

By: Representative Ford

To: Judiciary B;
Appropriations

HOUSE BILL NO. 547

1 AN ACT TO BRING FORWARD SECTIONS 25-32-31, 25-32-33,
2 25-32-35, 25-32-37, 25-32-39, 25-32-41, 25-32-43, 25-32-45,
3 25-32-47, 25-32-49, 25-32-51, 25-32-53, 25-32-55, 25-32-57,
4 25-32-59, 25-32-61, 25-32-63 AND 25-32-65, MISSISSIPPI CODE OF
5 1972, WHICH PROVIDES FOR THE MISSISSIPPI STATEWIDE PUBLIC DEFENDER
6 SYSTEM ACT OF 1998; TO AMEND SECTIONS 19, 20 AND 21 OF CHAPTER
7 575, LAWS OF 1998, TO EXTEND THE REPEALER ON THE OFFICE OF PUBLIC
8 DEFENDER TO EXTEND THE REPEALER ON THE APPOINTMENT OF COUNSEL FOR
9 INDIGENTS AND TO EXTEND THE REPEALER ON THE LIMITATIONS AND
10 CONDITIONS OF THE ENACTMENT OF THE MISSISSIPPI STATEWIDE PUBLIC
11 DEFENDER SYSTEM ACT OF 1998; AND FOR RELATED PURPOSES.

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

13 SECTION 1. Section 25-32-31, Mississippi Code of 1972, is
14 brought forward as follows:

15 25-32-31. **Title.**

16 Sections 25-32-31 through 25-32-65 shall be known as the
17 "Mississippi Statewide Public Defender System Act of 1998."

18 SECTION 2. Section 25-32-33, Mississippi Code of 1972, is
19 brought forward as follows:

20 25-32-33. **Recognition of Interests; Declaration of Purpose.**

21 (1) The State of Mississippi recognizes that, in the
22 administration of its criminal justice system, its people have a
23 number of vital interests which are present and often at tension,
24 one with the other. Among these are:

25 (a) The prosecutorial interest, including the prompt
26 detection and investigation of offenses and the speedy and
27 vigorous apprehension and prosecution and punishment of offenders;

28 (b) The victim's interest, including respect for the
29 personal tragedy, the physical, mental and emotional injuries, and
30 the financial and other economic losses suffered by the victims of
31 offenders;

32 (c) The defense interest, including respect for the
33 presumption of innocence of persons accused of offenses and those
34 whose liberty interests are at risk, guaranteeing to each accused
35 person the effective assistance of competent, loyal and
36 independent counsel, and assuring that each such person is
37 prosecuted and punished only as may be found consistent with due
38 process of law;

39 (d) The state's justice interest, which includes
40 administration of its criminal justice system, so as to secure the
41 just, fair, speedy, and efficient adjustment and final
42 adjudication of each charge formally made, to protect the
43 innocent, and to punish offenders;

44 (e) The state's prevention and deterrence interests,
45 which include reducing the number and degree of offenses as much
46 as is reasonably practicable, and holding the social costs of
47 offenses to as low a level as is possible; and

48 (f) The state's budgetary interest in holding the cost
49 of administration of its criminal justice system to its optimal
50 level, consistent with the fair and efficient provision of the
51 services reasonably necessary to advance the state's other
52 interests in the premises.

53 (2) This enactment is made to secure the state's defense
54 interest declared in subsection (1)(c) of this section and to
55 secure generally the independence of public defenders in their
56 day-to-day activities from political control and to guarantee the
57 integrity of the relationship between the indigent person who is
58 accused of an offense and his attorney.

59 (3) This enactment is also made to secure the state's
60 justice interest declared in subsection (1)(f) of this section,
61 its prevention and deterrence interest declared in subsection
62 (1)(e) of this section, and its budgetary interest declared in
63 subsection (1)(c) of this section, and, more particularly, to do
64 all that is reasonably practicable to the end that no otherwise
65 valid conviction or sentence is reversed, vacated or otherwise set

66 aside on grounds of denial of the right to counsel or of the
67 ineffective assistance of counsel.

68 (4) This enactment is also made to establish a mechanism for
69 the appointment, compensation and payment of reasonable litigation
70 expenses of competent counsel in state post-conviction proceedings
71 brought by indigent prisoners whose convictions and sentences have
72 become final for state law purposes, to provide optimal standards
73 of competency for the appointment of such counsel, and otherwise
74 to satisfy all requirements and conditions of the Act of Congress
75 officially designated as Public Law 104-132, Title I, Section 107,
76 April 24, 1996, 110 Stat. 1221, and any amendments that may
77 thereafter be made thereto.

78 SECTION 3. Section 25-32-35, Mississippi Code of 1972, is
79 brought forward as follows:

80 25-32-35. **Construction.**

81 Sections 25-32-31 through 25-32-65, and particularly the
82 parts thereof regarding the powers and duties of the Public
83 Defender Commission, the executive director, and the district
84 defenders, shall be liberally and broadly construed to promote the
85 state's defense, justice, prevention and deterrence, and budgetary
86 interests and to the end that each person accused of an offense
87 shall enjoy the right to counsel and the right to the effective
88 assistance of counsel at all stages of proceedings from and after
89 the time when such person is first taken into custody. All other
90 officers and personnel of the criminal justice system of this
91 state or any political subdivision thereof are enjoined and
92 directed to cooperate with the state defender and the commission,
93 the executive director and the district defenders in the exercise
94 of their powers and discharge of their duties.

