

By: Fillingane

To: Judiciary B;
Appropriations

HOUSE BILL NO. 1103

1 AN ACT TO CREATE THE MISSISSIPPI STATEWIDE PUBLIC CAPITAL
2 DEFENDER SYSTEM; TO CREATE AND PRESCRIBE THE APPOINTMENT, DUTIES
3 AND RESPONSIBILITIES OF THE PUBLIC DEFENDER COMMISSION; TO CREATE
4 THE OFFICE OF AND PROVIDE FOR THE APPOINTMENT OF THE EXECUTIVE
5 DIRECTOR; TO PRESCRIBE THE DUTIES, POWERS AND RESPONSIBILITIES OF
6 THE CAPITAL DEFENDER; TO CREATE THE OFFICE OF AND PRESCRIBE THE
7 POWERS AND DUTIES OF THE DISTRICT CAPITAL DEFENDER; TO PRESCRIBE
8 STANDARDS FOR THE DETERMINATION OF INDIGENCE; TO REPEAL SECTIONS
9 25-32-1 THROUGH 25-32-19, MISSISSIPPI CODE OF 1972, WHICH
10 ESTABLISH THE OFFICE OF PUBLIC DEFENDER, AND SECTION 99-15-15,
11 MISSISSIPPI CODE OF 1972, WHICH DEALS WITH THE APPOINTMENT OF
12 COUNSEL FOR INDIGENTS; TO REPEAL SECTION 21, CHAPTER 575, LAWS OF
13 1998, WHICH PROVIDES A CONDITIONAL EFFECTIVE DATE ON THE
14 MISSISSIPPI STATEWIDE PUBLIC DEFENDER SYSTEM ACT OF 1998; TO
15 REPEAL SECTIONS 25-32-31 THROUGH 25-32-65, MISSISSIPPI CODE OF
16 1972, WHICH CREATES THE MISSISSIPPI STATEWIDE PUBLIC DEFENDER
17 SYSTEM ACT OF 1998; AND FOR RELATED PURPOSES.

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

19 SECTION 1. This act shall be known as the "Mississippi
20 Statewide Public Capital Defender System Act of 2000."

21 SECTION 2. (1) The State of Mississippi recognizes that, in
22 the administration of its criminal justice system, its people have
23 a number of vital interests which are present and often at
24 tension, 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 capital offenses

34 and those whose liberty interests are at risk, guaranteeing to
35 each person accused of a capital offense the effective assistance
36 of competent, loyal and independent counsel, and assuring that
37 each such person is prosecuted and punished only as may be found
38 consistent with due 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 capital defenders in
56 their day-to-day activities from political control and to
57 guarantee the integrity of the relationship between the indigent
58 person who is accused of a capital 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. This act, and particularly the parts thereof
79 regarding the powers and duties of the Public Capital Defender
80 Commission, the executive director, and the district capital
81 defenders, shall be liberally and broadly construed to promote the
82 state's defense, justice, prevention and deterrence, and budgetary
83 interests and to the end that each person accused of a capital
84 offense shall enjoy the right to counsel and the right to the
85 effective assistance of counsel at all stages of proceedings from
86 and after the time when such person is first taken into custody.

87 SECTION 4. (1) There is hereby created the Public Capital
88 Defender Commission of the State of Mississippi (hereinafter the
89 "commission").

90 (2) The commission shall consist of three (3) members each
91 of whom shall serve until his successor shall be appointed and
92 qualified. No active prosecutor may serve as a member of the
93 commission. The members of the commission shall be selected as
94 follows:

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

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

99 (c) The Speaker of the House of Representatives shall
100 appoint one (1) member whose initial term shall expire on December
101 31, 2001.

102 (3) Such selections and appointments shall be made by the
103 respective appointing authorities not later than January 1, 2001.

104 Vacancies on the commission shall be filled by the respective
105 selecting and appointing authorities. In the event that any
106 selection or appointment is not timely made, the Chief Justice of
107 the Supreme Court of the State of Mississippi shall make such
108 selection or appointment, and any commission member so appointed
109 shall serve the remaining unexpired portion of the term for which
110 he has been appointed.

