

By: Watson, Fillingane

To: Judiciary A;  
AppropriationsHOUSE BILL NO. 1228  
(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 AMEND SECTION 99-19-105,  
12 MISSISSIPPI CODE OF 1972, TO REVISE THE SETTING OF THE DATE OF  
13 EXECUTION OF DEATH SENTENCE; TO AMEND SECTION 99-39-5, MISSISSIPPI  
14 CODE OF 1972, TO REVISE THE STATUTE OF LIMITATIONS FOR  
15 POST-CONVICTION RELIEF IN CAPITAL CASES; TO AMEND SECTION  
16 99-39-23, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR THE APPOINTMENT  
17 OF POST-CONVICTION COUNSEL IN CAPITAL CASES; TO AMEND SECTION  
18 99-39-27, MISSISSIPPI CODE OF 1972, TO EXCLUDE POST-CONVICTION  
19 RELIEF IN CAPITAL CASES; TO CREATE SECTION 99-15-18, MISSISSIPPI  
20 CODE OF 1972, TO PROVIDE FOR COMPENSATION OF COUNSEL IN  
21 POST-CONVICTION RELIEF CASES INVOLVING THE DEATH PENALTY; TO  
22 CREATE SECTION 99-39-28, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT  
23 THE SUPREME COURT SHALL PROVIDE RULES FOR POST-CONVICTION  
24 PROCEEDINGS IN CAPITAL CASES; TO PROVIDE FOR THE SETTING OF THE  
25 DATE FOR EXECUTION OF DEATH SENTENCES; TO REPEAL SECTION 99-19-49,  
26 MISSISSIPPI CODE OF 1972, WHICH PROVIDES FOR THE SETTING OF A DAY  
27 FOR THE EXECUTION OF A DEATH SENTENCE; TO CREATE THE MISSISSIPPI  
28 CAPITAL DEFENSE LITIGATION ACT; TO CREATE THE MISSISSIPPI OFFICE  
29 OF CAPITAL DEFENSE COUNSEL AND SPECIFY ITS PERSONNEL; TO PROVIDE  
30 QUALIFICATIONS FOR ATTORNEYS IN THE OFFICE; TO PROVIDE FOR  
31 COMPENSATION; TO SPECIFY OFFICE HOURS; TO AUTHORIZE THE DIRECTOR  
32 TO ACQUIRE OFFICE SPACE, SUPPLIES AND EQUIPMENT; TO REQUIRE THE  
33 DIRECTOR TO MAINTAIN A DOCKET; TO AUTHORIZE APPOINTMENT OF  
34 ATTORNEYS IN SITUATIONS WHERE CONFLICTS ARISE; TO CREATE THE  
35 SPECIAL CAPITAL DEFENSE LITIGATION FUND; TO PROVIDE THAT ATTORNEYS  
36 APPOINTED TO THE OFFICE SHALL BE FULL TIME; AND FOR RELATED  
37 PURPOSES.

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

39 SECTION 1. Sections 1 through 18 of this act may be cited as  
40 the "Mississippi Capital Post-Conviction Counsel Act."

41 SECTION 2. There is created the Mississippi Office of  
42 Capital Post-Conviction Counsel. This office shall consist of  
43 three (3) attorneys, one (1) investigator, one (1) fiscal officer

44 and one (1) secretary/paralegal. One of those attorneys shall  
45 serve as director of the office. The director shall be appointed  
46 by the Chief Justice of the Supreme Court with the approval of a  
47 majority of the justices voting, for a term of four (4) years, or  
48 until a successor takes office. The remaining attorneys and other  
49 staff shall be appointed by the director of the office and shall  
50 serve at the will and pleasure of the director. The director and  
51 all other attorneys in the office shall be active members of The  
52 Mississippi Bar and shall meet all qualifications necessary to  
53 serve as post-conviction counsel for persons under a sentence of  
54 death. The director may be removed from office by the Chief  
55 Justice upon finding that the director is not qualified under law  
56 to serve as post-conviction counsel for persons under sentences of  
57 death, has failed to perform the duties of the office or has acted  
58 beyond the scope of the authority granted by law for the office.

59 SECTION 3. The Office of Capital Post-Conviction Counsel is  
60 created for the purpose of providing representation to indigent  
61 parties under sentences of death in post-conviction proceedings,  
62 and to perform such other duties as set forth by law.