95 SECTION 4. Section 25-32-37, Mississippi Code of 1972, is
96 brought forward as follows:

97 25-32-37. **Creation of Public Defender Commission.**

98 (1) There is hereby created the Public Defender Commission
99 of the State of Mississippi (hereinafter the "commission").

100 (2) The commission shall consist of nine (9) members each of
101 whom shall serve until his successor shall be appointed and
102 qualified. No active prosecutor may serve as a member of the
103 commission. The members of the commission shall be selected as
104 follows:

105 (a) The Governor shall appoint one (1) member whose
106 initial term shall expire on December 31, 2001.

107 (b) The Lieutenant Governor shall appoint one (1)
108 member whose initial term shall expire on December 31, 2001.

109 (c) The Speaker of the House of Representatives shall
110 appoint one (1) member whose initial term shall expire on December
111 31, 2001.

112 (d) The Chief Justice of the Supreme Court of
113 Mississippi shall appoint one (1) member whose initial term shall
114 expire on December 31, 2000.

115 (e) The Conference of Circuit Judges of the State of
116 Mississippi shall appoint one (1) member whose initial term shall
117 expire on December 31, 2000.

118 (f) The Conference of County Court Judges of the State
119 of Mississippi shall appoint one (1) member whose initial term
120 shall expire on December 31, 2000.

121 (g) The President of The Mississippi Bar shall appoint
122 one (1) member whose initial term shall expire on December 31,
123 1999.

124 (h) The President of the Magnolia Bar shall appoint one
125 (1) member whose initial term shall expire on December 31, 1999.

126 (i) The President of the Mississippi Public Defenders
127 Association shall appoint one (1) member whose initial term shall
128 expire on December 31, 1999.

129 (j) The Chairman of the Senate Judiciary Committee, or
130 his designee, and the Chairman of the House of Representatives
131 Judiciary B Committee, or his designee, shall serve as legislative
132 liaisons and nonvoting members.

133 (3) Such selections and appointments shall be made by the

134 respective appointing authorities not later than January 1, 1999.
135 Vacancies on the commission shall be filled by the respective
136 selecting and appointing authorities. In the event that any
137 selection or appointment is not timely made, the Chief Justice of
138 the Supreme Court of the State of Mississippi shall make such
139 selection or appointment, and any commission member so appointed
140 shall serve the remaining unexpired portion of the term for which
141 he has been appointed.

142 (4) After the initial terms, all terms shall be three (3)
143 years and shall commence on January 1 following the expiration of
144 each prior term.

145 SECTION 5. Section 25-32-39, Mississippi Code of 1972, is
146 brought forward as follows:

147 25-32-39. **The Powers and Duties of the Commission;**
148 **Administration and Other Related Duties.**

149 The commission shall have the following powers and duties:

150 (a) To appoint an executive director who shall be
151 licensed to practice law in the State of Mississippi and shall
152 have been so licensed for at least four (4) years prior to the
153 appointment, and who shall be knowledgeable and experienced in the
154 field of criminal law, and to charge the executive director with
155 the performance of all reasonable and appropriate administrative
156 and related duties;

157 (b) In its discretion, to delegate to the executive
158 director such of the powers and duties, in whole or in part, as
159 are provided in Sections 25-32-31 through 25-32-65 to be performed
160 by the commission;

161 (c) To implement and ensure the enjoyment of the right
162 to counsel and the right to the effective assistance of counsel
163 secured to persons by the Constitution of the United States of
164 America and by the Constitution of the State of Mississippi;

165 (d) To establish, implement and enforce policies and
166 standards for a comprehensive and effective public defender system
167 throughout the State of Mississippi, including, but not limited

168 to, standards for determining who qualifies as an indigent person;

169 (e) To establish, implement and enforce policies and
170 standards for the appointment, compensation and payment of
171 reasonable litigation expenses of competent counsel in state
172 post-conviction proceedings brought by indigent prisoners whose
173 convictions and sentences have become final for state law
174 purposes, to provide optimal standards of competency for the
175 appointment of such counsel, and otherwise to satisfy all
176 requirements and conditions of the Act of Congress officially
177 designated as Public Law 104-132, Title I, Section 107, April 24,
178 1996, 110 Stat. 1221, and any amendments that may thereafter be
179 made thereto.