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

114 SECTION 5. The commission shall have the following powers
115 and duties:

116 (a) To appoint an executive director who shall be
117 licensed to practice law in the State of Mississippi and shall
118 have been so licensed for at least four (4) years prior to the
119 appointment, and who shall be knowledgeable and experienced in the
120 field of criminal law, and to charge the executive director with
121 the performance of all reasonable and appropriate administrative
122 and related duties;

123 (b) In its discretion, to delegate to the executive
124 director such of the powers and duties, in whole or in part, as
125 are provided in this act to be performed by the commission;

126 (c) To implement and ensure the enjoyment of the right
127 to counsel and the right to the effective assistance of counsel
128 secured to persons by the Constitution of the United States of
129 America and by the Constitution of the State of Mississippi;

130 (d) To establish, implement and enforce policies and
131 standards for a comprehensive and effective public capital
132 defender system throughout the State of Mississippi, including,
133 but not limited to, standards for determining who qualifies as an
134 indigent person;

135 (e) To establish, implement and enforce policies and
136 standards for the appointment, compensation and payment of

137 reasonable litigation expenses of competent counsel in state
138 post-conviction proceedings brought by indigent prisoners whose
139 convictions and sentences have become final for state law
140 purposes, to provide optimal standards of competency for the
141 appointment of such counsel, and otherwise to satisfy all
142 requirements and conditions of the Act of Congress officially
143 designated as Public Law 104-132, Title I, Section 107, April 24,
144 1996, 110 Stat. 1221, and any amendments that may thereafter be
145 made thereto.

146 (f) To maintain within its office an appellate division
147 and to appoint qualified persons to direct and perform the
148 functions of it;

149 (g) To establish policies and standards for the
150 organization and operation of its office and of the district
151 capital defenders' offices throughout the state, including, but
152 not limited to:

153 (i) Distribution to and among the several district
154 capital defender offices of the financial resources as are made
155 available for its office and providing, as well, for a reasonable
156 allocation of such resources to the commission and its offices and
157 staff;

158 (ii) Establishment of optimal qualifications for
159 all attorneys particularly within or employed by the Statewide
160 Public Capital Defender System.

161 (iii) Establishment of optimal standards of
162 experience for paralegals, investigators and other personnel
163 assigned to such offices and to particular cases;

164 (iv) Establishment of optimal standards for
165 staffing, caseloads and support personnel and facilities for each
166 district capital defender's office; and

167 (v) Establishment of employee personnel policies
168 including compensation, salary and benefit schedules for the
169 office of the state capital defender and of each district capital

170 defender;

171 (h) To appoint district defenders for each
172 congressional district;

173 (i) To evaluate the performance of each district
174 capital defender, and all other personnel of the public capital
175 defender system, and to have and provide for quality control,
176 personnel evaluation and review, incentives and rewards for
177 meritorious performance, and to have and exercise such powers as
178 may be reasonably necessary to enhance the quality and quantity of
179 services delivered and to address and correct deficiencies;

180 (j) To reassign cases from one district defender to
181 another district defender within the congressional district on a
182 volume basis or an individual basis for the purpose of avoiding
183 conflicts, adjusting or more efficiently distributing caseloads,
184 securing expertise needed for the defense of particular cases, and
185 otherwise implementing the purposes and provisions of this act;

186 (k) To commence such civil actions as may be reasonably
187 necessary to assure the efficient and effective functioning of the
188 Statewide Public Capital Defender System and to enjoin or
189 otherwise remedy or resolve attempts to interfere therewith;

190 (l) To prepare and approve the annual budget for the
191 operation of the Statewide Capital Public Defender System and for
192 each capital district defender's office throughout the state, and
193 to administer and oversee the implementation of each such budget;

194 (m) To compile and disseminate statutes, court
195 opinions, legal research, articles and other information to
196 district defenders;

197 (n) To maintain a law library or libraries and a brief
198 bank for use in connection with trials and appeals at such place
199 or places as may be reasonably practicable;