63 SECTION 4. The Office of Capital Post-Conviction Counsel  
64 shall limit its activities to the representation of inmates under  
65 sentence of death in post-conviction proceedings and ancillary  
66 matters related directly to post-conviction review of their  
67 convictions and sentences and other activities explicitly  
68 authorized in statute. Representation by the office or by private  
69 counsel under appointment by the office will end upon the filing  
70 of proceeding for federal habeas corpus review or for appointment  
71 of counsel to represent the defendant in federal habeas corpus  
72 proceedings. However, the office may continue representation if  
73 the office or a staff attorney employed by the office shall be  
74 appointed by a federal court to represent the inmate in federal  
75 habeas corpus proceedings. In such event, the office or the  
76 employee attorney shall apply to the federal court for  
77 compensation and expenses and shall upon receipt of payments by  
78 the federal court pay all sums received over to the office for  
79 deposit in the Special Capital Post-Conviction Counsel Fund as  
80 provided in Section 9 of this act, from which all expenses for

81 investigation and litigation shall be disbursed. Representation  
82 in post-conviction proceedings shall further include  
83 representation of the inmate from the exhaustion of all state and  
84 federal post-conviction litigation until execution of the sentence  
85 or an adjudication resulting in either a new trial or a vacation  
86 of the death sentence. The attorneys appointed to serve in the  
87 Office of Capital Post-Conviction Counsel shall devote their  
88 entire time to the duties of the office, shall not represent any  
89 persons in other litigation, civil or criminal, nor in any other  
90 way engage in the practice of law, and shall in no manner,  
91 directly or indirectly, participate in the trial of any person  
92 charged with capital murder or direct appeal of any person under  
93 sentence of death in the state, nor engage in lobbying activities  
94 for or against the death penalty. Any violation of this provision  
95 shall be grounds for termination from employment, in the case of  
96 the director, by the Chief Justice, and in the case of other  
97 attorneys, by the director, with approval of the Chief Justice.

98 SECTION 5. The director appointed under this act shall be  
99 compensated at no more than the maximum amount allowed by statute  
100 for a district attorney, and other attorneys in the office shall  
101 be compensated at no more than the maximum amount allowed by  
102 statute for an assistant district attorney.

103 SECTION 6. The Director of the Office of Post-Conviction  
104 Counsel shall keep the office open Monday through Friday for not  
105 less than eight (8) hours each day.

106 SECTION 7. In addition to the authority to represent persons  
107 under sentence of death in state post-conviction proceedings, the  
108 director is hereby empowered to pay and disburse salaries,  
109 employment benefits and charges relating to employment of staff  
110 and to establish their salaries, and expenses of the office; to  
111 incur and pay travel expenses of staff necessary for the  
112 performance of the duties of the office; to rent or lease on such  
113 terms as he may think proper such office space as is necessary in

114 the City of Jackson to accommodate the staff; to solicit and  
115 accept monies, gifts, grants or services from any public or  
116 private sources for the purpose of funding, operating and  
117 executing the statutory duties of the office; to enter into and  
118 perform contracts, including but not limited to, contracts and  
119 agreements necessary to obtain and receive monies, gifts, grants  
120 or services from federal, public and private sources, and to  
121 purchase such necessary office supplies and equipment as may be  
122 needed for the proper administration of said offices; and to incur  
123 and pay such other expenses as are appropriate and customary to  
124 the operations of the office. The director shall be required to  
125 obtain a surety bond in the amount of not less than One Hundred  
126 Thousand Dollars (\$100,000.00) payable to the state. The cost of  
127 such bond shall be paid out of funds appropriated for the  
128 operations of the office. All salaries and other expenditures  
129 shall be paid from funds appropriated for such purposes augmented  
130 by funds received as gifts and grants from public and private  
131 sources.

132       SECTION 8. The director shall, as prescribed by the Chief  
133 Justice, keep a docket of all death penalty cases originating in  
134 the courts of Mississippi, which must at all reasonable times be  
135 open to the inspection of the public and must show the county,  
136 district and court in which the causes have been instituted. The  
137 director shall prepare and maintain a roster of all death penalty  
138 cases originating in the courts of Mississippi and pending in  
139 state and federal courts indicating the current status of each  
140 such case, and a history of those death penalty cases filed since  
141 1976. Copies of such dockets and rosters shall be submitted to  
142 the Supreme Court in such format and with such appropriate  
143 information and as frequently as the Chief Justice may direct.  
144 The director shall also report monthly to the Chief Justice the  
145 activities, receipts and expenditures of the office.

