MISSISSIPPI LEGISLATURE REGULAR SESSION 2007

By: Representative Watson

To: Corrections; Judiciary A

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1510

AN ACT TO CREATE A COMMUNITY CORRECTIONS PROGRAM FOR THE 12TH JUDICIAL CIRCUIT COURT DISTRICT, WHICH IS COMPRISED OF FORREST AND PERRY COUNTIES; TO PROVIDE THAT THE COMMUNITY CORRECTIONS PROGRAM BE KNOWN AS THE 12TH CIRCUIT COURT COMMUNITY CORRECTIONS; TO PROVIDE THAT THE NAME OF THE COMMISSION WHICH OPERATES PROGRAMS AND SUPPORT SERVICES FOR THE 12TH CIRCUIT COURT COMMUNITY CORRECTIONS SHALL BE THE 12TH CIRCUIT COURT COMMUNITY CORRECTIONS COMMISSION, WHICH SHALL OVERSEE AND OPERATE ALL PROGRAMS, SERVICES, AND ADMINISTRATIVE FUNCTIONS OF THE 12TH CIRCUIT COURT COMMUNITY CORRECTIONS; TO PROVIDE FOR THE COMPOSITION OF THE COMMISSION; TO ALLOW THE COMMISSION TO APPOINT AN EXECUTIVE DIRECTOR, WHO SHALL SERVE AT ITS PLEASURE; TO INCORPORATE INTO THE 12TH CIRCUIT COURT COMMUNITY CORRECTIONS, PROGRAMS AND SUPPORT SERVICES CONCERNING PRETRIAL RELEASE, COMMUNITY SERVICE PROGRAM, SUPERVISION FOR PARTICIPANTS ENTERING A PLEA OF GUILT PURSUANT, POST-ADJUDICATION SUPERVISION, A VOCATIONAL/EDUCATIONAL AND EMPLOYMENT PROGRAM, RESIDENTIAL REHABILITATION AND WORK RELEASE, A REENTRY RESIDENTIAL AND NONRESIDENTIAL PROGRAM, ADULT AND JUVENILE DRUG AND DUI COURT PROGRAMS AND SERVICES, INCLUDING, BUT NOT LIMITED TO, DEFERRED PROSECUTION AND PRETRIAL DIVERSION, AND ANY OTHER SIMILAR OR RELATED PROGRAM; TO DEFINE PERSONS ELIGIBLE TO PARTICIPATE IN SUCH PROGRAMS AND SERVICES AND TO ALLOW THE REFUSAL OF THE PARTICIPATION IN PROGRAMS AND SERVICES OF OTHERWISE ELIGIBLE PERSONS WHOSE PARTICIPATION WOULD NOT BE IN THE PUBLIC INTEREST OR WOULD INVALIDATE THE INTENT OF THE PROGRAMS OR SERVICES OFFERED; TO AUTHORIZE THE COMMISSION TO CONTRACT FOR ITS PROGRAMS AND SERVICES WITH A NOT-FOR-PROFIT CORPORATION; TO AUTHORIZE THE 12TH CIRCUIT COURT COMMUNITY CORRECTIONS TO COLLECT REASONABLE FEES FROM PARTICIPANTS OF ITS PROGRAMS AND SERVICES; TO PROVIDE FOR AN AUDIT OF THE 12TH CIRCUIT COURT COMMUNITY CORRECTIONS EVERY THREE YEARS; TO AUTHORIZE THE 12TH CIRCUIT COURT COMMUNITY CORRECTIONS THE ABILITY TO HIRE LEGAL, ACCOUNTING, AND OTHER PROFESSIONAL SERVICES; TO AUTHORIZE THE DISCRETION OF THE EXECUTIVE DIRECTOR TO DEFER OR WAIVE THE PAYMENT OF ANY FEES BASED UPON THE FINANCIAL HARDSHIP OF A PARTICIPANT OR HIS OR HER DEPENDENT; TO PROVIDE THAT ANY PARTICIPANT IN A RESIDENTIAL PROGRAM WHO WILLFULLY FAILS TO REPORT TO SUCH PROGRAM AS ORDERED, OR WHO WILLFULLY FAILS TO RETURN TO SUCH PROGRAM FROM A JOB OR TEMPORARY PASS, SHALL BE GUILTY OF ESCAPE; TO PROVIDE THAT THE PROVISIONS AND ENUMERATED POWERS DESCRIBED SHALL NOT INTERFERE WITH, OR CHANGE IN ANY MANNER, THE DRUG COURT OR PRETRIAL DIVERSION PROGRAMS CURRENTLY OPERATING IN THE 12TH JUDICIAL CIRCUIT COURT DISTRICT AUTHORIZED BY OTHER STATE STATUTES; AND FOR RELATED PURPOSES.