200 (o) To convene conferences, continuing legal education
201 programs and training seminars or planning or strategy meetings
202 related to the Statewide Public Capital Defender System, and to

203 attend or send any persons to any such conferences, programs,
204 seminars or meetings both within and without the State of
205 Mississippi;

206 (p) To accept, and to authorize a district defender to
207 accept, monies, gifts, grants, or services from any public or
208 private source, for the purpose of funding, operating and
209 executing the duties of his or its office;

210 (q) To enter into contracts with individuals,
211 educational institutions, nonprofit associations, or state or
212 federal agencies, including contracts for the provision of legal
213 services related to the defense of capital defendants;

214 (r) To cooperate with any individual or public agency,
215 whether state or federal, or with any law school, public or
216 private, or with any institution of higher learning of the State
217 of Mississippi, to obtain by gift, grant or otherwise any
218 financial, professional, investigatory, training, educational or
219 research or other assistance; provided, however, that any grants
220 or any financial assistance whatever for the purpose herein set
221 out shall be paid over to the commission and administered by the
222 commission consistent with the provisions of this act;

223 (s) To receive, allocate and disburse funds
224 appropriated for the operation of the Statewide Public Capital
225 Defender System pursuant to guidelines established by its office,
226 in cooperation with and after consultation with the Administrative
227 Office of Courts, and to reallocate available resources within the
228 Statewide Public Capital Defender System as may be necessary to
229 carry out and implement more effectively the purposes and policies
230 of this act;

231 (t) To approve the purchase, lease, rental and use of
232 office space, equipment, or personnel and the sharing of same
233 between and among district capital defenders and between and among
234 the counties within the several congressional districts;

235 (u) To provide to the Administrative Office of Courts

236 and the Mississippi Judicial Advisory Study Committee any and all
237 information, reports, statistics and other forms of assistance as
238 may from time to time be requested or otherwise required by law;

239 (v) To present to the Governor and to the Legislature
240 within ninety (90) days after the end of the fiscal year an annual
241 report on the operation of the Statewide Public Capital Defender
242 System, and recommendations for improvement;

243 (w) To appear before and provide assistance to, and
244 make recommendations to the Legislature and other relevant bodies
245 regarding matters related to the public capital defender system,
246 including, but not limited to, recommendations regarding the
247 phasing in of the statewide public capital defender system, and
248 regarding the appropriateness and practicability of the repealer
249 dates provided herein for the statutes repealed by this act;

250 (x) To maintain records of the operation of the
251 Statewide Public Capital Defender System, including, but not
252 limited to, the following:

253 (i) Detailed descriptions of the organization of
254 each district defender's office;

255 (ii) Caseload of each district capital defender's
256 office, broken down by counties;

257 (iii) Budgets and actual expenditures of the
258 office of the commission and each district capital defender's
259 office;

260 (iv) Reassignment of cases from one district
261 defender to another district capital defender;

262 (y) To employ and set the compensation of the executive
263 director, his assistants and other employees as are necessary to
264 enable the commission to exercise its powers and perform its
265 duties;

266 (z) To purchase professional liability insurance to
267 cover and protect all persons within the Statewide Public Capital
268 Defender System;

269 (aa) To educate the public regarding the state's
270 defense interest and regarding the history, need, importance and
271 legal dimensions of the right to counsel;

272 (bb) To cooperate with, share information with and
273 receive assistance from the American Bar Association and,
274 particularly, its Standing Committee on Legal Aid and Indigent
275 Defendants, The Mississippi Bar, and other associations of
276 attorneys;

277 (cc) To perform any and all functions necessary for the
278 efficient operation of such an office to the end that adequate
279 legal defense for indigent persons accused of capital offenses
280 shall be provided at every stage of their cases, and in
281 post-conviction proceedings with regard thereto;

282 (dd) To adopt and promulgate reasonable and necessary
283 rules and regulations, formally or informally, as may be
284 appropriate, to administer the Statewide Public Capital Defender
285 System, to perform its duties and powers hereunder, and to
286 implement the provisions of this act; and to propose forms for the
287 use of the courts, the commissions and other persons with powers
288 and duties hereunder;

