing officer
68 at least once each year. In no case shall an offender serve as a
69 servant in the home of any employee other than authorized by the
70 commissioner.

71 (3) The classification board shall establish substantive and
72 procedural rules and regulations governing the assignment and
73 alteration of inmate classifications, and shall make such rules
74 and regulations available to any offender upon request.

75 **SECTION 2.** Section 47-5-193, Mississippi Code of 1972, is
76 amended as follows:

77 47-5-193. It is unlawful for any officer or employee of the
78 department, of any county sheriff's department, of any private
79 correctional facility in this state in which offenders are
80 confined or for any other person to furnish, attempt to furnish,
81 or assist in furnishing to any offender confined in this state any
82 weapon, deadly weapon, unauthorized electronic device that sends
83 or receives messages or contraband item. It is unlawful for any
84 person to take, attempt to take, or assist in taking any weapon,
85 deadly weapon, unauthorized electronic device that sends or
86 receives messages or contraband item on property belonging to the
87 department which is occupied or used by offenders, except as
88 authorized by law.

89 **SECTION 3.** Section 97-3-104, Mississippi Code of 1972, is
90 amended as follows:

91 97-3-104. It shall be unlawful for any jailer, guard,
92 employee of the Department of Corrections, sheriff, constable,
93 marshal or other officer to have carnal knowledge of any offender,
94 with or without the offender's consent, who is incarcerated at any
95 jail or any state, county or private correctional facility. Any
96 person who violates this section shall be guilty of a felony and
97 upon conviction shall be fined not more than Five Thousand Dollars
98 (\$5,000.00) or imprisoned for a term not to exceed five (5) years,
99 or both.

100 **SECTION 4.** The Governor, on behalf of this state, may
101 execute a compact, in substantially the following form, and the
102 Legislature signifies in advance its approval and ratification of
103 such compact:

104 **THE INTERSTATE COMPACT FOR ADULT OFFENDER SUPERVISION**

105 **ARTICLE I**

106 **PURPOSE**

107 The compacting states to this interstate compact recognize
108 that each state is responsible for the supervision of adult
109 offenders in the community who are authorized, pursuant to the
110 bylaws and rules of this compact, to travel across state lines
111 both to and from each compacting state in such a manner as to:
112 track the location of offenders; transfer supervision authority in
113 an orderly and efficient manner; and when necessary, return
114 offenders to the originating jurisdictions.

115 The compacting states also recognize that Congress, by
116 enacting the Crime Control Act, 4 USCS Section 112 (1965), has
117 authorized and encouraged compacts for cooperative efforts and
118 mutual assistance in the prevention of crime.

119 It is the purpose of this compact and the interstate
120 commission created under this compact, through means of joint and
121 cooperative action among the compacting states: to provide the
122 framework for the promotion of public safety and to protect the
123 rights of victims through the control and regulation of the
124 interstate movement of offenders in the community; to provide for
125 the effective tracking, supervision and rehabilitation of these
126 offenders by the sending and receiving states; and to equitably
127 distribute the costs, benefits and obligations of the compact
128 among the compacting states.

129 In addition, this compact will: create an interstate
130 commission that will establish uniform procedures to manage the
131 movement between states of adults placed under community
132 supervision and released to the community under the jurisdiction
133 of courts, paroling authorities, corrections or other criminal
134 justice agencies that will promulgate rules to achieve the purpose
135 of this compact; ensure an opportunity for input and timely notice
136 to victims and to jurisdictions where defined offenders are
137 authorized to travel or to relocate across state lines; establish
138 a system of uniform data collection, access to information on
139 active cases by authorized criminal justice officials, and regular

140 reporting of compact activities to heads of state councils, state
141 executive, judicial and legislative branches and criminal justice
142 administrators; monitor compliance with rules governing interstate
143 movement of offenders and initiate interventions to address and
144 correct noncompliance; and coordinate training and education
145 regarding regulations of interstate movement of offenders for
146 officials involved in such activity.

147 The compacting states recognize that there is no "right" of
148 any offender to live in another state and that duly accredited
149 officers of a sending state may enter a receiving state and
150 apprehend and retake any offender under supervision subject to the
151 provisions of this compact and bylaws and rules promulgated under
152 the compact.

153 It is the policy of the compacting states that the activities
154 conducted by the interstate commission created in this compact are
155 the formation of public policies and are therefore public
156 business.

157 **ARTICLE II**

158 **DEFINITIONS**

159 As used in this compact, the following words and terms have
160 the following meanings, unless a different meaning clearly appears
161 from the context:

162 (a) "Adult" means individuals legally classified as adults
163 and juveniles treated as adults by court order, statute or
164 operation of law.

165 (b) "Bylaws" mean those bylaws established by the interstate
166 commission for its governance or for directing or controlling the
167 interstate commission's actions or conduct.

168 (c) "Compact administrator" means the individual in each
169 compacting state appointed under this compact who is responsible
170 for the administration and management of the state's supervision
171 and transfer of offenders subject to the terms of this compact,

172 the rules adopted by the interstate commission and policies
173 adopted by the state council under this compact.

174 (d) "Compacting state" means any state that has enacted the
175 enabling legislation for this compact.

