

By: Representative Capps

To: Judiciary A;
AppropriationsHOUSE BILL NO. 1363
(As Passed the House)

1 AN ACT TO CREATE THE MISSISSIPPI CAPITAL POST-CONVICTION
2 COUNSEL ACT; TO CREATE THE MISSISSIPPI OFFICE OF CAPITAL
3 POST-CONVICTION COUNSEL AND SPECIFY ITS PERSONNEL; TO PROVIDE
4 QUALIFICATIONS FOR ATTORNEYS IN THE OFFICE; TO PRESCRIBE THE
5 DUTIES OF ATTORNEYS IN THE OFFICE; TO PROVIDE FOR COMPENSATION; TO
6 SPECIFY OFFICE HOURS; TO AUTHORIZE THE DIRECTOR TO ACQUIRE OFFICE
7 SPACE, SUPPLIES AND EQUIPMENT; TO REQUIRE THE DIRECTOR TO MAINTAIN
8 A DOCKET; TO AUTHORIZE THE APPOINTMENT OF ATTORNEYS IN SITUATIONS
9 WHERE CONFLICTS ARISE; TO CREATE THE SPECIAL CAPITAL
10 POST-CONVICTION COUNSEL FUND; TO PROVIDE THAT ATTORNEYS APPOINTED
11 TO THE OFFICE SHALL BE FULL-TIME; TO PROVIDE FOR THE REMOVAL OF
12 ATTORNEYS; AND FOR RELATED PURPOSES.

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

14 SECTION 1. This act may be cited as the "Mississippi Capital
15 Post-Conviction Counsel Act."

16 SECTION 2. There is created the Mississippi Office of
17 Capital Post-Conviction Counsel. This office shall consist of two
18 (2) attorneys, one (1) investigator and one (1) secretary. The
19 attorneys shall be appointed by the Mississippi Public Defender
20 Commission from a list of qualified candidates furnished by the
21 Mississippi State Bar Association. The commission shall designate
22 one (1) of the attorneys to act as the director of the office.

23 SECTION 3. In order to be qualified for appointment as an
24 attorney with the Mississippi Office of Post-Conviction Counsel
25 the attorney must meet the following qualifications:

26 (a) Must be licensed to practice law in the State of
27 Mississippi and a member in good standing of the Mississippi State
28 Bar;

29 (b) Must have been engaged in the active practice of
30 law for four (4) years in the Mississippi state courts or
31 equivalent experience;

32 (c) Verified attendance at three (3) approved appellate
33 training programs, including one (1) program concerning the
34 capital litigation within the two (2) years prior to appointment;

35 (d) Must have worked as lead counsel on at least one
36 (1), or worked as co-counsel on at least two (2), post-conviction
37 proceedings before the Mississippi Supreme Court, with at least
38 one (1) of these proceedings involving a capital murder
39 conviction; or worked as lead counsel on at least one (1), or
40 worked as co-counsel on at least two (2), direct appeal
41 proceedings before the Mississippi Supreme Court, involving a
42 capital murder conviction;

43 (e) Submission of two (2) appellate or post-conviction
44 briefs written by the attorney, one (1) of which involves a
45 capital murder conviction, for review by the Mississippi State Bar
46 committee that makes the recommendations to the Chief Justice.

47 SECTION 4. The attorneys appointed to serve in the Office of
48 Capital Post-Conviction Counsel shall devote their entire time to
49 the representation of indigent capital defendants in state
50 post-conviction proceedings. No person appointed as an attorney
51 with the Capital Post-Conviction Counsel shall in any manner
52 participate in the trial or direct appeal of any capital case in
53 this state. Such participation shall be grounds for immediate
54 termination from employment with the Capital Post-Conviction
55 Counsel's office.

56 SECTION 5. The director appointed under this act shall be
57 compensated at no more than the amount set by statute for the
58 compensation of an Assistant Attorney General. The other attorney
59 shall be compensated at no more than ninety percent (90%) of the
60 salary of the director.

61 SECTION 6. The Director of the Office of Post-Conviction
62 Counsel is authorized and empowered to employ one (1) investigator
63 and one (1) secretary, and to fix their salaries in such amount as
64 he may deem proper within the funds appropriated for such purpose.

65 SECTION 7. The Director of the Office of Post-Conviction
66 Counsel shall keep the office open Monday through Friday for not
67 less than eight (8) hours each day. The director and his
68 assistant shall be there for business during said hours with the
69 exception of such time when the director or his assistants may be
70 required to conduct the business of the office at other locations.

71 SECTION 8. The director is hereby authorized to rent, on an
72 annual or month-to-month basis on such terms as he may think
73 proper, such office space as is necessary in the City of Jackson
74 to accommodate the staff, and to purchase such necessary office
75 supplies and equipment as may be needed for the proper
76 administration of said offices within the funds appropriated for
77 such purpose.

78 SECTION 9. The director shall keep a docket of all causes in
79 which he is required to appear, which must at all reasonable times
80 be open to the inspection of the public and must show the county,
81 district and court in which the causes have been instituted.

82 SECTION 10. If, at any time during the representation of two
83 (2) or more capital defendants, the Director of the Office of
84 Capital Post-Conviction Counsel determines that the interest of
85 those persons are so adverse or hostile that they cannot all be
86 counseled by the Director of the Office of Capital Post-Conviction
87 Counsel or his staff without conflict of interest, the Mississippi
88 Public Defender Commission shall upon application therefor by the
89 Director of the Office of Capital Post-Conviction Counsel appoint
90 one or more members of The Mississippi Bar to represent one or
91 more of such persons from a list of qualified persons. Appointed
92 counsel shall be paid from funds appropriated to a Special Capital
93 Post-Conviction Counsel Fund for this purpose, which is hereby
94 created. Monies in this fund shall not lapse into the General
95 Fund at the end of a fiscal year but shall remain in the fund and
96 any interest accruing to such fund shall remain in the fund.

97 SECTION 11. The attorneys appointed to the Office of Capital

98 Post-Conviction Counsel shall serve on a full-time basis and are
99 prohibited from engaging in the private practice of law.

100 SECTION 12. The commission may remove any attorney appointed
101 to the Office of Capital Post-Conviction Counsel for misconduct,
102 incompetency, immorality, unprofessional conduct, failure to
103 perform duties of the office, neglect of duty or for other
104 sufficient cause.

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