289 (ee) To have and exercise such implied duties and
290 powers as may reasonably be necessary to assure the efficient and
291 effective functioning of the Statewide Public Capital Defender
292 System;

293 (ff) To delegate to the district capital defenders in
294 whole or in part the exercise and performance of powers and duties
295 set forth in this section where and to the extent that the
296 commission determines such powers and duties are suitable for
297 exercise and performance at the district level;

298 (gg) In the exercise and performance of any and all
299 powers and duties provided by this act, to cooperate fully with,
300 to seek the advice, assistance and support of, the Administrative
301 Office of Courts and the Mississippi Judicial Advisory Study

302 Committee;

303 (hh) In the exercise and performance of any and all
304 powers and duties provided by this act, to establish priorities
305 for the provision of counsel for indigent persons by reference to
306 the stage of proceedings against such persons and the nature and
307 importance of the charges against such persons, and to do so by
308 reference to the availability of financial, professional and other
309 resources, and to adjust such priorities from time to time as may
310 be appropriate; and

311 SECTION 6. The commission shall have the following powers
312 and duties with respect to the representation of indigent persons
313 accused of capital offenses and to appear in and before courts and
314 other tribunals in all proceedings; provided, however, that the
315 fact that the commission, or, if the commission so provides, the
316 executive director, may have authority to appear in and before
317 such courts or tribunals in such proceedings shall not be
318 construed to require any such appearance unless a court of
319 competent jurisdiction by order appoints the executive director to
320 so appear or unless the executive director agrees with any person
321 eligible for representation under this act to so appear:

322 (a) To implement and ensure the enjoyment of the right
323 to counsel and the right to the effective assistance of counsel
324 secured to persons by the Constitution of the United States of
325 America and by the Constitution of the State of Mississippi;

326 (b) To investigate charges against any indigent person
327 accused of a capital offense and all facts surrounding the same,
328 and to appear at all stages of proceedings from and after the time
329 when such accused person is first taken into custody, and to
330 appear at all pre-trial proceedings with regard to such indigent
331 accused, and in any and all trial and appellate courts on behalf
332 of the indigent person in all cases, to have free access to the
333 accused who shall have compulsory process to compel the attendance
334 of witnesses in his favor, to engage the services of expert

335 witnesses and consultants on such terms as may be reasonable and
336 appropriate;

337 (c) To assist and counsel the several district capital
338 defenders, as from time to time may be necessary or appropriate,
339 regarding the handling of matters and issues that may be unusually
340 difficult or complex or that may likely affect or become a part of
341 any appeal; the commission may provide the same level of
342 assistance to district capital defenders as the Attorney General
343 of Mississippi is authorized to provide to the district attorneys
344 in the prosecution of offenders;

345 (d) To appear in or initiate habeas corpus proceedings
346 and any and all matters or proceedings related to bail bonds and
347 other bonds in the case of an indigent person accused of a capital
348 offense;

349 (e) To appear in any forfeiture, restitution or
350 contempt proceedings;

351 (f) To appear in habeas corpus, coram nobis and other
352 post-conviction or sentence review proceedings regarding indigent
353 persons accused or convicted of a capital offense in any state or
354 federal trial or appellate court; provided, however, that in the
355 event of any such appearance in the courts of a jurisdiction,
356 state or federal, other than the State of Mississippi, the
357 authority is to do all that is necessary or practicable (i) to
358 satisfy all requirements and conditions of the Act of Congress
359 officially designated as Public Law 104-132, Title I, Section 107,
360 April 24, 1996, 110 Stat. 1221, and any amendments that may
361 thereafter be made thereto; and (ii) to assure that full advantage
362 is taken of all funds available under the Act of Congress known as
363 the Criminal Justice Act, as amended, or any other program for
364 compensation of attorneys for indigents, including accepting
365 appointments of the court or other appointing authority within any
366 such jurisdiction as counsel for an indigent;

367 (g) To appear in extradition proceedings both within

368 and without the State of Mississippi;