180 (f) To establish the standards for determining which
181 counties require full-time district defender offices, which, if
182 any, require and can best be served by part-time contract district
183 defenders, and which, if any, require and can effectively be
184 served by a system of court-appointment of private practicing
185 lawyers, and to review the standards so established and the needs
186 of each county so assessed from time to time as may be
187 appropriate, but not less often than every fifth year beginning
188 with July 1, 1998;

189 (g) To maintain within its office a conflicts division
190 and an appellate division and to appoint a qualified person to
191 direct and perform the functions of each;

192 (h) To establish policies and standards for the
193 organization and operation of its office and of the district
194 defenders' offices throughout the state, including, but not
195 limited to:

196 (i) Distribution to and among the several district
197 defender offices of the financial resources as are made available
198 for its office and providing, as well, for a reasonable allocation
199 of such resources to the commission and its offices and staff;

200 (ii) Establishment of optimal qualifications for
201 all attorneys particularly within or employed by the Statewide

202 Public Defender System, whether as full-time staff attorneys,
203 assistant state defenders, assistant district defenders, part-time
204 contract defenders or specially appointed defenders;

205 (iii) Establishment of optimal standards of
206 experience for paralegals, investigators and other personnel
207 assigned to such offices and to particular cases;

208 (iv) Establishment of optimal standards for
209 staffing, caseloads and support personnel and facilities for each
210 district defender's office; and

211 (v) Establishment of employee personnel policies
212 including compensation, salary and benefit schedules for the
213 office of the state defender and of each district defender;

214 (i) To appoint a district defender for each circuit
215 court district;

216 (j) To evaluate the performance of each district
217 defender, assistant district defender, part-time attorney,
218 contract attorney, private attorney assigned to represent indigent
219 persons, and all other personnel of the public defender system,
220 and to have and provide for quality control, personnel evaluation
221 and review, incentives and rewards for meritorious performance,
222 and to have and exercise such powers as may be reasonably
223 necessary to enhance the quality and quantity of services
224 delivered and to address and correct deficiencies;

225 (k) To reassign cases from one district defender to
226 another district defender in another circuit court district on a
227 volume basis or an individual basis for the purpose of avoiding
228 conflicts, adjusting or more efficiently distributing caseloads,
229 securing expertise needed for the defense of particular cases, and
230 otherwise implementing the purposes and provisions of Sections
231 25-32-31 through 25-32-65;

232 (l) To enter into contracts with attorneys who will
233 thereafter serve as part-time assistant district defenders on such
234 terms and conditions as may be appropriate and agreed upon;

235 (m) To maintain for each county and for each circuit

236 court district a current list of private attorneys who are
237 competent in the defense of criminal charges and are willing to
238 accept appointments for individual representations, cases or other
239 assignments, including the defense of capital cases, and who meet
240 any other qualifications established by his office, and to these
241 ends:

242 (i) To notify once a year all licensed attorneys
243 residing in Mississippi by publication or otherwise that a list is
244 being prepared and maintained of attorneys willing to represent
245 indigent persons;

246 (ii) To afford attorneys notified under this
247 section a reasonable time to submit the information requested by
248 the commission;

249 (iii) To prepare, certify and update annually a
250 list of such attorneys for each county and for each circuit court
251 district;

252 (iv) To prepare, certify and update annually a
253 separate list of attorneys competent and willing to accept
254 appointment in capital cases for each county and for each circuit
255 court district; and

256 (v) To appoint attorneys from this list for
257 individual representations, cases or other assignments and to
258 compensate any such attorney and, out of funds available to his
259 office, to reimburse expenses as provided in Section 99-15-17,
260 Mississippi Code of 1972;

261 (n) To commence such civil actions as may be reasonably
262 necessary to assure the efficient and effective functioning of the
263 Statewide Public Defender System and to enjoin or otherwise remedy
264 or resolve attempts to interfere therewith;

265 (o) To prepare and approve the annual budget for the
266 operation of the Statewide Public Defender System and for each
267 district defender's office throughout the state, and to administer
268 and oversee the implementation of each such budget;

269 (p) To compile and disseminate statutes, court

270 opinions, legal research, articles and other information to
271 district defenders and private attorneys participating in the
272 Statewide Public Defender System;

273 (q) To maintain a law library or libraries and a brief
274 bank for use in connection with trials and appeals at such place
275 or places as may be reasonably practicable;

276 (r) To convene conferences, continuing legal education
277 programs and training seminars or planning or strategy meetings
278 related to the Statewide Public Defender System, and to attend or
279 send any persons to any such conferences, programs, seminars or
280 meetings both within and without the State of Mississippi;

281 (s) To accept, and to authorize a district defender to
282 accept, monies, gifts, grants, or services from any public or
283 private source, for the purpose of funding, operating and
284 executing the duties of his or its office;

285 (t) To enter into contracts with individuals,
286 educational institutions, nonprofit associations, or state or
287 federal agencies, including contracts for the provision of legal
288 services related to the defense of indigent persons;

289 (u) To cooperate with any individual or public agency,
290 whether state or federal, or with any law school, public or
291 private, or with any institution of higher learning of the State
292 of Mississippi, to obtain by gift, grant or otherwise any
293 financial, professional, investigatory, training, educational or
294 research or other assistance; provided, however, that any grants
295 or any financial assistance whatever for the purpose herein set
296 out shall be paid over to the commission and administered by the
297 commission consistent with the provisions of Sections 25-32-31
298 through 25-32-65;

299 (v) To receive, allocate and disburse funds
300 appropriated for the operation of the Statewide Public Defender
301 System pursuant to guidelines established by its office, in
302 cooperation with and after consultation with the Administrative
303 Office of Courts, and to reallocate available resources within the

304 Statewide Public Defender System as may be necessary to carry out
305 and implement more effectively the purposes and policies of
306 Sections 25-32-31 through 25-32-65;

307 (w) To approve the purchase, lease, rental and use of
308 office space, equipment, or personnel and the sharing of same
309 between and among district defenders and between and among the
310 counties within the several circuit court districts;