146       SECTION 9. If, at any time during the representation of two

147 (2) or more defendants, the director determines that the interest  
148 of those persons are so adverse or hostile that they cannot all be  
149 represented by the director or his staff without conflict of  
150 interest, or if the director shall determine that the volume or  
151 number of representations shall so require, the director, in his  
152 sole discretion, notwithstanding any statute or regulation to the  
153 contrary, shall be authorized to employ qualified private counsel.  
154 Fees and expenses, approved by order of the appropriate court,  
155 including investigative and expert witness expenses of such  
156 private counsel shall be paid from funds appropriated to a Special  
157 Capital Post-Conviction Counsel Fund for this purpose, which fund  
158 is hereby created. Monies in this fund shall not lapse into the  
159 General Fund at the end of a fiscal year but shall remain in the  
160 fund and any interest which accrues to the fund shall remain in  
161 the fund.

162 SECTION 10. The director is further authorized to solicit  
163 and accept monies, gifts, grants or services from any public or  
164 private source, for the purpose of funding, operating and  
165 executing the duties of the office.

166 SECTION 11. Section 99-19-105, Mississippi Code of 1972, is  
167 amended as follows:

168 99-19-105. (1) Whenever the death penalty is imposed, and  
169 upon the judgment becoming final in the trial court, the sentence  
170 shall be reviewed on the record by the Mississippi Supreme Court.  
171 The clerk of the trial court, within ten (10) days after receiving  
172 the transcript, shall transmit the entire record and transcript to  
173 the Mississippi Supreme Court together with a notice prepared by  
174 the clerk and a report prepared by the trial judge. The notice  
175 shall set forth the title and docket number of the case, the name  
176 of the defendant and the name and address of his attorney, a  
177 narrative statement of the judgment, the offense, and the  
178 punishment prescribed. The report shall be in the form of a  
179 standard questionnaire prepared and supplied by the Mississippi

180 Supreme Court, a copy of which shall be served upon counsel for  
181 the state and counsel for the defendant.

182 (2) The Mississippi Supreme Court shall consider the  
183 punishment as well as any errors enumerated by way of appeal.

184 (3) With regard to the sentence, the court shall determine:

185 (a) Whether the sentence of death was imposed under the  
186 influence of passion, prejudice or any other arbitrary factor;

187 (b) Whether the evidence supports the jury's or judge's  
188 finding of a statutory aggravating circumstance as enumerated in  
189 Section 99-19-101;

190 (c) Whether the sentence of death is excessive or  
191 disproportionate to the penalty imposed in similar cases,  
192 considering both the crime and the defendant; and

193 (d) Should one or more of the aggravating circumstances  
194 be found invalid on appeal, the Mississippi Supreme Court shall  
195 determine whether the remaining aggravating circumstances are  
196 outweighed by the mitigating circumstances or whether the  
197 inclusion of any invalid circumstance was harmless error, or both.

198 (4) Both the defendant and the state shall have the right to  
199 submit briefs within the time provided by the court, and to  
200 present oral argument to the court.

201 (5) The court shall include in its decision a reference to  
202 those similar cases which it took into consideration. In addition  
203 to its authority regarding correction of errors, the court, with  
204 regard to review of death sentences, shall be authorized to:

205 (a) Affirm the sentence of death;

206 (b) Reweigh the remaining aggravating circumstances  
207 against the mitigating circumstances should one or more of the  
208 aggravating circumstances be found to be invalid, and (i) affirm  
209 the sentence of death or (ii) hold the error in the sentence phase  
210 harmless error and affirm the sentence of death or (iii) remand  
211 the case for a new sentencing hearing; or

212 (c) Set the sentence aside and remand the case for

213 modification of the sentence to imprisonment for life.

214 (6) The sentence review shall be in addition to direct  
215 appeal, if taken, and the review and appeal shall be consolidated  
216 for consideration. The court shall render its decision on legal  
217 errors enumerated, the factual substantiation of the verdict, and  
218 the validity of the sentence.