176 (e) "Commissioner" means the voting representative of each
177 compacting state appointed under Article III of this compact.

178 (f) "Interstate commission" means the Interstate Commission
179 for Adult Offender Supervision established by this compact.

180 (g) "Member" means the commissioner of a compacting state or
181 the commissioner's designee, who shall be a person officially
182 connected with the commissioner.

183 (h) "Noncompacting state" means any state that has not
184 enacted the enabling legislation for this compact.

185 (i) "Offender" means an adult placed under, or subject to,
186 supervision as the result of the commission of a criminal offense
187 and released to the community under the jurisdiction of courts,
188 paroling authorities, corrections or other criminal justice
189 agencies.

190 (j) "Person" means any individual, corporation, business
191 enterprise or other legal entity, either public or private.

192 (k) "Rules" mean acts of the interstate commission, duly
193 promulgated pursuant to Article VII of this compact, substantially
194 affecting interested parties in addition to the interstate
195 commission, which shall have the force and effect of law in the
196 compacting states.

197 (l) "State" means a state of the United States, the District
198 of Columbia and any other territorial possessions of the United
199 States.

200 (m) "State council" means the resident members of the
201 respective state council for interstate adult offender supervision
202 created by each state under Article III of this compact.

203 **ARTICLE III**

204 **THE COMPACT COMMISSION**

205 (A) The compacting states create the "Interstate Commission
206 for Adult Offender Supervision." The interstate commission shall
207 be a body corporate and joint agency of the compacting states.
208 The interstate commission shall have all the responsibilities,
209 powers and duties set forth in this compact, including the power
210 to sue and be sued, and such additional powers as may be conferred
211 upon it by subsequent action of the respective legislatures of the
212 compacting states in accordance with the terms of this compact.

213 (B) The interstate commission shall consist of commissioners
214 selected and appointed by resident members of a state council for
215 interstate adult offender supervision or the Governor for each
216 state. While each member state may determine the membership of
217 its own state council, its membership must include at least one
218 (1) representative from the legislative, judicial and executive
219 branches of government, victims groups and compact administrators.
220 The Mississippi state council will be appointed by the compact
221 administrator. The compact administrator also may appoint
222 additional representatives to the state council when he deems such
223 appointments necessary. The commissioner of corrections or his
224 designee shall serve as the compact administrator and as the
225 state's commissioner on the interstate commission in such capacity
226 pursuant to applicable law of the member state. Each compacting
227 state retains the right to determine the qualifications of the
228 compact administrator who shall be appointed by the Governor.

229 The commissioner of corrections shall serve as compact
230 administrator and chairperson of the state council for interstate
231 adult offender supervision. If the commissioner of corrections
232 appoints a designee, the designee must be a deputy commissioner of
233 corrections or the division director in the office of community
234 corrections that has operational authority over the interstate
235 compact division.

236 The term of office for state council members shall be four
237 (4) years. The state council shall meet at least twice a year.

238 The state council may advise the compact administrator on
239 participation in the interstate commission activities and
240 administration of the compact. Members of the council are
241 entitled to reimbursement for travel and expenses related to the
242 interstate commission as provided by state law.

243 In addition to appointment of its commissioner to the
244 National Interstate Commission, each state council shall exercise
245 oversight and advocacy concerning its participation in interstate
246 commission activities and other duties as may be determined by
247 each member state, including, but not limited to, development of
248 policy concerning operations and procedures of the compact within
249 that state.

250 (C) In addition to the commissioners who are the voting
251 representatives of each state, the interstate commission shall
252 include individuals who are not commissioners, but who are members
253 of interested organizations; the noncommissioner members must
254 include a member of the national organizations of governors,
255 legislators, state chief justices, attorneys general and crime
256 victims. All noncommissioner members of the interstate commission
257 shall be ex officio (nonvoting) members. The interstate
258 commission may provide in its bylaws for such additional, ex
259 officio (nonvoting) members as it deems necessary.

260 (D) Each compacting state represented at any meeting of the
261 interstate commission is entitled to one (1) vote. A majority of
262 the compacting states constitutes a quorum for the transaction of
263 business, unless a larger quorum is required by the bylaws of the
264 interstate commission.

265 (E) The interstate commission shall meet at least once each
266 calendar year. The chairperson may call additional meetings and,
267 upon the request of twenty-seven (27) or more compacting states,
268 shall call additional meetings. Public notice shall be given of
269 all meetings and meetings shall be open to the public.

270 (F) The interstate commission shall establish an executive
271 committee that shall include commission officers, members and
272 others as determined by the bylaws. The executive committee has
273 the power to act on behalf of the interstate commission during
274 periods when the interstate commission is not in session, with the
275 exception of rule-making or amendment to the compact, or both.
276 The executive committee: oversees the day-to-day activities
277 managed by the executive director and interstate commission staff;
278 administers enforcement and compliance with the provisions of the
279 compact, its bylaws and as directed by the interstate commission;
280 and performs other duties as directed by the commission or set
281 forth in the bylaws.