369 (h) To appear in and before such other and additional
370 courts, tribunals, boards or agencies as may be necessary to
371 represent and protect the interests of indigent persons accused of
372 capital offenses;

373 (i) To commence such civil actions as may be reasonably
374 necessary to assure the efficient and effective functioning of the
375 Statewide Public Capital Defender System and to enjoin or
376 otherwise remedy or resolve attempts to interfere therewith; and

377 (j) Without limitation of the foregoing, to do any and
378 all things and perform every character of legal service on behalf
379 of an indigent person that a member of The Mississippi Bar would
380 have the duty and authority to do if privately engaged to
381 represent a person accused of a capital offense or whose liberty
382 interests are at risk, including the full discharge of the
383 attorney's duty of care and duty of loyalty to such indigent
384 person.

385 SECTION 7. (1) There shall be a district public capital
386 defender for each congressional district in the State of
387 Mississippi (herein "the district capital defender").

388 (2) The commission shall appoint the executive director who
389 shall have been a member in good standing of The Mississippi Bar
390 for four (4) consecutive years next preceding the appointment.
391 The district capital defender shall serve for a term of four (4)
392 years and such term shall coincide with the term of the district
393 attorney. The executive director shall be eligible for
394 reappointment.

395 (3) The executive director shall be provided with a staff of
396 assistant district capital defenders, investigators, secretarial
397 assistance, office space, and all reasonable facilities and
398 expenses for the operation of his office according to the
399 policies, standards and directives of the commission.

400 (4) The commission may discharge the executive director for

401 inefficiency in his office, ineffectiveness in the performance of
402 his duties, or other cause.

403 (5) The executive director shall appoint one (1) district
404 public capital defender for each congressional district.

405 SECTION 8. (1) Each district capital defender shall advise,
406 represent and defend indigent persons accused of capital offenses
407 at all stages of proceedings in any court in the counties of the
408 congressional district and as may be designated by the commission.

409 (2) Each district defender shall perform all duties assigned
410 to him by the executive director.

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

414 (4) To the extent he may do so consistent with the
415 provisions of Sections 5 and 6 of this act, each district defender
416 shall have and may exercise within the district which he serves
417 each and every duty and power given to the commission and/or the
418 executive director by Sections 5 and 6 of this act; moreover, each
419 district defender shall assist and cooperate with the commission
420 and/or the executive director in its or his exercise and discharge
421 of the duties and powers set forth in Sections 5 and 6 of this
422 act.

423 SECTION 9. (1) The duty of vigilance, investigation,
424 assessment and judgment regarding conflicts of interest rests upon
425 each attorney participating in the Statewide Public Capital
426 Defender System, with the ultimate responsibility being shared
427 equally and independently by the court and by the commission. If
428 either the commission or the court determines that a conflict of
429 interest exists between an indigent person and the district
430 defender, the commission shall reassign the representation of any
431 such person to another attorney within the Statewide Public
432 Capital Defender System with respect to whom no conflict exists.

433 (2) Unless all affected persons give their informed consent

434 to representation under the limitations and conditions provided in
435 subsection (3) of this section, a district defender may not
436 represent an indigent person if the representation would
437 constitute a conflict of interest. A conflict of interest exists
438 if there is a substantial risk that the district defender's
439 representation of the indigent person would be materially and
440 adversely affected by the district defender's duties to another
441 person.

442 (3) (a) A defender may represent an indigent person
443 notwithstanding a conflict of interest prohibited by subsection
444 (2) of this section if each affected person gives informed consent
445 to the defender's representation. Informed consent requires that
446 the person have reasonably adequate information about the risks
447 and advantages of such representation to that person;

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

450 (i) The defender represents an opposing party in
451 the same proceeding;

452 (ii) One or more of the persons is legally
453 incapable of giving consent; or

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

457 (4) (a) If a conflict of interest is determined by the
458 commission or by the court to exist between the district defender
459 and the indigent person or if for any other reason the commission
460 or the court determines that the district defender cannot or
461 should not represent the indigent person, the commission shall
462 provide that the indigent person be represented by a district
463 defender from another area;

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

467 (5) In the event of conflicts, the executive director may
468 appoint another district defender to represent the indigent
469 person.

