

Chapter No. 544
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HOUSE BILL NO. 835

Originated in House Don Richardson Clerk

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AN ACT TO CREATE A COMMUNITY CORRECTIONS PILOT PROGRAM FOR THE SIXTH, SEVENTH, ELEVENTH, TWELFTH, FOURTEENTH, FIFTEENTH AND NINETEENTH CIRCUIT COURT DISTRICTS; TO PROVIDE THAT THE COMMUNITY CORRECTIONS PROGRAMS BE KNOWN AS THE CIRCUIT COURT COMMUNITY CORRECTIONS PROGRAMS; TO PROVIDE THAT THE NAME OF THE COMMISSION WHICH OPERATES PROGRAMS AND SUPPORT SERVICES FOR A CIRCUIT COURT COMMUNITY CORRECTIONS PROGRAM SHALL BE THE CIRCUIT COURT COMMUNITY CORRECTIONS COMMISSION, WHICH SHALL OVERSEE AND OPERATE ALL PROGRAMS, SERVICES AND ADMINISTRATIVE FUNCTIONS OF THE CIRCUIT COURT COMMUNITY CORRECTIONS PROGRAM; TO PROVIDE FOR THE COMPOSITION OF EACH COMMISSION; TO ALLOW THE COMMISSION TO APPOINT AN EXECUTIVE DIRECTOR, WHO SHALL SERVE AT ITS PLEASURE; TO INCORPORATE INTO THE CIRCUIT COURT COMMUNITY CORRECTIONS PROGRAM SUPPORT SERVICES AND PROGRAMS CONCERNING PRETRIAL RELEASE, COMMUNITY SERVICE, SUPERVISION FOR CERTAIN PARTICIPANTS ENTERING A PLEA OF GUILTY, 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 REFUSAL OF PARTICIPATION IN PROGRAMS AND SERVICES TO 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 A CIRCUIT COURT COMMUNITY CORRECTIONS PROGRAM TO COLLECT REASONABLE FEES FROM PARTICIPANTS IN ITS PROGRAMS AND SERVICES; TO PROVIDE FOR AN ANNUAL AUDIT OF A CIRCUIT COURT COMMUNITY CORRECTIONS PROGRAM; TO AUTHORIZE A CIRCUIT COURT COMMUNITY CORRECTIONS PROGRAM THE ABILITY TO HIRE LEGAL, ACCOUNTING AND OTHER PROFESSIONAL SERVICES; TO AUTHORIZE 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 CIRCUIT COURT DISTRICTS AUTHORIZED BY OTHER STATE STATUTES; AND FOR RELATED PURPOSES.

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

SECTION 1. (1) This act shall be known as the "Circuit Court Community Corrections Act of 2010."

(2) The community corrections pilot program authorized by this act shall be known as the Circuit Court Community Corrections Program.

(3) (a) The Circuit Court Community Corrections Commissions shall oversee and operate all programs, services and administrative functions of the applicable Circuit Court Community Corrections Program. The number of members comprising each commission shall be comprised of the following individuals:

(i) The district attorney of the circuit court district, or his designee;

(ii) The sheriffs of each county in the circuit court district, or their designee;

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

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

(v) Two (2) members to be appointed by the senior circuit judge from a list of individuals recommended by the district attorney, the sheriffs and the Commissioner of Corrections.

(b) The term of service of each 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.

(c) Each commission shall have full authority to implement this act and superintend all administrative functions, services and programs of the Circuit Court Community Corrections Program. 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.

(d) Each 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.

(e) All action of a commission shall require the approval of a majority of the members of the commission.

(4) Each commission shall be vested with all authority necessary to create or manage, or both, all of the following:

(a) 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.

(b) 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.

(c) 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.

(d) 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.

(e) 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.

(f) 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.

(g) Support services for juvenile and adult drug courts, deferred prosecution and pretrial diversion programs as authorized by Sections 99-15-101 through 99-15-127 in participating counties.

(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 and 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 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 Circuit Court Community Corrections Program 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, a commission and its members and a Circuit Court Community Corrections Program, an executive director or 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, any participating 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 Circuit Court Community Corrections Program 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 a Circuit Court Community Corrections Program, when, as a previous participant, the person undermined, caused disruption to, or interfered with the intent of this act or any Circuit Court Community Corrections Program services and programs, or where a former participant has previously failed to abide by a Circuit Court Community Corrections Program rules and procedures.

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

(6) 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 whose criminal sentence has been suspended, in whole or in part, and who is placed under terms of probation by a judicial officer.

(ii) Any person who, having been adjudicated for a criminal offense, would be sentenced to incarceration in jail or in the custody of the Mississippi Department of Corrections.

(iii) Any person who would otherwise be incarcerated in the jail of a participating county 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 civil offense.

(b) "Judicial officer" means any circuit, chancery or county court judge in a participating county, or any duly appointed referee or special master in a participating county, or any other circuit judge from any other county of this state; provided, however, that the Executive Director of a Circuit Court Community Corrections Program shall approve the participation of all persons directed to a Circuit Court Community Corrections Program from a circuit, chancery or county court judge of a nonparticipating county.