311 (x) To provide to the Administrative Office of Courts
312 and the Mississippi Judicial Advisory Study Committee any and all
313 information, reports, statistics and other forms of assistance as
314 may from time to time be requested or otherwise required by law;

315 (y) To present to the Governor and to the Legislature
316 within ninety (90) days after the end of the fiscal year an annual
317 report on the operation of the Statewide Public Defender System,
318 and recommendations for improvement;

319 (z) To appear before and provide assistance to, and
320 make recommendations to the Legislature and other relevant bodies
321 regarding matters related to the public defender system,
322 including, but not limited to, recommendations regarding the
323 phasing in of the Statewide Public Defender System, the transition
324 from the current county based system of indigent defense, and
325 regarding the appropriateness and practicability of the repealer
326 dates provided herein for Section 99-15-15 and the statutes
327 repealed by Section 25-32-21;

328 (aa) To maintain records of the operation of the
329 Statewide Public Defender System, including, but not limited to,
330 the following:

331 (i) Detailed descriptions of the organization of
332 each district defender's office;

333 (ii) Caseload of each district defender's office,
334 broken down by counties and including cases assigned to private
335 attorneys;

336 (iii) Budgets and actual expenditures of the
337 office of the commission and each district defender's office;

338 (iv) Reassignment of cases from one district
339 defender to another district defender in another circuit court
340 district;

341 (v) Use of part-time contract attorneys; and

342 (vi) Assignment of cases to private attorneys;

343 (bb) To employ and set the compensation of the
344 executive director, his assistants and other employees as are
345 necessary to enable the commission to exercise its powers and
346 perform its duties;

347 (cc) To purchase professional liability insurance to
348 cover and protect all persons within the Statewide Public Defender
349 System;

350 (dd) To educate the public regarding the state's
351 defense interest and regarding the history, need, importance and
352 legal dimensions of the right to counsel;

353 (ee) To cooperate with, share information with and
354 receive assistance from the American Bar Association and,
355 particularly, its Standing Committee on Legal Aid and Indigent
356 Defendants, The Mississippi Bar, and other associations of
357 attorneys;

358 (ff) To perform any and all functions necessary for the
359 efficient operation of such an office to the end that adequate
360 legal defense for indigent persons accused of offenses shall be
361 provided at every stage of their cases, and in post-conviction
362 proceedings with regard thereto;

363 (gg) To adopt and promulgate reasonable and necessary
364 rules and regulations, formally or informally, as may be
365 appropriate, to administer the Statewide Public Defender System,
366 to perform its duties and powers hereunder, and to implement the
367 provisions of Sections 25-32-31 through 25-32-65; and to propose
368 forms for the use of the courts, the commissions and other persons
369 with powers and duties hereunder;

370 (hh) To have and exercise such implied duties and
371 powers as may reasonably be necessary to assure the efficient and

372 effective functioning of the Statewide Public Defender System;

373 (ii) To delegate to the district defenders in whole or
374 in part the exercise and performance of powers and duties set
375 forth in this section where and to the extent that the commission
376 determines such powers and duties are suitable for exercise and
377 performance at the district level;

378 (jj) In the exercise and performance of any and all
379 powers and duties provided by Sections 25-32-31 through 25-32-65,
380 to cooperate fully with, to seek the advice, assistance and
381 support of, the Administrative Office of Courts and the
382 Mississippi Judicial Advisory Study Committee;

383 (kk) In the exercise and performance of any and all
384 powers and duties provided by Sections 25-32-31 through 25-32-65,
385 to establish priorities for the provision of counsel for indigent
386 persons by reference to the stage of proceedings against such
387 persons and the nature and importance of the charges against such
388 persons, and to do so by reference to the availability of
389 financial, professional and other resources, and to adjust such
390 priorities from time to time as may be appropriate; and

391 (ll) In cooperation with and with the assistance of the
392 Administrative Office of Courts, to develop policies and
393 procedures for the transition from the current county-based system
394 of indigent defense to the Statewide Public Defender System
395 authorized and contemplated by Sections 25-32-31 through 25-32-65,
396 including a timetable for phasing in and implementing the
397 provisions of Sections 25-32-31 through 25-32-65 and for staffing
398 and funding the offices created and provided herein, and to
399 implement same.

400 SECTION 6. Section 25-32-41, Mississippi Code of 1972, is
401 brought forward as follows:

402 25-32-41. **Powers and Duties of the Commission in**
403 **Representation of Indigent Persons.**

404 The commission shall have the following powers and duties
405 with respect to the representation of indigent persons accused of

406 felony offenses and to appear in and before courts and other
407 tribunals in all proceedings; provided, however, that the fact
408 that the commission, or, if the commission so provides, the
409 executive director, may have authority to appear in and before
410 such courts or tribunals in such proceedings shall not be
411 construed to require any such appearance unless a court of
412 competent jurisdiction by order appoints the executive director to
413 so appear or unless the executive director agrees with any person
414 eligible for representation under Sections 25-32-31 through
415 25-32-65 to so appear:

416 (a) To implement and ensure the enjoyment of the right
417 to counsel and the right to the effective assistance of counsel
418 secured to persons by the Constitution of the United States of
419 America and by the Constitution of the State of Mississippi;