470 SECTION 10. (1) The members of the commission, the
471 executive director, members of the commission staff and each
472 district capital defender shall not:

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

477 (b) Refer any person, indigent or otherwise, who
478 contacts the district defender to any other attorney.

479 (2) Nothing in this section shall be construed to bar a
480 prosecution or other disciplinary action against any attorney
481 within the Statewide Public Capital Defender System who commits a
482 violation of law or of the Model Rules of Professional Conduct, or
483 one or more provisions thereof, as they exist and are enforced in
484 the State of Mississippi.

485 (3) Neither the executive director, nor a district defender,
486 nor any other full-time assistant or employee of the commission or
487 any district defender shall engage nor be associated with any
488 person in the private practice of law.

489 (4) Subject to the proper performance of his duties under
490 this act, nothing herein shall be construed to prohibit the
491 members of the commission, the executive director, the commission
492 staff, a district capital defender or any person serving with the
493 Statewide Public Capital Defender System from speaking, writing,
494 lecturing, teaching or participating in other activities
495 concerning the law, the legal system and the administration of
496 justice and accepting compensation therefor and reimbursement of
497 expenses in connection therewith.

498 SECTION 11. (1) There is hereby created within the
499 office of the commission an appellate division which shall

500 function under the direction and supervision of the executive
501 director.

502 (2) The appellate division may perfect and prosecute direct
503 appeals, petitions for rehearing, petitions for writs of
504 certiorari, and petitions for post-conviction relief, and perform
505 such other duties as the commission shall direct.

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

510 SECTION 12. Every arrested person shall be taken before a
511 judicial officer without unnecessary delay. Upon the arrested
512 person's initial appearance, the judicial officer shall ascertain
513 his true name and address, and amend the formal charge if
514 necessary to reflect this information. The arrested person shall
515 be informed of the charges against him and provided with a copy of
516 the complaint. The judicial officer shall also advise the
517 arrested person of the following:

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

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

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

526 SECTION 13. (1) An inquiry to determine financial
527 eligibility of an accused for the appointment of counsel shall be
528 made whenever possible prior to the initial appearance and by such
529 persons as the court may direct.

530 (2) At or before the initial appearance, or whenever any
531 person shall be taken into custody upon suspicion of a capital
532 offense, then the arresting authority and, thereafter, the

533 presiding judge at the initial appearance, shall afford such
534 person an opportunity to sign an affidavit stating that such
535 person is an indigent and unable to employ counsel. Upon the
536 signing of such affidavit by such person, the commission and a
537 district capital defender shall represent said person and shall
538 have authority to act for said person, unless the right to counsel
539 be waived by such person. In addition thereto, the alleged
540 indigent person shall give a statement, under oath, listing all
541 assets available to the indigent for the payment of attorney's
542 fees and legal expenses, including the ownership of any property,
543 real or personal, and setting out therein the alleged indigent's
544 employment status, number of dependents, income from any source,
545 the ability of his parents or spouse to provide attorney's fees
546 and legal expenses, and any other information which may be
547 prescribed by the commission and which might prove or disprove a
548 finding of indigence. The affidavit and statement shall be a part
549 of the record in the case and shall be subject to review by the
550 appropriate court. Based on review of the affidavit, statement or
551 other appropriate evidence, if the appropriate court finds that
552 the accused is not indigent, said court shall terminate the
553 representation of the accused by the commission and district
554 capital defender. The ability to pay any part of the cost of
555 adequate representation at any time while the charges are pending
556 against an accused shall not preclude the appointment of counsel
557 for the defendant.

558 (3) The court may require an accused, to the extent of his
559 ability, to compensate or reimburse the commission for all or part
560 of the reasonable value of the representation he has received,
561 plus any sums reasonably and necessarily expended in the course
562 and scope of such representation. In making any such order, the
563 court shall consider and give priority to the victim's rights to
564 restitution, compensation or damages.