219 \* \* \*

220 SECTION 12. Section 99-39-5, Mississippi Code of 1972, is  
221 amended as follows:

222 99-39-5. (1) Any prisoner in custody under sentence of a  
223 court of record of the State of Mississippi who claims:

224 (a) That the conviction or the sentence was imposed in  
225 violation of the Constitution of the United States or the  
226 Constitution or laws of Mississippi;

227 (b) That the trial court was without jurisdiction to  
228 impose sentence;

229 (c) That the statute under which the conviction and/or  
230 sentence was obtained is unconstitutional;

231 (d) That the sentence exceeds the maximum authorized by  
232 law;

233 (e) That there exists evidence of material facts, not  
234 previously presented and heard, that requires vacation of the  
235 conviction or sentence in the interest of justice;

236 (f) That his plea was made involuntarily;

237 (g) That his sentence has expired; his probation,  
238 parole or conditional release unlawfully revoked; or he is  
239 otherwise unlawfully held in custody;

240 (h) That he is entitled to an out-of-time appeal; or

241 (i) That the conviction or sentence is otherwise  
242 subject to collateral attack upon any grounds of alleged error  
243 heretofore available under any common law, statutory or other  
244 writ, motion, petition, proceeding or remedy; may file a motion to  
245 vacate, set aside or correct the judgment or sentence, or for an

246 out-of-time appeal.

247 (2) A motion for relief under this chapter shall be made  
248 within three (3) years after the time in which the prisoner's  
249 direct appeal is ruled upon by the Supreme Court of Mississippi  
250 or, in case no appeal is taken, within three (3) years after the  
251 time for taking an appeal from the judgment of conviction or  
252 sentence has expired, or in case of a guilty plea, within three  
253 (3) years after entry of the judgment of conviction. Excepted  
254 from this three-year statute of limitations are those cases in  
255 which the prisoner can demonstrate either that there has been an  
256 intervening decision of the Supreme Court of either the State of  
257 Mississippi or the United States which would have actually  
258 adversely affected the outcome of his conviction or sentence or  
259 that he has evidence, not reasonably discoverable at the time of  
260 trial, which is of such nature that it would be practically  
261 conclusive that had such been introduced at trial it would have  
262 caused a different result in the conviction or sentence. Likewise  
263 excepted are those cases in which the prisoner claims that his  
264 sentence has expired or his probation, parole or conditional  
265 release has been unlawfully revoked. Likewise excepted are  
266 filings for post-conviction relief in capital cases which shall be  
267 made within one (1) year after conviction.

268 (3) This motion is not a substitute for, nor does it affect,  
269 any remedy incident to the proceeding in the trial court, or  
270 direct review of the conviction or sentence.

271 (4) Proceedings under this chapter shall be subject to the  
272 provisions of Section 99-19-42.

273 SECTION 13. Section 99-39-23, Mississippi Code of 1972, is  
274 amended as follows:

275 99-39-23. (1) If an evidentiary hearing is required the  
276 judge may appoint counsel for a petitioner who qualifies for the  
277 appointment of counsel under Section 99-15-15, Mississippi Code of  
278 1972.



279 (2) The hearing shall be conducted as promptly as  
280 practicable, having regard for the need of counsel for both  
281 parties for adequate time for investigation and preparation.

282 (3) The parties shall be entitled to subpoena witnesses and  
283 compel their attendance, including, but not being limited to,  
284 subpoenas duces tecum.

285 (4) The court may receive proof by affidavits, depositions,  
286 oral testimony or other evidence and may order the prisoner  
287 brought before it for the hearing.

288 (5) If the court finds in favor of the prisoner, it shall  
289 enter an appropriate order with respect to the conviction or  
290 sentence under attack, and any supplementary orders as to  
291 rearraignment, retrial, custody, bail, discharge, correction of  
292 sentence or other matters that may be necessary and proper. The  
293 court shall make specific findings of fact, and state expressly  
294 its conclusions of law, relating to each issue presented.

295 (6) The order as provided in subsection (5) of this section  
296 or any order dismissing the prisoner's motion or otherwise denying  
297 relief under this chapter is a final judgment and shall be  
298 conclusive until reversed. It shall be a bar to a second or  
299 successive motion under this chapter. Excepted from this  
300 prohibition is a motion filed pursuant to Section 99-19-57(2),  
301 Mississippi Code of 1972, raising the issue of the convict's  
302 supervening insanity prior to the execution of a sentence of  
303 death. A dismissal or denial of a motion relating to insanity  
304 under Section 99-19-57(2), Mississippi Code of 1972, shall be res  
305 judicata on the issue and shall likewise bar any second or  
306 successive motions on the issue. Likewise excepted from this  
307 prohibition are those cases in which the prisoner can demonstrate  
308 either that there has been an intervening decision of the Supreme  
309 Court of either the State of Mississippi or the United States  
310 which would have actually adversely affected the outcome of his  
311 conviction or sentence or that he has evidence, not reasonably

312 discoverable at the time of trial, which is of such nature that it  
313 would be practically conclusive that had such been introduced at  
314 trial it would have caused a different result in the conviction or  
315 sentence. Likewise excepted are those cases in which the prisoner  
316 claims that his sentence has expired or his probation, parole or  
317 conditional release has been unlawfully revoked.