282 **ARTICLE IV**

283 **POWERS AND DUTIES OF THE INTERSTATE COMMISSION**

284 The interstate commission shall have the following powers:

285 (1) To adopt a seal and suitable bylaws governing the
286 management and operation of the interstate commission.

287 (2) To promulgate rules that have the force and effect
288 of statutory law and are binding in the compacting states to the
289 extent and in the manner provided in this compact.

290 (3) To oversee, supervise and coordinate the interstate
291 movement of offenders subject to the terms of this compact and any
292 bylaws adopted and rules promulgated by the compact commission.

293 (4) To enforce compliance with compact provisions,
294 interstate commission rules and bylaws, using all necessary and
295 proper means, including, but not limited to, the use of judicial
296 process.

297 (5) To establish and maintain offices.

298 (6) To purchase and maintain insurance and bonds.

299 (7) To borrow, accept or contract for services of
300 personnel, including, but not limited to, members and their
301 staffs.

302 (8) To establish and appoint committees and hire staff
303 that it deems necessary for the carrying out of its functions
304 including, but not limited to, an executive committee as required
305 by Article III, which shall have the power to act on behalf of the
306 interstate commission in carrying out its powers and duties
307 hereunder.

308 (9) To elect or appoint such officers, attorneys,
309 employees, agents or consultants and to fix their compensation,
310 define their duties and determine their qualifications; and to
311 establish the interstate commission's personnel policies and
312 programs relating to, among other things, conflicts of interest,
313 rates of compensation and qualifications of personnel.

314 (10) To accept any and all donations and grants of
315 money, equipment, supplies, materials and services, and to
316 receive, utilize and dispose of same.

317 (11) To lease, purchase, accept contributions or
318 donations of, or otherwise to own, hold, improve or use any
319 property, real, personal or mixed.

320 (12) To sell, convey, mortgage, pledge, lease,
321 exchange, abandon or otherwise dispose of any property, real,
322 personal or mixed.

323 (13) To establish a budget and make expenditures and
324 levy dues as provided in Article IX of this compact.

325 (14) To sue and be sued.

326 (15) To provide for dispute resolution among compacting
327 states.

328 (16) To perform such functions as may be necessary or
329 appropriate to achieve the purposes of this compact.

330 (17) To report annually to the legislatures, governors,
331 judiciary and state councils of the compacting states concerning
332 the activities of the interstate commission during the preceding
333 year. These reports shall include any recommendations that may
334 have been adopted by the interstate commission.

367 (g) Providing a mechanism for concluding the operations
368 of the interstate commission and the equitable return of any
369 surplus funds that may exist upon the termination of the compact
370 after the payment or reserving, or both, of all of its debts and
371 obligations;

372 (h) Providing transition rules for the "start up"
373 administration of the compact; and

374 (i) Establishing standards and procedures for
375 compliance and technical assistance in carrying out the compact.

376 **Section B. Officers and Staff**

377 (1) The interstate commission shall elect from among its
378 members, by a majority of the members, a chairperson and a vice
379 chairperson, each of whom shall have such authorities and duties
380 as may be specified in the bylaws. The chairperson or, in the
381 chairperson's absence or disability, the vice chairperson, shall
382 preside at all meetings of the interstate commission. The
383 officers so elected shall serve without compensation or
384 remuneration from the interstate commission; however, subject to
385 the availability of budgeted funds, the officers shall be
386 reimbursed for any actual and necessary costs and expenses
387 incurred by them in the performance of their duties and
388 responsibilities as officers of the interstate commission.

389 (2) The interstate commission, through its executive
390 committee, shall appoint or retain an executive director for such
391 period, upon such terms and conditions and for such compensation
392 as the interstate commission may deem appropriate. The executive
393 director shall serve as secretary to the interstate commission,
394 and hire and supervise such other staff as may be authorized by
395 the interstate commission, but the executive director shall not be
396 a member of the interstate commission.

397 **Section C. Corporate Records of the Interstate Commission**

398 The interstate commission shall maintain its corporate books
399 and records in accordance with the bylaws.

400 **Section D. Qualified Immunity, Defense and Indemnification**

401 (1) The members, officers, executive director and employees
402 of the interstate commission shall be immune from suit and
403 liability, either personally or in their official capacity, for
404 any claim for damage to or loss of property or personal injury or
405 other civil liability caused or arising out of any actual or
406 alleged act, error or omission that occurred within the scope of
407 interstate commission employment, duties or responsibilities;
408 however, nothing in this paragraph may be construed to protect any
409 such person from suit or liability, or both, for any damage, loss,
410 injury or liability caused by the intentional or willful and
411 wanton misconduct of any such person.

412 (2) The interstate commission shall defend the commissioner
413 of a compacting state, or the commissioner's representatives or
414 employees, or the interstate commission's representatives or
415 employees, in any civil action seeking to impose liability,
416 arising out of any actual or alleged act, error or omission that
417 occurred within the scope of interstate commission employment,
418 duties or responsibilities, or which the defendant had a
419 reasonable basis for believing occurred within the scope of
420 interstate commission employment, duties or responsibilities if
421 the actual or alleged act, error or omission did not result from
422 intentional wrongdoing on the part of such person.

