

By: Representative Smith (39th)

To: Judiciary B;  
Appropriations

HOUSE BILL NO. 623

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 PROVIDE 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; TO REVISE THE MEMBERSHIP OF THE  
 12 COMMISSION FOR ASSESSMENT PURPOSES; AND FOR RELATED PURPOSES.

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

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

16 25-32-31. **Title.**

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

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

21 25-32-33. **Recognition of Interests; Declaration of Purpose.**

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

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

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

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

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

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

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

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

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

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

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

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

81 25-32-35. **Construction.**

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

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

98 25-32-37. **Creation of Public Defender Commission.**

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

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

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

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

110           (c) The Speaker of the House of Representatives shall  
111 appoint one (1) member whose initial term shall expire on December  
112 31, 2001.

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

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

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

122           (g) The President of The Mississippi Bar shall appoint  
123 one (1) member whose initial term shall expire on December 31,  
124 1999.

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

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

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

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

135 respective appointing authorities not later than January 1, 1999.

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

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

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

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

150 The commission shall have the following powers and duties:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

226 (k) To reassign cases from one district defender to  
227 another district defender in another circuit court district on a  
228 volume basis or an individual basis for the purpose of avoiding  
229 conflicts, adjusting or more efficiently distributing caseloads,  
230 securing expertise needed for the defense of particular cases, and  
231 otherwise implementing the purposes and provisions of Sections  
232 25-32-31 through 25-32-65;

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

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

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

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

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

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

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

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

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

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

270 (p) To compile and disseminate statutes, court



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

343 (vi) Assignment of cases to private attorneys;

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

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

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

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

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

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

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

373 effective functioning of the Statewide Public Defender System;

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

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

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

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

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

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

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

407 felony offenses and to appear in and before courts and other  
408 tribunals in all proceedings; provided, however, that the fact  
409 that the commission, or, if the commission so provides, the  
410 executive director, may have authority to appear in and before  
411 such courts or tribunals in such proceedings shall not be  
412 construed to require any such appearance unless a court of  
413 competent jurisdiction by order appoints the executive director to  
414 so appear or unless the executive director agrees with any person  
415 eligible for representation under Sections 25-32-31 through  
416 25-32-65 to so appear:

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

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

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

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

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

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

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

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

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

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

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

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

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

481 25-32-43. **Creation of Offices of District Public Defenders.**

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

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

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

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

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

503 25-32-45. **Powers and Duties of District Defender.**

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

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

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

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

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

525 25-32-47. **Conflicts of Interest.**

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

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



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

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

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

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

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

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

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

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

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

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

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

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

590 25-32-49. **Prohibited Acts and Practices.**

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

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

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

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

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

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

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

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

626 25-32-51. **Conflicts Division Created.**

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

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

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

638 25-32-53. **Appellate Division Created.**

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

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

645 such other duties as the commission shall direct.

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

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

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

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

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

661 25-32-57. **Initial Appearance.**

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

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

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

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

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

679 brought forward as follows:

680 25-32-59. **Determination of Indigence.**

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

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

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

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

722           25-32-61. **Appointment of Counsel for Indigent Person.**

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

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

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

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

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

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

752 25-32-63. **Salaries and Expenses.**

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

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

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

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

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

780 25-32-65. **Funding; Powers and Duties Subject to**

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

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

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

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

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

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

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

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



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

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

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

830 (2) Notwithstanding any other provision of this act, the  
831 only actions authorized under this act to be funded shall be the  
832 hiring of the executive director, the hiring of a secretary for  
833 the executive director, expenses necessary for the operation of  
834 the commission and the executive director's office and expenses  
835 incidental thereto, and providing per diem for the members of the  
836 commission unless other legal funding as authorized under this act  
837 other than by appropriation of the Legislature is available. The  
838 commission and those persons specified in subsection (3) shall  
839 assess the feasibility and cost of the implementation of this act  
840 and report its findings to the Legislature not later than January  
841 1, 2000. This subsection (2) shall stand repealed on July 1,  
842 2000.

843 (3) The following shall be voting members of the commission  
844 for the purposes of this section and shall assist the commission  
845 in its assessment as prescribed in subsection (2):

846 (a) Two (2) representatives of the Mississippi  
847 Prosecutors Association;

848 (b) One (1) representative of the Mississippi Sheriffs

849 Association; and

850 (c) One (1) representative of the Chiefs of Police in

851 Mississippi.

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