318 (7) No relief shall be granted under this chapter unless the  
319 prisoner proves by a preponderance of the evidence that he is  
320 entitled to such.

321 (8) Proceedings under this section shall be subject to the  
322 provisions of Section 99-19-42.

323 (9) In cases resulting in a sentence of death and upon a  
324 determination of indigence, appointment of post-conviction counsel  
325 shall be made by the Office of Capital Post-Conviction Counsel  
326 upon order entered by the Supreme Court promptly upon announcement  
327 of the decision on direct appeal affirming the sentence of death.  
328 The order shall direct the trial court to immediately determine  
329 indigence and whether the inmate will accept counsel.

330 SECTION 14. Section 99-39-27, Mississippi Code of 1972, is  
331 amended as follows:

332 99-39-27. (1) The application for leave to proceed in the  
333 trial court filed with the Supreme Court under Section 99-39-7  
334 shall name the State of Mississippi as the respondent.

335 (2) The application shall contain the original and two (2)  
336 executed copies of the motion proposed to be filed in the trial  
337 court together with such other supporting pleadings and  
338 documentation as the Supreme Court by rule may require.

339 (3) The prisoner shall serve an executed copy of the  
340 application upon the Attorney General simultaneously with the  
341 filing of the application with the court.

342 (4) The original motion, together with all files, records,  
343 transcripts and correspondence relating to the judgment under  
344 attack, shall promptly be examined by the court.

345 (5) Unless it appears from the face of the application,  
346 motion, exhibits and the prior record that the claims presented by  
347 such are not procedurally barred under Section 99-39-21 and that  
348 they further present a substantial showing of the denial of a  
349 state or federal right, the court shall by appropriate order deny  
350 the application. The court may, in its discretion, require the  
351 Attorney General upon sufficient notice to respond to the  
352 application.

353 (6) The court upon satisfaction of the standards set forth  
354 in this chapter is empowered to grant the application.

355 (7) In granting the application the court, in its  
356 discretion, may:

357 (a) Where sufficient facts exist from the face of the  
358 application, motion, exhibits, the prior record and the state's  
359 response, together with any exhibits submitted therewith, or upon  
360 stipulation of the parties, grant or deny any or all relief  
361 requested in the attached motion.

362 (b) Allow the filing of the motion in the trial court  
363 for further proceedings under Sections 99-39-13 through 99-39-23.

364 (8) No application or relief shall be granted without the  
365 Attorney General being given at least five (5) days to respond.

366 (9) The dismissal or denial of an application under this  
367 section is a final judgment and shall be a bar to a second or  
368 successive application under this chapter. Excepted from this  
369 prohibition is an application filed pursuant to Section  
370 99-19-57(2), Mississippi Code of 1972, raising the issue of the  
371 convict's supervening insanity prior to the execution of a  
372 sentence of death. A dismissal or denial of an application  
373 relating to insanity under Section 99-19-57(2), Mississippi Code  
374 of 1972, shall be res judicata on the issue and shall likewise bar  
375 any second or successive applications on the issue. Likewise  
376 excepted from this prohibition are those cases in which the  
377 prisoner can demonstrate either that there has been an intervening

378 decision of the Supreme Court of either the State of Mississippi  
379 or the United States which would have actually adversely affected  
380 the outcome of his conviction or sentence or that he has evidence,  
381 not reasonably discoverable at the time of trial, which is of such  
382 nature that it would be practically conclusive that had such been  
383 introduced at trial it would have caused a different result in the  
384 conviction or sentence. Likewise exempted are those cases in  
385 which the prisoner claims that his sentence has expired or his  
386 probation, parole or conditional release has been unlawfully  
387 revoked.

388 (10) Proceedings under this section shall be subject to the  
389 provisions of Section 99-19-42.

390 (11) Post-conviction proceedings wherein the defendant is  
391 under sentence of death shall be governed by rules established by  
392 the Supreme Court as well as the provisions of this section.