423 (3) The interstate commission shall indemnify and hold the
424 commissioner of a compacting state, the appointed designee or
425 employees, or the interstate commission's representatives or
426 employees, harmless in the amount of any settlement or judgment
427 obtained against such persons arising out of any actual or alleged
428 act, error or omission that occurred within the scope of
429 interstate commission employment, duties or responsibilities, or
430 which such persons had a reasonable basis for believing occurred
431 within the scope of interstate commission employment, duties or
432 responsibilities if the actual or alleged act, error or omission

433 did not result from gross negligence or intentional wrongdoing on
434 the part of such person.

435 **ARTICLE VI**

436 **ACTIVITIES OF THE INTERSTATE COMMISSION**

437 (1) The interstate commission shall meet and take such
438 actions as are consistent with this compact.

439 (2) Except as otherwise provided in this compact and unless
440 a greater percentage is required by the bylaws, in order to
441 constitute an act of the interstate commission, the act must be
442 taken at a meeting of the interstate commission and must receive
443 an affirmative vote of a majority of the members present.

444 (3) Each member of the interstate commission has the right
445 and power to cast a vote to which that compacting state is
446 entitled and to participate in the business and affairs of the
447 interstate commission. A member shall vote in person on behalf of
448 the state and may not delegate a vote to another member state.
449 However, the compact administrator shall appoint another
450 authorized representative, in the absence of the commissioner from
451 that state, to cast a vote on behalf of the member state at a
452 specified meeting. The bylaws may provide for members'
453 participation in meetings by telephone or other means of
454 telecommunication or electronic communication. Any voting
455 conducted by telephone or other means of telecommunication or
456 electronic communication shall be subject to the same quorum
457 requirements of meetings where members are present in person.

458 (4) The interstate commission shall meet at least once
459 during each calendar year. The chairperson of the interstate
460 commission may call additional meetings at any time and, upon the
461 request of a majority of the members, shall call additional
462 meetings.

463 (5) The interstate commission's bylaws shall establish
464 conditions and procedures under which the interstate commission
465 shall make its information and official records available to the

466 public for inspection or copying. The interstate commission may
467 exempt from disclosure any information or official records to the
468 extent that they would adversely affect personal privacy rights or
469 proprietary interests. In promulgating such rules, the interstate
470 commission may make available to law enforcement agencies records
471 and information otherwise exempt from disclosure, and may enter
472 into agreements with law enforcement agencies to receive or
473 exchange information or records subject to nondisclosure and
474 confidentiality provisions.

475 (6) Public notice shall be given of all meetings and all
476 meetings shall be open to the public, except as set forth in the
477 rules or as otherwise provided in the compact. The interstate
478 commission shall promulgate rules consistent with the principles
479 contained in the "Government in Sunshine Act," 5 USCS Section
480 552(b), as may be amended. The interstate commission and any of
481 its committees may close a meeting to the public where it
482 determines, by two-thirds (2/3) vote, that an open meeting would
483 be likely to: (a) relate solely to the interstate commission's
484 internal personnel practices and procedures; (b) disclose matters
485 specifically exempted from disclosure by statute; (c) disclose
486 trade secrets or commercial or financial information which is
487 privileged or confidential; (d) involve accusing any person of a
488 crime or formally censuring any person; (e) disclose information
489 of a personal nature where disclosure would constitute a clearly
490 unwarranted invasion of personal privacy; (f) disclose
491 investigatory records compiled for law enforcement purposes; (g)
492 disclose information contained in or related to examination,
493 operating or condition reports prepared by, or on behalf of or for
494 the use of, the interstate commission with respect to a regulated
495 entity for the purpose of regulation or supervision of such
496 entity; (h) disclose information, the premature disclosure of
497 which would significantly endanger the life of a person or the
498 stability of a regulated entity; (i) specifically relate to the

499 interstate commission's issuance of a subpoena, or its
500 participation in a civil action or proceeding.

501 (7) For every meeting closed pursuant to this provision, the
502 interstate commission's chief legal officer shall certify publicly
503 that, in the legal officer's opinion, the meeting may be closed to
504 the public and shall reference each relevant exemptive provision.
505 The interstate commission shall keep minutes that shall describe
506 fully and clearly, all matters discussed in any meeting and shall
507 provide a full and accurate summary of any actions taken and the
508 reasons therefor, including, a description of each of the views
509 expressed on any item and the record of any roll call vote
510 (reflected in the vote of each member on the question). All
511 documents considered in connection with any action shall be
512 identified in such minutes.

513 (8) The interstate commission shall collect standardized
514 data concerning the interstate movement of offenders as directed
515 through its bylaws and rules, which shall specify the data to be
516 collected, the means of collection and data exchange and reporting
517 requirements.

518 **ARTICLE VII**

519 **RULE-MAKING FUNCTIONS OF THE INTERSTATE COMMISSION**

520 (1) The interstate commission shall promulgate rules in
521 order to effectively and efficiently achieve the purposes of the
522 compact, including transition rules governing administration of
523 the compact during the period in which it is being considered and
524 enacted by the states.

