

By: Representative Ford

To: Judiciary B;
Appropriations

HOUSE BILL NO. 550

1 AN ACT TO REENACT SECTIONS 25-32-1, 25-32-3, 25-32-5,
2 25-32-7, 25-32-9, 25-32-11, 25-32-13, 25-32-15, 25-32-17 AND
3 25-32-19, MISSISSIPPI CODE OF 1972, WHICH PROVIDE FOR THE
4 ESTABLISHMENT OF AN OFFICE OF PUBLIC DEFENDER BY THE BOARDS OF
5 SUPERVISORS; TO AMEND SECTION 25-32-21, MISSISSIPPI CODE OF 1972,
6 TO EXTEND THE REPEALER ON THE ESTABLISHMENT OF THE OFFICE OF
7 PUBLIC DEFENDER; TO BRING FORWARD SECTION 21 OF CHAPTER 575, LAWS
8 OF 1998, WHICH PLACES FUNDING CONDITIONS ON THE EFFECTIVE DATE OF
9 THE STATEWIDE PUBLIC DEFENDER SYSTEM; AND FOR RELATED PURPOSES.

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

11 SECTION 1. Section 25-32-1, Mississippi Code of 1972, is
12 reenacted as follows:

13 25-32-1. Should the board of supervisors of any county or
14 the boards of supervisors of two (2) or more counties in the same
15 circuit court district determine by order spread upon their
16 minutes that the county or counties have a sufficient number of
17 indigent defendant cases to establish an office of public
18 defender, the board of supervisors or boards of supervisors are
19 authorized and empowered, in their discretion, to establish the
20 office, provide office space, personnel and funding for the
21 office, and to perform any and all functions necessary for the
22 efficient operation of such an office to the end that adequate
23 legal defense for indigent persons accused of crime shall be
24 provided at every critical stage of their cases as an alternative
25 to court appointed counsel. Said order shall specify whether the
26 public defender shall be full-time or part-time.

27 SECTION 2. Section 25-32-3, Mississippi Code of 1972, is
28 reenacted as follows:

29 25-32-3. (1) When the office of public defender is
30 established, the circuit judge or the senior circuit judge, if

31 there be more than one (1) circuit judge, shall appoint a
32 practicing attorney to serve the county or counties as public
33 defender until the end of the term of office of the district
34 attorney and thereafter for a term of four (4) years and said term
35 shall coincide with the term of the district attorney. Such
36 appointee shall be selected from a list of two (2) or more
37 attorneys recommended by the county or regional bar association.
38 In the event a vacancy shall occur in the office of the public
39 defender, the circuit judge or the senior circuit judge, if there
40 be more than one (1) circuit judge, shall appoint another person
41 to serve as public defender until the end of the regular term of
42 office.

43 (2) Assistant public defenders may be authorized by the
44 board of supervisors, or boards of supervisors if two (2) or more
45 counties are acting jointly. The public defender shall appoint
46 all assistant public defenders. Such assistant public defenders
47 may be compensated in such an amount as may be authorized by the
48 respective board of supervisors; provided, however, that in no
49 case may such assistant public defenders receive compensation in
50 an amount greater than that received by the public defender.

51 SECTION 3. Section 25-32-5, Mississippi Code of 1972, is
52 reenacted as follows:

53 25-32-5. Compensation for the public defender shall be fixed
54 by the board of supervisors or boards of supervisors, if two (2)
55 or more counties are acting jointly; provided, however, the
56 compensation for a public defender, who shall be full-time,
57 representing an entire circuit court district shall not be less
58 than the compensation of the district attorney, the compensation
59 for a public defender representing one (1) county shall not be
60 less than the compensation of the county prosecuting attorney and
61 the compensation for a public defender representing two (2) or
62 more counties, but less than the entire circuit court district,
63 shall not be less than the aggregate of the compensation for
64 county prosecuting attorneys of the counties served, but in no

65 event to exceed the compensation of the district attorney. No
66 full-time public defender or full-time assistant public defenders
67 shall engage nor be associated with any person in the private
68 practice of law. Part-time public defenders or part-time
69 assistant public defenders may engage in the private practice of
70 the law as long as such practice does not relate to the
71 prosecution of criminal matters.

72 SECTION 4. Section 25-32-7, Mississippi Code of 1972, is
73 reenacted as follows:

74 25-32-7. The public defender shall be provided with office
75 space, secretarial assistance, and all reasonable expenses of
76 operating the office, at least equal to or more than the county
77 prosecuting attorney, or the district attorney if the public
78 defender represents the entire circuit court district. The
79 compensation and expenses of the public defender's office shall be
80 paid by the county or counties if two (2) or more counties are
81 acting jointly. The funds shall be paid upon allowance by the
82 board of supervisors by order spread upon the minutes of the
83 board.

84 SECTION 5. Section 25-32-9, Mississippi Code of 1972, is
85 reenacted as follows:

86 25-32-9. (1) When any person shall be arrested and charged
87 with a felony, a misdemeanor or an act of delinquency, then the
88 arresting authority shall afford such person an opportunity to
89 sign an affidavit stating that such person is an indigent and
90 unable to employ counsel. Upon the signing of such affidavit by
91 such person, the public defender shall represent said person
92 unless the right to counsel be waived by such person. Provided
93 further, a statement shall be executed by the alleged indigent,
94 under oath, listing all assets available to the indigent for the
95 payment of attorney's fees, including the ownership of any
96 property, real or personal, and setting out therein the alleged
97 indigent's employment status, number of dependents, income from
98 any source, the ability of his parents or spouse to provide an

99 attorney's fee, and any other information which might prove or
100 disprove a finding of indigency. The affidavit and statement
101 shall be a part of the record in the case and shall be subject to
102 review by the appropriate court. Based on review of the
103 affidavit, statement or other appropriate evidence, if the
104 appropriate court finds that the defendant is not indigent, said
105 court shall terminate the representation of the defendant by the
106 public defender.