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

SECTION 1. This act shall be known as the "12th Circuit Court Community Corrections Act of 2007."

SECTION 2. The community corrections program authorized by this act shall be known as the 12th Circuit Court Community Corrections.

SECTION 3. (1) The 12th Circuit Court Community Corrections Commission shall oversee and operate all programs, services, and administrative functions of the 12th Circuit Court Community Corrections. The number of members comprising the commission shall be seven (7) and shall be comprised of the following individuals:

(a) The District Attorney of Forrest and Perry Counties, or his designee;

(b) The Sheriff of Forrest County, or his designee;

(c) The Sheriff of Perry County, or his designee;

(d) The Commissioner of the Mississippi Department of Corrections, or his designee;

(e) A member of the criminal defense bar practicing in the district, to be appointed by the circuit judge; and

(f) Two members to be appointed by the circuit judge from a list of individuals recommended by the district attorney, the sheriffs, and the commissioner, or their designees.

(2) The term of service of the commission shall be commensurate with the elected terms of the district attorney and sheriffs and shall expire at the end of their regular terms of office. A new commission shall be appointed in the manner directed by this act at the beginning of each new regular term of office for the district attorney and sheriffs.

(3) The commission shall have full authority to implement this act and superintend all administrative functions, services, and programs of the 12th Circuit Court Community Corrections. The commission shall select from its membership a president and other officers as needed, and may appoint an executive director, who shall serve at the pleasure of the commission.

(4) The commission shall make and publish its own rules for the conduct of its affairs. Commission meetings shall be held at least once a quarter, at the call of the president, or upon the request of any three (3) commission members.

SECTION 4. The commission shall be vested with all authority necessary to create or manage, or both, all of the following:

(a) A supervised pretrial release program so that no person be needlessly incarcerated pending adjudication in Forrest or Perry County due to his or her personal economic circumstances and inability to post bail, provided that his or her release shall not be contrary to the public interest or a danger to the public at large and also shall serve the purpose of assuring the presence of the defendant at trial.

(b) A supervised nonresidential community service program designed to provide close supervision of the participant's activities, compliance with conditions of any suspended sentence, performance of community service work, and payment of restitution and other court-ordered monies.

(c) A supervised post-adjudication rehabilitation program designed to provide close supervision of the participant's activities, compliance with conditions of any suspended sentence, and payment of restitution and other court-ordered monies.

(d) A supervised nonresidential program designed to provide close supervision of the participant's activities, compliance with conditions of any suspended sentence, performance of community service work, and payment of restitution and other court-ordered monies for those participants who have entered a plea of guilt but had his or her sentence deferred pursuant to Section 99-15-26.

(e) An educational, vocational and job fair program designed to enable participants to obtain the educational and vocational skills necessary to find and retain employment and

which will provide assistance to participants in exploring employment opportunities.

(f) A residential rehabilitation and work release program for certain inmates incarcerated in county jails for the purpose of working at gainful employment, enabling them to pay for the cost of their crimes, and to provide a means for them to pay the cost of their supervision from their gross earnings.

(g) A reentry residential and nonresidential rehabilitation and work release program for inmates being released from the custody of the Mississippi Department of Corrections which will assist participants in reentry to noncustodial life and in finding employment opportunities.

(h) Support services for Forrest and Perry Counties juvenile and adult drug courts, deferred prosecution and pretrial diversion programs.

(i) Any other such lawful services or programs which the commission deems appropriate for the furtherance of this act.

SECTION 5. The commission shall also be vested with all authority necessary to implement this act, to include, but not be limited to, those necessary to do all of the following:

(a) To create or remove employment positions, set or alter pay scales, employ, direct, regulate, supervise, and dismiss personnel; obtain fidelity bonds for the faithful performance of the personnel's duties.