525 (2) Rule-making shall occur pursuant to the criteria set
526 forth in this article and the bylaws and rules adopted pursuant
527 thereto. Such rule-making shall substantially conform to the
528 principles of the federal Administrative Procedure Act, 5 USCS
529 Section 551 et seq., and the Federal Advisory Committee Act, 5
530 USCS App. 2, Section 1 et seq., as may be amended (hereinafter
531 "APA").

532 (3) All rules and amendments shall become binding as of the
533 date specified in each rule or amendment.

534 (4) If a majority of the legislatures of the compacting
535 states rejects a rule, by enactment of a statute or resolution in
536 the same manner used to adopt the compact, then that rule shall
537 have no further force and effect in any compacting state.

538 (5) When promulgating a rule, the interstate commission
539 shall: (a) publish the proposed rule stating with particularity
540 the text of the rule that is proposed and the reason for the
541 proposed rule; (b) allow persons to submit written data, facts,
542 opinions and arguments, which information shall be publicly
543 available; (c) provide an opportunity for an informal hearing; and
544 (d) promulgate a final rule and its effective date, if
545 appropriate, based on the rule-making record.

546 (6) Not later than sixty (60) days after a rule is
547 promulgated, any interested person may file a petition in the
548 United States District Court for the District of Columbia or in
549 the federal district court where the interstate commission's
550 principal office is located for judicial review of the rule. If
551 the court finds that the interstate commission's action is not
552 supported by substantial evidence (as defined in the APA) in the
553 rule-making record, the court shall hold the rule unlawful and set
554 it aside.

555 (7) Subjects to be addressed within twelve (12) months after
556 the first meeting must include, at a minimum: (a) notice to
557 victims and opportunity to be heard; (b) offender registration and
558 compliance; (c) violations and returns; (d) transfer procedures
559 and forms; (e) eligibility for transfer; (f) collection of
560 restitution and fees from offenders; (g) data collection and
561 reporting; (h) the level of supervision to be provided by the
562 receiving state; (i) transition rules governing the operation of
563 the compact and the interstate commission during all or part of
564 the period between the effective date of the compact and the date

565 on which the last eligible state adopts the compact; and (j)
566 mediation, arbitration and dispute resolution.

567 The existing rules governing the operation of the previous
568 compact superceded by this act shall be null and void twelve (12)
569 months after the first meeting of the interstate commission
570 created under this compact.

571 (8) Upon determination by the interstate commission that an
572 emergency exists, the interstate commission may promulgate an
573 emergency rule that shall become effective immediately upon
574 adoption; however, the usual rule-making procedures provided under
575 this compact shall be applied retroactively to that rule as soon
576 as reasonably possible, and in no event, later than ninety (90)
577 days after the effective date of the rule.

578 **ARTICLE VIII**

579 **OVERSIGHT, ENFORCEMENT, AND DISPUTE RESOLUTION BY THE** 580 **INTERSTATE COMMISSION**

581 **Section A. Oversight**

582 (1) The interstate commission shall oversee the interstate
583 movement of adult offenders in the compacting states and shall
584 monitor such activities being administered in noncompacting states
585 which significantly may affect compacting states.

586 (2) The courts and executive agencies in each compacting
587 state shall enforce this compact and shall take all actions
588 necessary and appropriate to effectuate the compact's purposes and
589 intent. In any judicial or administrative proceeding in a
590 compacting state pertaining to the subject matter of this compact
591 which may affect the powers, responsibilities or actions of the
592 interstate commission, the interstate commission shall be entitled
593 to receive all service of process in any such proceeding and shall
594 have standing to intervene in the proceeding for all purposes.

595 **Section B. Dispute Resolution**

596 (1) The compacting states shall report to the interstate
597 commission on issues or activities of concern to them and shall

598 cooperate with and support the interstate commission in the
599 discharge of its duties and responsibilities.

600 (2) The interstate commission shall attempt to resolve any
601 disputes or other issues that are subject to the compact and which
602 may arise among compacting states and noncompacting states.

603 (3) The interstate commission shall enact a bylaw or
604 promulgate a rule providing for both mediation and binding dispute
605 resolution for disputes among the compacting states.

606 **Section C. Enforcement**

607 The interstate commission, in the reasonable exercise of its
608 discretion, shall enforce the provisions of this compact using any
609 or all means set forth in Article XI, Section B, of this compact.

610 **Section D. Retaking Cases From Another Jurisdiction**

611 The duly accredited officers of a sending state may enter a
612 receiving state and apprehend and retake any person on probation
613 or parole according to the laws of the United States. For that
614 purpose, the sending state must establish the authority of the
615 officer and the identity of the person or persons to be retaken.
616 The person or persons must be afforded a preliminary hearing
617 consistent with due process requirements under the United States
618 Constitution as interpreted by the Supreme Court of the United
619 States. All legal requirements to extradition of fugitives from
620 justice are waived expressly on the part of states that are
621 parties to this compact as to such persons. The decision of the
622 sending state to retake a person on probation or parole is
623 conclusive and not reviewable within the receiving state; however,
624 if, at the time a state seeks to retake a probationer or parolee,
625 there is pending against him within the receiving state a criminal
626 charge or if he is suspected of having committed within that state
627 a criminal offense, the probationer or parolee may not be retaken
628 without the consent of the receiving state until the probationer
629 or parolee is discharged from prosecution or from imprisonment for
630 such offense. The duly accredited officers of the sending state

631 may transport prisoners being retaken through any state that is a
632 party to this compact without interference.