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

(d) "Participating county" means any county in the Sixth, Seventh, Eleventh, Twelfth, Fourteenth, Fifteenth or Nineteenth Circuit Court District.

(7) 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 Circuit Court Community Corrections Program under any conditions ordered by the judicial officer, and in accord with all of the Circuit Court Community Corrections Program rules and procedures. These conditions shall include, but are not limited to, the participant, during the term of the suspended sentence, reporting to the Circuit Court Community Corrections Program on a periodic basis; abiding by all of the Circuit Court Community Corrections Program rules and procedures; submitting to, paying for and passing random drug and alcohol tests as directed by the Circuit Court Community Corrections Program; and to offset the costs of such a program by the participant periodically paying to the Circuit Court Community Corrections Program 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.

(8) (a) 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 a Circuit Court Community Corrections Program 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 Circuit Court Community Corrections Program rules and procedures. The terms and conditions shall include, but are not limited to, the following:

(i) The participant, during his or her participation in the residential program, abiding by all Circuit Court Community Corrections Program rules and procedures;

(ii) The participant submitting to, paying for, and passing random drug and alcohol tests as directed by the Circuit Court Community Corrections Program; and

(iii) 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 Circuit Court Community Corrections Program from which the sums can be taken before remitting the remainder to the participant.

(b) 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 a Circuit Court Community Corrections Program. Failure to abide by any conditions may result in the participant's arrest and the remainder of the sentence of incarceration being served.

(c) 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.

(9) (a) 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 a participating county, deferred prosecution and pretrial diversion programs as authorized by Sections 99-15-101 through 99-15-127. 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.

(b) 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.

(10) (a) Any and all fees collected from any participant, whether by payroll deduction or otherwise, shall be paid over to and collected by a Circuit Court Community Corrections Program 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.

(b) 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 a Circuit Court Community Corrections Program or its executive director to waive any court ordered restitution, recoupment or court costs.

(c) A Circuit Court Community Corrections Program 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 on an annual basis; however, the initial audit shall occur before July 1, 2012.

(11) A commission and its members and a Circuit Court Community Corrections Program, its executive director, employees and agents shall be entitled to the statutory privileges and immunities otherwise applicable to duties performed within the scope of their authority under this section.

(12) Upon the voluntary dissolution of a Circuit Court Community Corrections Program 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 the participating counties on a pro rata basis.

(13) Should a commission elect to establish a reentry residential and/or nonresidential rehabilitation and work-release program for inmates being released from the custody of the Mississippi Department of Corrections pursuant to Section 4 of this act, the following shall apply:

(a) The commission and the Mississippi Department of Corrections must agree to establish the program;

(b) The commission and the Mississippi Department of Corrections must agree to the rules, regulations, policies and guidelines pertaining to the operation of the program;

(c) The criteria for those individuals who are selected for participation in the program authorized by this section shall be established by the unanimous agreement of the circuit judge, the district attorney, the commission and the Commissioner of the Mississippi Department of Corrections; and

(d) The participants in the program must have been residents of the appropriate circuit court district at the time of his or her incarceration in the Mississippi Department of Corrections, or this requirement must be waived by the commission prior to entry of a participant into the program.

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

(b) This act shall not interfere with or change in any manner the operation of any adult or juvenile drug or DUI court, or a pretrial diversion program operated by a district attorney's office.

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

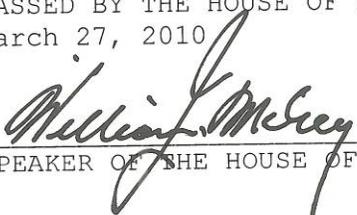
(15) The provisions of this act are severable. If any part of this act is declared invalid or unconstitutional, that declaration shall not affect the part which remains.

(16) 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.

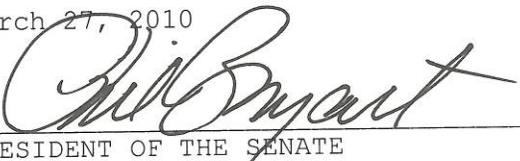
(17) This act shall stand repealed from and after July 1, 2013.

SECTION 2. This act shall take effect and be in force from and after its passage.

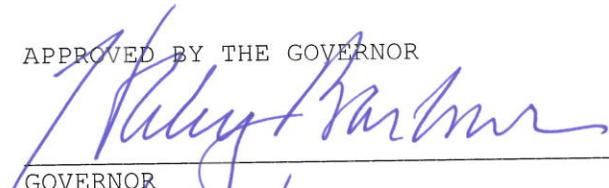
PASSED BY THE HOUSE OF REPRESENTATIVES
March 27, 2010


SPEAKER OF THE HOUSE OF REPRESENTATIVES

PASSED BY THE SENATE
March 27, 2010


PRESIDENT OF THE SENATE

APPROVED BY THE GOVERNOR


GOVERNOR

4/28/10 