(b) To buy, sell, lease, or otherwise hold real or personal property in its own name.

(c) To contract with other persons or entities for the provision of goods and services required by it, on terms and conditions as may be convenient, as allowed by the laws and regulations concerning purchases made by public bodies in the State of Mississippi.

(d) To charge reasonable fees to the participants in any 12th Circuit Court Community Corrections program for any services they receive.

(e) To open and maintain financial accounts.

(f) To hire legal, accounting, and other professions to aid in the furtherance of this act.

(g) To contract with the Mississippi Department of Corrections and any other state agency to receive funding.

(h) To promote gainful employment and education for those participating in any of the 12th Circuit Court Community Corrections services or programs.

(i) To provide transportation, if financially feasible, for participants to and from any job site within the county, and in doing so, the commission and its members and the 12th Circuit Court Community Corrections, its executive director, employees, and agents, shall be exempt from all civil liability for any act or omission occurring during any part of such transportation.

(j) To apply for, receive, and administer any financial grants, gifts, or donations of funds from the United States Government or any federal agency, from the State of Mississippi or any state agency, from Forrest or Perry County or any county agency, from any private or quasi-governmental foundation, corporation, partnership, firm, or agency, and from any individual or group of individuals.

(k) To refuse to have any person participate in any of the 12th Circuit Court Community Corrections services and programs when it is contrary to the public interest, is not in the interest of public safety, is a clear and present danger to either the public at large or to another participant, is a clear and present danger to the executive director, employees, and agents of the 12th Circuit Court Community Corrections, when, as a previous participant, the person undermined, caused disruption to, or interfered with the intent of this act or any of the 12th Circuit

Court Community Corrections services and programs, or where a former participant has previously failed to abide by the 12th Circuit Court Community Corrections rules and procedures.

(l) To exercise incidental powers and authority to do any and all things necessary to carry out the intent and purposes of this act.

SECTION 6. The commission may contract for its programs and services with a not-for-profit corporation to help provide for supervised pretrial release, community service program, supervision for participants entering a plea of guilty pursuant to Section 99-15-26, post-adjudication rehabilitation supervision, a vocational/educational and employment program, residential rehabilitation, support services for Forrest and Perry Counties juvenile and adult drug courts, deferred prosecution and pretrial diversion programs, reentry residential and nonresidential program, and any other court-related or rehabilitation services or programs as the commission deems appropriate.

SECTION 7. As used in this act the following words shall have the following meanings:

(a) "Eligible person" means one who is not currently charged with, or in the past was not convicted of a crime of violence, including murder, aggravated assault, rape, sexual battery, armed robbery, robbery, manslaughter, burglary of a dwelling, offense pertaining to the sale, barter, or transfer, manufacture, or distribution of a controlled substance pursuant to Section 41-29-139(a)(1), except less than one (1) ounce of marijuana, or have been charged with the possession of one (1) kilogram or more of marijuana, or who has previously demonstrated a pattern of violent behavior. In reaching a determination, as to the latter, the judicial officer with jurisdiction may consider prior convictions, juvenile or youthful offender adjudications, other criminal charges, and the behavior of the offender during incarceration. However, if a person is ineligible based solely

upon a previous conviction, that person may be allowed to become a participant with the approval of the district attorney. Otherwise, an eligible person is as follows:

(i) Any person who is incarcerated in the Forrest County Regional Jail or Perry County Jail awaiting adjudication and is financially unable to post bail.

(ii) Any person whose criminal sentence has been suspended, in whole or in part, and who is placed under terms of probation by a Forrest or Perry County judicial officer.

(iii) Any person who, having been adjudicated for a criminal offense, would be sentenced to incarceration in the Mississippi Department of Corrections, or in the Forrest County Regional Jail or the Perry County Jail.

(iv) Any person who would otherwise be incarcerated in the Forrest County Regional Jail or the Perry County Jail for violation of any previous civil or criminal court order, or for any failure to pay child support, or for civil or criminal contempt of court, or for any other criminal or civil offense.