633 **ARTICLE IX**

634 **FINANCE**

635 (1) The interstate commission shall pay or provide for the
636 payment of the reasonable expenses of its establishment,
637 organization and ongoing activities.

638 (2) The interstate commission shall levy on and collect an
639 annual assessment from each compacting state to cover the cost of
640 the internal operations and activities of the interstate
641 commission and its staff, which levy must be in a total amount
642 sufficient to cover the interstate commission's annual budget as
643 approved each year. The aggregate annual assessment amount shall
644 be allocated based upon a formula to be determined by the
645 interstate commission, taking into consideration the population of
646 the state and the volume of interstate movement of offenders in
647 each compacting state. The interstate commission shall promulgate
648 a rule binding upon all compacting states which governs the
649 assessment.

650 (3) The interstate commission shall not incur any
651 obligations of any kind before securing the funds adequate to meet
652 the obligations. The interstate commission may not pledge the
653 credit of any of the compacting states, except by and with the
654 authority of the compacting state.

655 (4) The interstate commission shall keep accurate accounts
656 of all receipts and disbursements. The receipts and disbursements
657 of the interstate commission shall be subject to the audit and
658 accounting procedures established under its bylaws. However, all
659 receipts and disbursements of funds handled by the interstate
660 commission shall be audited yearly by a certified or licensed
661 public accountant, and the report of the audit shall be included
662 in and become part of the annual report of the interstate
663 commission.

664 **ARTICLE X**

665 **COMPACTING STATES, EFFECTIVE DATE AND AMENDMENT**

666 (1) Any state, as defined in Article II of this compact, is
667 eligible to become a compacting state.

668 (2) The compact shall become effective and binding upon
669 legislative enactment of the compact into law by no less than
670 thirty-five (35) of the states. The initial effective date shall
671 be the later of July 1, 2004, or upon enactment into law by the
672 thirty-fifth jurisdiction. Thereafter, it shall become effective
673 and binding, as to any other compacting state, upon enactment of
674 the compact into law by that state. The governors of nonmember
675 states or their designees will be invited to participate in
676 interstate commission activities on a nonvoting basis before
677 adoption of the compact by all states and territories of the
678 United States.

679 (3) Amendments to the compact may be proposed by the
680 interstate commission for enactment by the compacting states. No
681 amendment shall become effective and binding upon the interstate
682 commission and the compacting states unless it is enacted into law
683 by unanimous consent of the compacting states.

684 **ARTICLE XI**

685 **WITHDRAWAL, DEFAULT, TERMINATION, AND JUDICIAL ENFORCEMENT**

686 **Section A. Withdrawal**

687 (1) Once effective, the compact shall continue in force and
688 remain binding upon every compacting state; however, a compacting
689 state may withdraw from the compact ("withdrawing state") by
690 enacting a statute specifically repealing the statute that enacted
691 the compact into law.

692 (2) The effective date of withdrawal is the effective date
693 of the repeal.

694 (3) The withdrawing state shall notify immediately the
695 chairperson of the interstate commission in writing upon the

696 introduction of legislation repealing this compact in the
697 withdrawing state.

698 (4) The interstate commission shall notify the other
699 compacting states of the withdrawing state's intent to withdraw
700 within sixty (60) days of its receipt of the notification.

701 (5) The withdrawing state is responsible for all
702 assessments, obligations and liabilities incurred through the
703 effective date of withdrawal, including any obligations, the
704 performance of which extend beyond the effective date of
705 withdrawal.

706 (6) Reinstatement following withdrawal of any compacting
707 state shall occur upon the withdrawing state reenacting the
708 compact or upon such later date as determined by the interstate
709 commission.

710 **Section B. Default**

711 (1) If the interstate commission determines that any
712 compacting state has at any time defaulted ("defaulting state") in
713 the performance of any of its obligations or responsibilities
714 under this compact, the bylaws or any duly promulgated rules, the
715 interstate commission may impose any or all of the following
716 penalties:

717 (a) Fines, fees and costs in such amounts as are deemed
718 to be reasonable, as fixed by the interstate commission;

719 (b) Remedial training and technical assistance as
720 directed by the interstate commission;

721 (c) Suspension and termination of membership in the
722 compact. Suspension shall be imposed only after all other
723 reasonable means of securing compliance under the bylaws and rules
724 have been exhausted. Immediate notice of suspension shall be
725 given by the interstate commission: to the Governor, the Chief
726 Justice or chief judicial officer of the state; the majority and
727 minority leaders of the defaulting state's Legislature; and the
728 state council. The grounds for default include, but are not

729 limited to, failure of a compacting state to perform such
730 obligations or responsibilities imposed upon it by this compact,
731 interstate commission bylaws or duly promulgated rules. The
732 interstate commission shall immediately notify the defaulting
733 state in writing of the penalty imposed by the interstate
734 commission on the defaulting state pending a cure of the default.
735 The interstate commission shall stipulate the conditions and the
736 time period within which the defaulting state must cure its
737 default. If the defaulting state fails to cure the default within
738 the time period specified by the interstate commission, in
739 addition to any other penalties imposed, the defaulting state may
740 be terminated from the compact upon an affirmative vote of a
741 majority of the compacting states and all rights, privileges and
742 benefits conferred by this compact shall be terminated from the
743 effective date of suspension.