420 (b) To investigate charges against any indigent person
421 accused of a felony and all facts surrounding the same, and to
422 appear at all stages of proceedings from and after the time when
423 such accused person is first taken into custody, and to appear at
424 all pre-trial proceedings with regard to such indigent accused,
425 and in any and all trial and appellate courts on behalf of the
426 indigent person in all cases, to have free access to the accused
427 who shall have compulsory process to compel the attendance of
428 witnesses in his favor, to engage the services of expert witnesses
429 and consultants on such terms as may be reasonable and
430 appropriate;

431 (c) To assist and counsel the several district
432 defenders, as from time to time may be necessary or appropriate,
433 regarding the handling of matters and issues that may be unusually
434 difficult or complex or that may likely affect or become a part of
435 any appeal; the commission may provide the same level of
436 assistance to district defenders as the Attorney General of
437 Mississippi is authorized to provide to the district attorneys in
438 the prosecution of offenders;

439 (d) To appear in or initiate habeas corpus proceedings

440 and any and all matters or proceedings related to bail bonds and
441 other bonds in the case of an indigent person accused of a felony;

442 (e) To appear in any forfeiture, restitution or
443 contempt proceedings;

444 (f) To appear in habeas corpus, coram nobis and other
445 post-conviction or sentence review proceedings regarding indigent
446 persons accused or convicted of felonies in any state or federal
447 trial or appellate court; provided, however, that in the event of
448 any such appearance in the courts of a jurisdiction, state or
449 federal, other than the State of Mississippi, the authority is to
450 do all that is necessary or practicable (i) to satisfy all
451 requirements and conditions of the Act of Congress officially
452 designated as Public Law 104-132, Title I, Section 107, April 24,
453 1996, 110 Stat. 1221, and any amendments that may thereafter be
454 made thereto; and (ii) to assure that full advantage is taken of
455 all funds available under the Act of Congress known as the
456 Criminal Justice Act, as amended, or any other program for
457 compensation of attorneys for indigents, including accepting
458 appointments of the court or other appointing authority within any
459 such jurisdiction as counsel for an indigent;

460 (g) To appear in extradition proceedings both within
461 and without the State of Mississippi;

462 (h) To appear in and before such other and additional
463 courts, tribunals, boards or agencies as may be necessary to
464 represent and protect the interests of indigent persons accused of
465 felony offenses;

466 (i) To commence such civil actions as may be reasonably
467 necessary to assure the efficient and effective functioning of the
468 Statewide Public Defender System and to enjoin or otherwise remedy
469 or resolve attempts to interfere therewith; and

470 (j) Without limitation of the foregoing, to do any and
471 all things and perform every character of legal service on behalf
472 of an indigent person that a member of The Mississippi Bar would
473 have the duty and authority to do if privately engaged to

474 represent a person accused of an offense or whose liberty
475 interests are at risk, including the full discharge of the
476 attorney's duty of care and duty of loyalty to such indigent
477 person.

478 SECTION 7. Section 25-32-43, Mississippi Code of 1972, is
479 brought forward as follows:

480 25-32-43. **Creation of Offices of District Public Defenders.**

481 (1) There shall be a district public defender for each
482 circuit court district in the State of Mississippi (herein "the
483 district defender").

484 (2) The commission shall appoint each district defender who
485 shall have been a member in good standing of The Mississippi Bar
486 for three (3) consecutive years next preceding the appointment.
487 The district defender shall serve for a term of four (4) years and
488 such term shall coincide with the term of the district attorney.
489 The district defender shall be eligible for reappointment.

490 (3) Each district defender shall be provided with a staff of
491 assistant district defenders, investigators, secretarial
492 assistance, office space, and all reasonable facilities and
493 expenses for the operation of his office according to the
494 policies, standards and directives of the commission substantially
495 equal to that provided to the district attorney of the circuit
496 court district in which the district defender serves.

497 (4) The commission may discharge the district defender for
498 inefficiency in his office, ineffectiveness in the performance of
499 his duties, or other cause.

500 SECTION 8. Section 25-32-45, Mississippi Code of 1972, is
501 brought forward as follows:

502 25-32-45. **Powers and Duties of District Defender.**

503 (1) Each district defender shall advise, represent and
504 defend indigent persons accused of felony offenses or whose
505 liberty interests are at risk at all stages of proceedings in any
506 court in the counties of the circuit court district and as may be
507 designated by the commission.

508 (2) Each district defender shall perform all duties assigned
509 to him by the commission.

510 (3) Each district defender shall appoint and employ all
511 personnel serving within the office of the district defender
512 pursuant to guidelines published by the commission.

513 (4) To the extent he may do so consistent with the
514 provisions of Sections 25-32-39 and 25-32-41, each district
515 defender shall have and may exercise within the district which he
516 serves each and every duty and power given to the commission
517 and/or the executive director by Sections 25-32-39 and 25-32-41;
518 moreover, each district defender shall assist and cooperate with
519 the commission and/or the executive director in its or his
520 exercise and discharge of the duties and powers set forth in
521 Sections 25-32-39 and 25-32-41.