393 SECTION 15. The following shall be codified as Section  
394 99-15-18, Mississippi Code of 1972:

395 99-15-18. (1) Counsel employed by an office funded by the  
396 State of Mississippi or any county shall receive no compensation  
397 or expenses for representation of a party seeking post-conviction  
398 relief while under a sentence of death other than the compensation  
399 attendant to his office.

400 (2) Unless employed by such an office, counsel appointed to  
401 represent a party seeking post-conviction relief while under a  
402 sentence of death shall be paid at an hourly rate not to exceed  
403 eighty percent (80%) of the hourly rate allowed in the United  
404 States District Courts of the Northern and Southern Districts of  
405 Mississippi to attorneys appointed to represent defendants seeking  
406 habeas corpus relief. Money shall not be paid to court appointed  
407 counsel unless either (a) a petition is timely filed, or (b) if a  
408 petition is not filed, a notice is timely filed stating that  
409 counsel has reviewed the record and found no meritorious claim.  
410 Prior to payment of any fees in a case in excess of Seven Thousand

411 Five Hundred Dollars (\$7,500.00) or expenses of investigation and  
412 experts in excess of Two Thousand Five Hundred Dollars  
413 (\$2,500.00), the application for such fees and expenses will be  
414 submitted to the Supreme Court for review of the award of the  
415 convicting court. If counsel believes that the court has failed  
416 to allow reasonable compensation, counsel may petition the Supreme  
417 Court for review. If counsel is appointed in successive  
418 post-conviction proceedings, such counsel shall receive reasonable  
419 compensation considering the services performed.

420 (3) The trial court shall also, upon petition by the party  
421 seeking post-conviction relief, authorize additional monies to pay  
422 for investigative and expert services that are reasonably  
423 necessary to adequately litigate the post-conviction claims. The  
424 initial petition for such expenses shall present a credible  
425 estimate of anticipated expenses, and such estimate shall be  
426 updated from time to time as needed to inform the court of the  
427 status of such expenses. Payment of such expenses shall be made  
428 from funds in the Special Capital Post-Conviction Counsel Fund.

429 SECTION 16. The following shall be codified as Section  
430 99-39-28, Mississippi Code of 1972:

431 99-39-28. If application to proceed in the trial court is  
432 granted, post-conviction proceedings on cases where the death  
433 penalty has been imposed in the trial court and appeals from the  
434 trial court shall be conducted in accordance with rules  
435 established by the Supreme Court.

436 SECTION 17. When judgment of death becomes final and a writ  
437 of certiorari to the United States Supreme Court has been denied  
438 or the time for filing such petition has expired, the court shall  
439 set an execution date for a person sentenced to the death penalty.

440 Within sixty (60) days following the appointment of  
441 post-conviction counsel, upon declaration by counsel that he deems  
442 post-conviction review to be meritorious and that he intends to  
443 file an application for post-conviction review, the court may stay

444 execution pending the disposition of the post-conviction  
445 proceeding. In the event no application for post-conviction  
446 relief is filed within one (1) year of the date of the disposition  
447 of the petition for writ of certiorari or the time for certiorari  
448 has expired, any stay entered by the court will automatically  
449 vacate. The filing of a declaration by counsel that he deems  
450 post-conviction review to be meritorious and intends to file an  
451 application for post-conviction review shall in no manner  
452 constitute the filing of an application for post-conviction review  
453 that would toll the running of any statute of limitations.  
454 Setting or resetting the date of execution shall be made on motion  
455 of the state that all state and federal remedies have been  
456 exhausted, or that the defendant has failed to file for further  
457 state or federal review within the time allowed by law.

458 SECTION 18. Section 99-19-49, Mississippi Code of 1972,  
459 which provides for the setting of a day for the execution of a  
460 death sentence, is repealed.

461 SECTION 19. Sections 19 through 29 of this act may be cited  
462 as the "Mississippi Capital Defense Litigation Act."

463 SECTION 20. There is hereby created the Mississippi Office  
464 of Capital Defense Counsel. This office shall consist of four (4)  
465 attorneys, two (2) investigators, one (1) fiscal officer and two  
466 (2) secretaries/paralegals. One of these attorneys shall serve as  
467 director of the office. The director shall be appointed by the  
468 Governor with the advise and consent of the Senate for a term of  
469 four (4) years or until a successor takes office. The remaining  
470 attorneys and other staff shall be appointed by the director of  
471 the office and shall serve at the will and pleasure of the  
472 director. The director and all other attorneys in the office  
473 shall be active members of The Mississippi Bar. The director may  
474 be removed by the Governor upon finding that the director is not  
475 qualified under law, has failed to perform the duties of the  
476 office, or has acted beyond the scope of the authority granted by

477 law for the office.