744 (2) Within sixty (60) days of the effective date of
745 termination of a defaulting state, the interstate commission shall
746 notify the governor, the chief justice or chief judicial officer
747 and the majority and minority leaders of the defaulting state's
748 legislature and the state council of such termination.

749 (3) The defaulting state is responsible for all assessments,
750 obligations and liabilities incurred through the effective date of
751 termination including any obligations, the performance of which
752 extends beyond the effective date of termination.

753 (4) The interstate commission shall not bear any costs
754 relating to the defaulting state unless otherwise mutually agreed
755 upon between the interstate commission and the defaulting state.

756 (5) Reinstatement following termination of any compacting
757 state requires both a reenactment of the compact by the defaulting
758 state and the approval of the interstate commission pursuant to
759 the rules.

760 **Section C. Judicial Enforcement**

793 (2) All compacting states' laws conflicting with this
794 compact are superseded to the extent of the conflict.

795 **Section B. Binding Effect of the Compact**

796 (1) All lawful actions of the interstate commission,
797 including all rules and bylaws promulgated by the interstate
798 commission, are binding upon the compacting states.

799 (2) All agreements between the interstate commission and the
800 compacting states are binding in accordance with their terms.

801 (3) Upon the request of a party to a conflict over the
802 meaning or interpretation of interstate commission actions, and
803 upon a majority vote of the compacting states, the interstate
804 commission may issue advisory opinions regarding such meaning or
805 interpretation.

806 (4) If any provision of this compact exceeds the
807 constitutional limits imposed on the legislature of any compacting
808 state, the obligations, duties, powers or jurisdiction sought to
809 be conferred by such provision upon the interstate commission
810 shall be ineffective, and such obligations, duties, powers or
811 jurisdiction shall remain in the compacting state and shall be
812 exercised by the agency of that state to which the obligations,
813 duties, powers or jurisdiction are delegated by law in effect at
814 the time this compact becomes effective.

815 **SECTION 5.** Pursuant to the Interstate Compact for Adult
816 Offender Supervision, the Department of Corrections may assume the
817 duties of supervision over offenders of any sending state who were
818 convicted of misdemeanors. The Department of Corrections may not
819 supervise offenders convicted of misdemeanors of states that are
820 not participating in the compact.

821 **SECTION 6.** Pursuant to the Interstate Compact for Adult
822 Offender Supervision, the Department of Corrections may charge a
823 one-time application fee in the amount of Thirty-five Dollars
824 (\$35.00) to each offender applying for out-of-state transfer under
825 the Interstate Compact for Adult Offender Adult Supervision.

826 Payments received under this section shall be deposited into a
827 special fund which is created in the State Treasury. Monies in
828 the fund shall be expended by the Department of Corrections, upon
829 appropriation by the Legislature, to defray costs incurred by the
830 department under the Interstate Compact for Adult Offender
831 Supervision. Unexpended amounts remaining in the special fund at
832 the end of a fiscal year shall not lapse into the State General
833 Fund, and any interest earned or investment earnings on amounts in
834 the special fund shall be deposited to the credit of the special
835 fund.

836 **SECTION 7.** Section 47-7-71, Mississippi Code of 1972, is
837 brought forward as follows:

838 47-7-71. I. The Governor of this state is hereby authorized
839 and directed to execute a compact on behalf of the State of
840 Mississippi with any of the United States legally joining therein
841 in the form substantially as follows:

842 **A Compact**

843 Entered into by and among the contracting states, signatories
844 hereto, with the consent of the Congress of the United States of
845 America, granted by an act entitled "An act granting the consent
846 of Congress to any two (2) or more states to enter into agreements
847 or compacts for cooperative effort and mutual assistance in the
848 prevention of crime and for other purposes."

849 The contracting states solemnly agree:

850 (1) That it shall be competent for the duly constituted
851 judicial and administrative authorities of a state party to this
852 compact (herein called "sending state"), to permit any person
853 convicted of an offense within such state and placed on probation
854 or released on parole to reside in any other state party to this
855 compact (herein called "receiving state"), while on probation or
856 parole, if

857 (a) Such person is in fact a resident of or has
858 his family residing within the receiving state and can obtain
859 employment there;

860 (b) Though not a resident of the receiving state
861 and not having his family residing there, the receiving state
862 consents to such person being sent there.

863 Before granting such permission, opportunity shall be granted
864 to the receiving state to investigate the home and prospective
865 employment of such person.

866 A resident of the receiving state, within the meaning of this
867 section, is one who has been an actual inhabitant of such state
868 continuously for more than one (1) year prior to his coming to the
869 sending state and has not resided within the sending state more
870 than six (6) continuous months immediately preceding the
871 commission of the offense for which he has been convicted.