565 SECTION 14. (1) If the accused does not already have an

566 attorney, one shall be appointed no later than the time of initial
567 appearance, and, once appointed, counsel shall continue to
568 represent the accused on all matters arising out of the
569 transaction or occurrence, or series of transactions or
570 occurrences, as may have given rise to the original charge or
571 charges, until permitted to withdraw by proper order of the court.

572 (2) In all cases in which the person who is the subject of
573 capital felony proceedings gives the statement provided by Section
574 15(2) of this act, and is eligible for the appointment of counsel
575 and so requests, the court by order shall appoint the commission
576 to represent such person. Any such order for appointment shall
577 also be deemed the appointment of the district capital defender of
578 the district in which the person is being prosecuted. The clerk
579 of the court entering such an order for appointment shall cause
580 copies of same to be delivered forthwith to the commission and the
581 office of the district capital defender, and shall at once
582 communicate the contents of the order to such other person or
583 attorney in the county where the case is docketed as the district
584 capital defender may have designated to receive such orders, all
585 to the end that the person or attorney so designated shall learn
586 of the order as soon as possible after it has been entered.

587 (3) At the earliest practicable moment, the court, the
588 commission, and the district capital defender shall inquire
589 whether there may be a possible conflict of interest and take such
590 action as may be required by this act or may be otherwise
591 appropriate.

592 SECTION 15. (1) (a) The annual salary of each district
593 defender shall be Fifty Thousand Dollars (\$50,000.00).

594 (b) The commission shall establish the salaries of all
595 other personnel within the Statewide Public Defender System.

596 (c) Members of the commission shall receive a per diem as
597 provided in Section 25-3-69, Mississippi Code of 1972, for actual
598 attendance upon meetings of the commission, together with

599 reimbursement for traveling and subsistence expenses incurred as
600 provided in Section 25-3-41, Mississippi Code of 1972, except that
601 members of the commission who are members of the Legislature shall
602 not receive per diem for attendance while the Legislature is in
603 session and no member whose regular compensation is payable by the
604 state or any political subdivision of the state shall receive per
605 diem for attendance upon meetings of the commission.

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

610 SECTION 16. (1) The Statewide Public Defender System
611 created by this act in all of its units and features shall be
612 funded by appropriations made by the Legislature to the commission
613 and by funds from any other source not prohibited by law.

614 (2) The board of supervisors of any county shall contribute
615 Fifty Thousand Dollars (\$50,000.00) for every indigent person
616 charged with a capital offense by that county that year not to
617 exceed One Hundred Thousand Dollars (\$100,000.00) per year and any
618 cost over such amounts shall be paid out of the general fund.

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

624 (4) All duties imposed upon the commission, the district
625 capital defenders and all other personnel of the Statewide Public
626 Capital Defender System, and all powers conferred upon such
627 persons, are made subject to the availability of financial and
628 other resources.

629 SECTION 17. Sections 25-32-1, 25-32-3, 25-32-5, 25-32-7,
630 25-32-9, 25-32-11, 25-32-13, 25-32-15, 25-32-17 and 25-32-19,
631 Mississippi Code of 1972, which establish and govern the Office of

632 Public Defender, are repealed from and after July 1, 2000.

633 SECTION 18. Section 99-15-15, Mississippi Code of 1972,
634 which deals with the appointment of counsel for indigents, is
635 repealed from and after July 1, 2000.

636 SECTION 19. Section 21, Chapter 575, Laws of 1998, which
637 provides for a conditional effective date of the Mississippi
638 Statewide Public Defender System Act of 1998, is repealed from and
639 after June 30, 2000.

640 SECTION 20. Sections 25-32-31, 25-32-33, 25-32-35, 25-32-37,
641 25-32-39, 25-32-41, 25-32-43, 25-32-45, 25-32-47, 25-32-49,
642 25-32-51, 25-32-53, 25-32-55, 25-32-57, 25-32-59, 25-32-61,
643 25-32-63 and 25-32-65, Mississippi Code of 1972, which creates the
644 Mississippi Statewide Public Defender System Act of 1998, is
645 repealed.

646 SECTION 21. This act shall take effect and be in force from
647 and after June 30, 2000.