(b) "Judicial officer" means any circuit, chancery or county court judge in Forrest or Perry County, or any duly appointed referee or special master in Forrest or Perry County, or any other circuit judge from any other county of this state, provided, however, that the Executive Director of the 12th Circuit Court Community Corrections shall approve the participation of all persons directed to the 12th Circuit Court Community Corrections from a non-12th Judicial District Court, chancery or county court judge.

(3) "Participant" means a person who is under an order from a judicial officer to participate in the services and programs provided by the 12th Circuit Community Corrections.

SECTION 8. It is the intent of the Legislature that the provisions of this act pertaining to pretrial release shall be a

guide to judicial officers in Forrest and Perry Counties to ensure that no person be needlessly detained in the county jail, because of his or her personal economic circumstances or inability to post bail, provided that his or her release shall not be contrary to the public interest or a danger to the public at large, and also shall serve the purpose of assuring the presence of the defendant at trial. It is not the intent of the Legislature that this act be so liberally construed as to allow the indiscriminate release of accused persons. Therefore, any judicial officer may order that any eligible person incarcerated before trial or adjudication be released on an unsecured appearance bond supervised by the 12th Circuit Court Community Corrections, under any conditions ordered by the judicial officer and in accord with all the 12th Circuit Court Community Corrections rules and procedures. Such rules and procedures shall include, but are not limited to, the participant reporting to the 12th Circuit Court Community Corrections on a periodic basis pending adjudication, abiding by all of the 12th Circuit Court Community Corrections rules and procedures, submitting to, paying for, and passing random drug and alcohol tests as directed by the 12th Circuit Court Community Corrections; and to offset the costs of such a program by the participant periodically paying to the 12th Circuit Court Community Corrections a reasonable supervision fee set by the commission. Failure to abide by any conditions may result in the participant's bail being revoked and the participant being re-incarcerated.

SECTION 9. Any judicial officer may order that any eligible person whose criminal sentence has been suspended, in whole or in part, upon certain conditions and who is placed under terms of probation, shall have the suspension supervised by the 12th Circuit Court Community Corrections under any conditions ordered by the judicial officer, and in accord with all of the 12th Circuit Court Community Corrections rules and procedures. These conditions shall include, but are not limited to, the participant,

during the term of the suspended sentence, reporting to the 12th Circuit Court Community Corrections on a periodic basis; abiding by all of the 12th Circuit Court Community Corrections rules and procedures; submitting to, paying for, and passing random drug and alcohol tests as directed by the 12th Circuit Court Community Corrections; and to offset the costs of such a program by the participant periodically paying to the 12th Circuit Court Community Corrections a reasonable supervision fee set by the commission. Failure to abide by any conditions may result in the participant's probation being revoked and the sentence of incarceration being reinstated.

SECTION 10. (1) In lieu of incarceration, any judicial officer may order that any eligible person who, having been adjudicated for a criminal offense, probation violation, or violation of a suspended sentence, and who would otherwise be sentenced to incarceration, or any eligible person who would otherwise be incarcerated for violation of any previous civil or criminal court order, or for any failure to pay child support, or for failure to pay court ordered restitution, or for civil or criminal contempt of court, or for any other criminal or civil offense, be placed in the 12th Circuit Court Community Corrections residential rehabilitation and work release center for the purpose of obtaining and working at gainful employment to enable the paying of fines, court costs, child support payments, family support payments, or any other court-ordered monies, or for any other purposes the judicial officer may deem conducive to rehabilitation or otherwise appropriate, for the time or intervals of time and under the terms and conditions as the judicial officer may order and in accord with all of the 12th Circuit Court Community Corrections rules and procedures. The terms and conditions shall include, but are not limited to, the following: (a) the participant, during his or her participation in the residential program, abiding by all of the 12th Circuit Court

Community Corrections rules and procedures; (b) the participant submitting to, paying for, and passing random drug and alcohol tests as directed by the 12th Circuit Court Community Corrections and (c) the participant offsetting the costs of such program by paying a sum equal to forty percent (40%) of his or her gross earnings earned while participating in the residential program and, if possible, establishing a payroll deduction for the payment of any sums due pursuant to this act, or establish that the employer pay the participant's wages directly to the 12th Circuit Court Community Corrections from which the sums can be taken before remitting the remainder to the participant.