872 (2) That each receiving state will assume the duties of
873 visitation of and supervision over probationers or parolees of any
874 sending state and in the exercise of those duties will be governed
875 by the same standards that prevail for its own probationers and
876 parolees.

877 (3) That duly accredited officers of a sending state
878 may at all times enter a receiving state and there apprehend and
879 retake any person on probation or parole. For that purpose no
880 formalities will be required other than establishing the authority
881 of the officer and the identity of the person to be retaken. All
882 legal requirements to obtain extradition of fugitives from justice
883 are hereby expressly waived on the part of states party hereto, as
884 to such persons. The decision of the sending state to retake a
885 person on probation or parole shall be conclusive upon and not
886 reviewable within the receiving state; provided, however, that if
887 at the time when a state seeks to retake a probationer or parolee
888 there should be pending against him within the receiving state any
889 criminal charge, or he should be suspected of having committed

890 within such state a criminal offense, he shall not be retaken
891 without the consent of the receiving state until discharged from
892 prosecution or from imprisonment for such offense.

893 (4) That the duly accredited officers of the sending
894 state will be permitted to transport prisoners being retaken
895 through any and all states parties to this compact, without
896 interference.

897 (5) That the governor of each state may designate an
898 officer who, acting jointly with like officers of other
899 contracting states, if and when appointed, shall promulgate such
900 rules and regulations as may be deemed necessary to more
901 effectively carry out the terms of this compact.

902 (6) That this compact shall become operative
903 immediately upon its execution by any state as between it and any
904 other state or states so executing. When executed it shall have
905 the full force and effect of law within such state, the form of
906 execution to be in accordance with the laws of the executing
907 state.

908 (7) That this compact shall continue in force and
909 remain binding upon each executing state until renounced by it.
910 The duties and obligations hereunder of a renouncing state shall
911 continue as to parolees or probationers residing therein at the
912 time of withdrawal until retaken or finally discharged by the
913 sending state. Renunciation of this compact shall be by the same
914 authority which executed it, by sending six (6) months' notice in
915 writing of its intention to withdraw from the compact to the other
916 state party hereto.

917 II. This section may be cited as the uniform act for
918 out-of-state parolee supervision.

919 **SECTION 8.** Section 47-7-73, Mississippi Code of 1972, is
920 brought forward as follows:

921 47-7-73. The Department of Corrections shall notify the
922 sheriff of the county and the police chief of each municipality in

923 the county when a person is placed on probation or released on
924 parole to reside in the county under the Uniform Act for
925 Out-of-state Parolee Supervision.

926 **SECTION 9.** Section 47-7-47, Mississippi Code of 1972, is
927 brought forward as follows:

928 47-7-47. (1) The judge of any circuit court may place an
929 offender on a program of earned probation after a period of
930 confinement as set out herein and the judge may seek the advice of
931 the commissioner and shall direct that the defendant be under the
932 supervision of the department.

933 (2) (a) Any circuit court or county court may, upon its own
934 motion, acting upon the advice and consent of the commissioner not
935 earlier than thirty (30) days nor later than one (1) year after
936 the defendant has been delivered to the custody of the department,
937 to which he has been sentenced, suspend the further execution of
938 the sentence and place the defendant on earned probation, except
939 when a death sentence or life imprisonment is the maximum penalty
940 which may be imposed or if the defendant has been confined two (2)
941 or more times for the conviction of a felony on a previous
942 occasion in any court or courts of the United States and of any
943 state or territories thereof or has been convicted of a felony
944 involving the use of a deadly weapon.

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

948 (c) The time limit imposed by paragraph (a) of this
949 subsection is not applicable to those defendants sentenced to the
950 custody of the department prior to April 14, 1977. Persons who
951 are convicted of crimes that carry mandatory sentences shall not
952 be eligible for earned probation.

953 (3) When any circuit or county court places an offender on
954 earned probation, the court shall give notice to the Mississippi
955 Department of Corrections within fifteen (15) days of the court's

956 decision to place the offender on earned probation. Notice shall
957 be delivered to the central office of the Mississippi Department
958 of Corrections and to the regional office of the department which
959 will be providing supervision to the offender on earned probation.

960 (4) If the court places any person on probation or earned
961 probation, the court may order the person, as a condition of
962 probation, to a period of confinement and treatment at a private
963 or public agency or institution, either within or without the
964 state, which treats emotional, mental or drug-related problems.
965 Any person who, as a condition of probation, is confined for
966 treatment at an out-of-state facility shall be supervised pursuant
967 to Section 47-7-71, and any person confined at a private agency
968 shall not be confined at public expense. Time served in any such
969 agency or institution may be counted as time required to meet the
970 criteria of subsection (2)(a).

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

975 (6) If the court places any person on probation or earned
976 probation, the court may order the person, as a condition of
977 probation, to submit, as provided in Section 47-5-601, to any type
978 of breath, saliva or urine chemical analysis test, the purpose of
979 which is to detect the possible presence of alcohol or a substance
980 prohibited or controlled by any law of the State of Mississippi or
981 the United States.

982 **SECTION 10.** This act shall take effect and be in force from
983 and after July 1, 2004.