522 SECTION 9. Section 25-32-47, Mississippi Code of 1972, is
523 brought forward as follows:

524 25-32-47. **Conflicts of Interest.**

525 (1) The duty of vigilance, investigation, assessment and
526 judgment regarding conflicts of interest rests upon each attorney
527 participating in the Statewide Public Defender System, with the
528 ultimate responsibility being shared equally and independently by
529 the court and by the commission. If either the commission or the
530 court determines that a conflict of interest exists between an
531 indigent person and the district defender, the commission shall
532 reassign the representation of any such person to another attorney
533 within or without the Statewide Public Defender System with
534 respect to whom no conflict exists.

535 (2) Unless all affected persons give their informed consent
536 to representation under the limitations and conditions provided in
537 subsection (3) of this section, a district defender may not
538 represent an indigent person if the representation would
539 constitute a conflict of interest. A conflict of interest exists
540 if there is a substantial risk that the district defender's
541 representation of the indigent person would be materially and

542 adversely affected by the district defender's duties to another
543 person.

544 (3) (a) A defender may represent an indigent person
545 notwithstanding a conflict of interest prohibited by subsection
546 (2) of this section if each affected person gives informed consent
547 to the defender's representation. Informed consent requires that
548 the person have reasonably adequate information about the risks
549 and advantages of such representation to that person;

550 (b) Notwithstanding each affected person's consent, a
551 defender may not represent an indigent person if:

552 (i) The defender represents an opposing party in
553 the same proceeding;

554 (ii) One or more of the persons is legally
555 incapable of giving consent; or

556 (iii) Special circumstances render it unlikely
557 that the defender will be able to provide adequate representation
558 to one or more of the persons.

559 (4) (a) If a conflict of interest is determined by the
560 commission or by the court to exist between the district defender
561 and the indigent person or if for any other reason the commission
562 or the court determines that the district defender cannot or
563 should not represent the indigent person, the commission shall
564 provide that the indigent person be represented by a district
565 defender from another area or by a private attorney appointed for
566 that purpose;

567 (b) Subject to caseload restrictions and conflict of
568 interest considerations, the court may notify the commission to
569 represent the indigent or provide representation for the indigent.

570 (5) In the event of conflicts, the commission may appoint a
571 private attorney who is competent in the defense of criminal
572 charges and/or is included in a list of volunteers who have agreed
573 to accept such appointments as provided in Section 25-32-39 who
574 shall be compensated and be reimbursed for expenses as provided in
575 Section 99-15-17, Mississippi Code of 1972.

576 (6) The commission shall attempt to equalize the
577 appointments for all attorneys on the list, but Sections 25-32-31
578 through 25-32-65 do not deprive the commission of the power to
579 appoint particularly qualified and willing attorneys in unusual or
580 complex matters.

581 (7) If the court finds that an indigent person is in a case
582 of such a nature that he cannot be properly represented by the
583 commission or district defender alone, the court may appoint
584 additional counsel to assist the defender. In such cases, the
585 attorney so appointed shall be compensated and be reimbursed as
586 provided in Section 99-15-17, Mississippi Code of 1972.

587 SECTION 10. Section 25-32-49, Mississippi Code of 1972, is
588 brought forward as follows:

589 25-32-49. **Prohibited Acts and Practices.**

590 (1) The members of the commission, the executive director,
591 members of the commission staff, each district defender, and each
592 deputy district public defender shall not:

593 (a) Receive any funds, services or other thing of
594 monetary value, directly or indirectly, for the representation of
595 an indigent person pursuant to court appointment, except the
596 compensation authorized by law; or

597 (b) Refer any person, indigent or otherwise, who
598 contacts the district defender to any other attorney, except
599 pursuant to guidelines established by the commission.

600 (2) Nothing in this section shall be construed to bar a
601 prosecution or other disciplinary action against any attorney
602 within the Statewide Public Defender System who commits a
603 violation of law or of the Model Rules of Professional Conduct, or
604 one or more provisions thereof, as they exist and are enforced in
605 the State of Mississippi.

606 (3) Neither the executive director, nor a district defender,
607 nor any other full-time assistant or employee of the commission or
608 any district defender shall engage nor be associated with any
609 person in the private practice of law. Part-time assistant

610 defenders, contract assistant defenders and persons on volunteer
611 appointment lists may engage in the private practice of law as
612 long as such practice does not relate to the prosecution of
613 criminal matters.

614 (4) Subject to the proper performance of his duties under
615 Sections 25-32-31 through 25-32-65, nothing herein shall be
616 construed to prohibit the members of the commission, the executive
617 director, the commission staff, a district defender or any person
618 serving with the Statewide Public Defender System from speaking,
619 writing, lecturing, teaching or participating in other activities
620 concerning the law, the legal system and the administration of
621 justice and accepting compensation therefor and reimbursement of
622 expenses in connection therewith.

623 SECTION 11. Section 25-32-51, Mississippi Code of 1972, is
624 brought forward as follows:

625 25-32-51. **Conflicts Division Created.**

626 (1) There is hereby created within the office of the
627 commission a conflicts division which shall function under the
628 direction and supervision of the commission.

629 (2) The conflicts division shall develop policies and
630 procedures for identifying conflicts of interest at the earliest
631 practicable moment and for remedying such conflicts. The
632 conflicts division shall also monitor and assess all questions
633 regarding conflicts of interest as provided and contemplated by
634 Section 25-32-47.