(2) The judicial officer may also require the participant in the program to perform community service hours for nonprofit entities, civic organizations, or governmental agencies as directed and supervised by the 12th Circuit Court Community Corrections. Failure to abide by any conditions may result in the participant's arrest and the remainder of the sentence of incarceration being served.

(3) Any jail credit shall be calculated in the customary manner and deducted from the time ordered for participation in the residential program, unless otherwise ordered by the judicial officer. Any part of a day spent within the residential center under the order of the judicial officer shall be counted as a full day toward the serving of the sentence unless otherwise provided by the judicial officer. However, in no event shall the number of days in the program exceed the number of days in the original sentence. If any participant in this residential program willfully fails to report to the program as ordered, or who willfully fails to return to the program from a job or a temporary pass, then such failure and conduct shall be considered the same as an escape from a work release or restitution center.

SECTION 11. (1) The commission, if it is financially feasible, shall provide support services at the request of the

judicial officer responsible for administering the juvenile and adult drug courts of Forrest and Perry Counties, deferred prosecution and pretrial diversion programs, or any other such program. The services may include, but are not limited to, providing drug and alcohol evaluation, assessments, treatment, case management, personnel, drug and alcohol testing, electronic monitoring, alcohol monitoring, supervision of those participating in the program, and any other service or program the judicial officer may request.

(2) The commission may charge those participating in these support services reasonable fees as established by the commission and commensurate with the service or program provided.

SECTION 12. (1) Any and all fees collected from any participant, whether by payroll deduction or otherwise, shall be paid over to and collected by the 12th Circuit Court Community Corrections and deposited into its accounts for the purposes set out in this act. The sums shall be expended only for implementation of this act, and shall include, but not be limited to, paying salaries and other expenses involved in the execution of this act; supervision of participants; housing and transportation of participants; matching any federal, state, foundation, and personal financial grants which may be available in relation to the purpose of this act, investigation and screening of participants subject to this act, and any other purpose reasonably related to carrying out or in furtherance of the intent of this act.

(2) Where it is determined by the executive director that payment of the fees and sums mandated by operation of this act imposes a definite and substantial financial hardship on the participant, or his or her dependents, the collection and payment of the fees or sums may be deferred or waived in whole or in part. However, in making that determination, the executive director or the judicial officer shall consider that the purpose of this act

is not only to promote the rehabilitation of offenders, but insofar as possible, to make the implementation of this act self-supporting. Nothing in this act shall allow the 12th Circuit Court Community Corrections or its executive director to waive any court ordered restitution, recoupment, or court costs.

(3) The 12th Circuit Court Community Corrections shall maintain a complete and accurate record of all sums collected and expended and there shall be an audit of the same by an appropriate authority at lease every three (3) years; however, the initial audit shall occur before July 1, 2009.

SECTION 13. The commission and its members and the 12th Circuit Court Community Corrections, its executive director, employees, and agents, shall be exempt from all civil liability for any act or omission occurring while acting in an official capacity on behalf of the 12th Circuit Court Community Corrections.

SECTION 14. Upon the voluntary dissolution of the 12th Circuit Court Community Corrections or upon its termination by law or rule of a judicial officer, all of its assets, other than those assets held for the benefit of some other person or entity, whether real or personal, tangible or intangible, shall become the property of Forrest and Perry Counties on a pro rata basis.

SECTION 15. (1) This act shall not interfere with or prevent the exercise by any judicial officer of Mississippi of its power to punish for contempt.

(2) This act shall not interfere with or change in any manner the operation of the 12th Circuit Court Adult Drug and DUI Court, the Forrest County Juvenile Drug Court, or the Pretrial Diversion Program operated by the district attorney's office.

(3) The procedures described in this act shall be cumulative and in addition to all other bail and release procedures provided by law.

SECTION 16. The provisions of this act are severable. If any part of this act is declared invalid or unconstitutional, that declaration shall not affect the part which remains.

SECTION 17. Upon its passage and approval by the Governor, or upon it otherwise becoming a law, this act shall be retroactive to the extent allowed by law.

SECTION 18. This act shall stand repealed from and after July 1, 2009.

SECTION 19. This act shall take effect and be in force from and after July 1, 2007.