107 When any person shall be arrested and charged with a
108 misdemeanor, the presiding judge or justice, upon determination
109 that the person is indigent as provided in this section, and that
110 representation of the indigent is required, shall appoint the
111 public defender whose duty it shall be to provide such
112 representation. No person determined to be an indigent as
113 provided in this section shall be imprisoned as a result of a
114 misdemeanor conviction unless he was represented by the public
115 defender or waived the right to counsel.

116 (2) The accused shall have such representation available at
117 every critical stage of the proceedings against him where a
118 substantial right may be affected.

119 (3) The public defender shall also represent persons in need
120 of mental treatment, as provided under Sections 41-21-61 et seq.
121 The chancery court may tax costs as provided in Sections 41-21-79
122 and 41-21-85.

123 SECTION 6. Section 25-32-11, Mississippi Code of 1972, is
124 reenacted as follows:

125 25-32-11. The duties of the public defender shall include
126 the investigation of charges against the defendant and all facts
127 surrounding the same, and shall include courtroom and appellate
128 appearances on behalf of the defendant in all cases originating in
129 state and county courts. The public defender shall have free
130 access to the accused who shall have process to compel the
131 attendance of witnesses in his favor.

132 SECTION 7. Section 25-32-13, Mississippi Code of 1972, is

133 reenacted as follows:

134 25-32-13. (1) If the court finds that indigent defendants
135 have such conflicts of interests that they all cannot be properly
136 represented by the public defender, or when other good cause is
137 shown in the trial court or on appeal, the court shall appoint
138 separate counsel as provided in Section 99-15-15, Mississippi Code
139 of 1972. In such cases, the fees allowed appointed counsel in
140 Section 99-15-17, Mississippi Code of 1972, shall apply.

141 (2) If the court finds that an indigent is a defendant in a
142 case of such a nature that he cannot be properly represented by
143 the public defender alone, the court shall appoint additional
144 counsel to assist the public defender as provided in section
145 99-15-15, Mississippi Code of 1972. In such cases, the fees
146 allowed appointed counsel in section 99-15-17, Mississippi Code of
147 1972, shall apply.

148 SECTION 8. Section 25-32-15, Mississippi Code of 1972, is
149 amended as follows:

150 25-32-15. The office of public defender may be terminated,
151 in the discretion of the board of supervisors, by entering an
152 order upon the minutes of the board of supervisors six (6) months
153 prior to the expiration of the term of the public defender. Such
154 termination shall be effective at the end of the term of the
155 public defender.

156 SECTION 9. Section 25-32-17, Mississippi Code of 1972, is
157 reenacted as follows:

158 25-32-17. The compensation, administrative staff, office
159 space and secretarial assistance shall not be reduced or
160 diminished but may be increased during the term of the public
161 defender.

162 SECTION 10. Section 25-32-19, Mississippi Code of 1972, is
163 reenacted as follows:

164 25-32-19. The public defender and the board of supervisors
165 may cooperate with any individual or public agency, whether state
166 or federal, or with any institution of higher learning of the

167 State of Mississippi, to obtain by gift, grant or otherwise any
168 financial, professional, investigatory or research or other
169 assistance; provided, however, that any grants or any financial
170 assistance whatever for the purpose herein set out shall be paid
171 over to the board of supervisors and administered by it for the
172 purposes herein set forth. The board shall have the authority to
173 use any financial assistance or grants to extend and expand the
174 facilities of the office.

175 SECTION 11. Section 25-32-21, Mississippi Code of 1972, is
176 amended as follows:

177 25-32-21. Sections 25-32-1, 25-32-3, 25-32-5, 25-32-7,
178 25-32-9, 25-32-11, 25-32-13, 25-32-15, 25-32-17 and 25-32-19,
179 Mississippi Code of 1972, which establish and govern the Office of
180 Public Defender, are repealed from and after July 1, 2000.

181 SECTION 12. Section 21 of Chapter 575, Laws 1998, is brought
182 forward as follows:

183 Section 21. (1) All new programs authorized under this
184 Senate Bill No. 2239 shall be subject to the availability of funds
185 specifically appropriated therefor by the Legislature during the
186 1998 Regular Session or any subsequent session. This act shall be
187 codified but no amendment to a code section or repeal of a code
188 section enacted by this Senate Bill No. 2239 shall take effect
189 until the Legislature has funded any new programs authorized
190 hereunder by line item appropriation, said line item appropriation
191 to be certified by the Legislative Budget Office to the Secretary
192 of State.

193 (2) Notwithstanding any other provision of this act, the
194 only actions authorized under this act to be funded shall be the
195 hiring of the executive director, the hiring of a secretary for
196 the executive director, expenses necessary for the operation of
197 the commission and the executive director's office and expenses
198 incidental thereto, and providing per diem for the members of the
199 commission unless other legal funding as authorized under this act
200 other than by appropriation of the Legislature is available. The

201 commission shall assess the feasibility and cost of the
202 implementation of this act and report its findings to the
203 Legislature not later than January 1, 1999. This subsection (2)
204 shall stand repealed on July 1, 1999.

205 SECTION 13. This act shall take effect and be in force from
206 and after July 1, 1999.