635 SECTION 12. Section 25-32-53, Mississippi Code of 1972, is
636 brought forward as follows:

637 25-32-53. **Appellate Division Created.**

638 (1) There is hereby created within the office of the
639 commission an appellate division which shall function under the
640 direction and supervision of the commission.

641 (2) The appellate division may perfect and prosecute direct
642 appeals, petitions for rehearing, petitions for writs of
643 certiorari, and petitions for post-conviction relief, and perform

644 such other duties as the commission shall direct.

645 (3) The appellate division may provide assistance and
646 counsel to a district defender regarding the handling of matters
647 and issues that may be unusually difficult or complex or that may
648 likely affect or become a part of any appeal.

649 SECTION 13. Section 25-32-55, Mississippi Code of 1972, is
650 brought forward as follows:

651 25-32-55. **Coordination Authorized Between Conflicts and**
652 **Appellate Divisions.**

653 The commission is authorized to organize the conflicts and
654 appellate divisions in such a way as it deems appropriate, to
655 provide for the cooperation of each division with the other and,
656 within its discretion, to provide that one or more persons within
657 each division also serve within the other division.

658 SECTION 14. Section 25-32-57, Mississippi Code of 1972, is
659 brought forward as follows:

660 25-32-57. **Initial Appearance.**

661 Every arrested person shall be taken before a judicial
662 officer without unnecessary delay. Upon the arrested person's
663 initial appearance, the judicial officer shall ascertain his true
664 name and address, and amend the formal charge if necessary to
665 reflect this information. The arrested person shall be informed
666 of the charges against him and provided with a copy of the
667 complaint. The judicial officer shall also advise the arrested
668 person of the following:

669 (a) That he is not required to speak and that any
670 statements he makes may be used against him;

671 (b) If he is unrepresented, that he has the right to
672 assistance of counsel, and that if he is unable to afford counsel,
673 an attorney will be appointed to represent him; and

674 (c) That he has the right to communicate with counsel,
675 family or friends, and that reasonable means will be provided to
676 enable him to do so.

677 SECTION 15. Section 25-32-59, Mississippi Code of 1972, is

678 brought forward as follows:

679 25-32-59. **Determination of Indigence.**

680 (1) An inquiry to determine financial eligibility of an
681 accused for the appointment of counsel shall be made whenever
682 possible prior to the initial appearance and by such persons as
683 the court may direct.

684 (2) At or before the initial appearance, or whenever any
685 person shall be taken into custody upon suspicion of a felony,
686 then the arresting authority and, thereafter, the presiding judge
687 at the initial appearance, shall afford such person an opportunity
688 to sign an affidavit stating that such person is an indigent and
689 unable to employ counsel. Upon the signing of such affidavit by
690 such person, the commission and a district defender shall
691 represent said person and shall have authority to act for said
692 person, unless the right to counsel be waived by such person. In
693 addition thereto, the alleged indigent person shall give a
694 statement, under oath, listing all assets available to the
695 indigent for the payment of attorney's fees and legal expenses,
696 including the ownership of any property, real or personal, and
697 setting out therein the alleged indigent's employment status,
698 number of dependents, income from any source, the ability of his
699 parents or spouse to provide attorney's fees and legal expenses,
700 and any other information which may be prescribed by the
701 commission and which might prove or disprove a finding of
702 indigence. The affidavit and statement shall be a part of the
703 record in the case and shall be subject to review by the
704 appropriate court. Based on review of the affidavit, statement or
705 other appropriate evidence, if the appropriate court finds that
706 the accused is not indigent, said court shall terminate the
707 representation of the accused by the commission and district
708 defender. The ability to pay any part of the cost of adequate
709 representation at any time while the charges are pending against
710 an accused shall not preclude the appointment of counsel for the
711 defendant.

712 (3) The court may require an accused, to the extent of his
713 ability, to compensate or reimburse the commission for all or part
714 of the reasonable value of the representation he has received,
715 plus any sums reasonably and necessarily expended in the course
716 and scope of such representation. In making any such order, the
717 court shall consider and give priority to the victim's rights to
718 restitution, compensation or damages.

719 SECTION 16. Section 25-32-61, Mississippi Code of 1972, is
720 brought forward as follows:

721 25-32-61. **Appointment of Counsel for Indigent Person.**

722 (1) If the accused does not already have an attorney, one
723 shall be appointed no later than the time of initial appearance,
724 and, once appointed, counsel shall continue to represent the
725 accused on all matters arising out of the transaction or
726 occurrence, or series of transactions or occurrences, as may have
727 given rise to the original charge or charges, until permitted to
728 withdraw by proper order of the court.

729 (2) In all cases in which the person who is the subject of
730 felony proceedings gives the statement provided by Section 15(2)
731 of Section 25-32-59(2), and is eligible for the appointment of
732 counsel and so requests, the court by order shall appoint the
733 commission to represent such person. Any such order for
734 appointment shall also be deemed the appointment of the district
735 defender of the district in which the person is being prosecuted.

736 The clerk of the court entering such an order for appointment
737 shall cause copies of same to be delivered forthwith to the
738 commission and the office of the district defender, and shall at
739 once communicate the contents of the order to such other person or
740 attorney in the county where the case is docketed as the district
741 defender may have designated to receive such orders, all to the
742 end that the person or attorney so designated shall learn of the
743 order as soon as possible after it has been entered.

744 (3) At the earliest practicable moment, the court, the
745 commission, and the district defender shall inquire whether there

746 may be a possible conflict of interest and take such action as may
747 be required by Sections 25-32-31 through 25-32-65 or may be
748 otherwise appropriate.

749 SECTION 17. Section 25-32-63, Mississippi Code of 1972, is
750 brought forward as follows:

751 25-32-63. **Salaries and Expenses.**

752 (1) (a) The annual salary of each district defender shall
753 be the same as the annual salary paid the district attorney within
754 the circuit court district within which the district defender
755 serves.

756 (b) The commission shall establish the salaries of all
757 other personnel within the Statewide Public Defender System and
758 shall approve all provisions of all contracts entered into with
759 part-time attorneys who serve as assistant district defenders.
760 Private practicing attorneys appointed to represent persons shall
761 be compensated and have their expenses reimbursed as provided in
762 Section 99-15-17, Mississippi Code of 1972.

763 (c) Members of the commission shall receive a per diem
764 as provided in Section 25-3-69, Mississippi Code of 1972, for
765 actual attendance upon meetings of the commission, together with
766 reimbursement for traveling and subsistence expenses incurred as
767 provided in Section 25-3-41, Mississippi Code of 1972, except that
768 members of the commission who are members of the Legislature shall
769 not receive per diem for attendance while the Legislature is in
770 session and no member whose regular compensation is payable by the
771 state or any political subdivision of the state shall receive per
772 diem for attendance upon meetings of the commission.

773 (2) The compensation, administrative staff, office space and
774 secretarial assistance, travel and other expense allowances of the
775 commission shall not be reduced or diminished but may be increased
776 during his term of office.

777 SECTION 18. Section 25-32-65, Mississippi Code of 1972, is
778 brought forward as follows:

779 25-32-65. **Funding; Powers and Duties Subject to**

780 **Availability of Funding and Other Resources.**

781 (1) The Statewide Public Defender System created by Sections
782 25-32-31 through 25-32-65 in all of its units and features shall
783 be funded by appropriations made by the Legislature to the
784 commission and by funds from any other source not prohibited by
785 law.

786 (2) The board of supervisors of any county may supplement
787 the resources available for financing the defense of indigent
788 persons within that county at such times and in such sums as it
789 determines to be reasonable and necessary, including, but not
790 limited to, such sums as may be necessary to compensate attorneys
791 and provide for reasonable and necessary legal expenses in cases
792 where Sections 25-32-31 through 25-32-65 direct that such fees and
793 expenses be as provided in Section 99-15-17, Mississippi Code of
794 1972. Any such sums shall be delivered to the commission for
795 administration, although disbursement shall be restricted to
796 funding the defense of indigent persons in that county.

797 (3) The commission may accept fees and reimbursement of
798 expenses if an attorney employed by or participating with this
799 system is appointed as counsel for an indigent by a court of a
800 jurisdiction, state or federal, other than the State of
801 Mississippi.

802 (4) All duties imposed upon the commission, the district
803 defenders and all other personnel of the Statewide Public Defender
804 System, and all powers conferred upon such persons, are made
805 subject to the availability of financial and other resources.

806 SECTION 19. Section 19, Chapter 575, Laws of 1998, is
807 amended as follows:

808 Section 19. Sections 25-32-1, 25-32-3, 25-32-5, 25-32-7,
809 25-32-9, 25-32-11, 25-32-13, 25-32-15, 25-32-17 and 25-32-19,
810 Mississippi Code of 1972, which establish and govern the Office of
811 Public Defender, are repealed from and after July 1, 2000.

812 SECTION 20. Section 20, Chapter 575, Laws of 1998, is
813 amended as follows:

814 Section 20. Section 99-15-15, Mississippi Code of 1972,
815 which deals with the appointment of counsel for indigents, is
816 repealed from and after July 1, 2000.

817 SECTION 21. Section 21, Chapter 575, Laws of 1998, is
818 amended as follows:

819 Section 21. (1) All new programs authorized under this
820 Senate Bill No. 2239 shall be subject to the availability of funds
821 specifically appropriated therefor by the Legislature during the
822 1998 Regular Session or any subsequent session. This act shall be
823 codified but no amendment to a code section or repeal of a code
824 section enacted by this Senate Bill No. 2239 shall take effect
825 until the Legislature has funded any new programs authorized
826 hereunder by line item appropriation, said line item appropriation
827 to be certified by the Legislative Budget Office to the Secretary
828 of State.

829 (2) Notwithstanding any other provision of this act, the
830 only actions authorized under this act to be funded shall be the
831 hiring of the executive director, the hiring of a secretary for
832 the executive director, expenses necessary for the operation of
833 the commission and the executive director's office and expenses
834 incidental thereto, and providing per diem for the members of the
835 commission unless other legal funding as authorized under this act
836 other than by appropriation of the Legislature is available. The
837 commission shall assess the feasibility and cost of the
838 implementation of this act and report its findings to the
839 Legislature not later than January 1, 1999. This subsection (2)
840 shall stand repealed on July 1, 2000.

841 SECTION 22. This act shall take effect and be in force from
842 and after July 1, 1999.