478         SECTION 21. The Office of Capital Defense Counsel is created  
479 for the purpose of providing representation to indigent parties  
480 under indictment for death penalty eligible offenses and to  
481 perform such other duties as set forth by law.

482         SECTION 22. The Office of Capital Defense Counsel shall  
483 limit its activities to representation of defendants accused of  
484 death eligible offenses and ancillary matters related directly to  
485 death eligible offenses and other activities expressly authorized  
486 by statute. Representation by the office or by other court  
487 appointed counsel under this act shall terminate upon completion  
488 of trial and/or direct appeal. The attorneys appointed to serve  
489 in the Office of Capital Defense Counsel shall devote their entire  
490 time to the duties of the office, shall not represent any persons  
491 in other litigation, civil or criminal, nor in any other way  
492 engage in the practice of law, and shall in no manner, directly or  
493 indirectly, engage in lobbying activities for or against the death  
494 penalty. Any violation of this provision shall be grounds for  
495 termination from employment, in the case of the director by the  
496 Governor and in the case of other attorneys by the director with  
497 approval of the Governor.

498         SECTION 23. The director appointed under this act shall be  
499 compensated at no more than the maximum amount allowed by statute  
500 for a district attorney, and other attorneys in the office shall  
501 be compensated at no more than the maximum amount allowed by  
502 statute for an assistant district attorney.

503         SECTION 24. The Director of the Capital Defense Counsel  
504 Office shall keep the office open Monday through Friday for not  
505 less than eight (8) hours each day and observe such holidays as  
506 prescribed by statute.

507         SECTION 25. In addition to the authority to represent  
508 persons under indictment for death eligible offenses, the director  
509 is hereby empowered to pay and disburse salaries, employment

510 benefits and charges relating to employment of staff and to  
511 establish their salaries and expenses of the office; to incur and  
512 pay travel expenses of staff necessary for the performance of the  
513 duties of the office; to rent or lease on such terms as he may  
514 think proper such office space as is necessary in the City of  
515 Jackson to accommodate the staff; to enter into and perform  
516 contracts and to purchase such necessary office supplies and  
517 equipment as may be needed for the proper administration of said  
518 offices within the funds appropriated for such purpose, and to  
519 incur and pay such other expenses as are appropriate and customary  
520 to the operation of the office.

521       SECTION 26. The director shall keep a docket of all indicted  
522 death eligible cases originating in the courts of Mississippi  
523 which must, at all reasonable times, be open to inspection by the  
524 public and must show the county, district and court in which the  
525 cause is pending. The director shall prepare and maintain a  
526 roster of all death penalty cases in the courts of Mississippi  
527 indicating the current status of each case and submit this report  
528 to the Governor, Chief Justice of the Supreme Court and the  
529 Administrative Office of the Courts monthly. The director shall  
530 also report monthly to the Administrative Office of Courts the  
531 activities, receipts and expenditures of the office.

532       SECTION 27. If, at any time, during the representation of  
533 two (2) or more defendants the director determines that the  
534 interests of those persons are so adverse or hostile they cannot  
535 all be represented by the director or his staff without conflict  
536 of interest, or if the director shall determine that the volume or  
537 number of representations shall so require, the director in his  
538 sole discretion, notwithstanding any statute or regulation to the  
539 contrary, shall be authorized to employ qualified private counsel.  
540 Fees and expenses approved by order of the court of original  
541 jurisdiction, including investigative and expert witness expenses  
542 of such private counsel, shall be paid by funds appropriated to a



543 Capital Defense Counsel Special Fund for this purpose, which fund  
544 is hereby created. Monies in this fund shall not lapse into the  
545 General Fund at the end of the fiscal year but shall remain in the  
546 fund, and any interest accrued to the fund shall remain in the  
547 fund.

548 SECTION 28. Upon determination of indigence the circuit  
549 court may in its discretion, appoint local counsel for the purpose  
550 of defending death eligible indigent defendants, the fees and  
551 expenses of which shall be paid by the Capital Defense Counsel  
552 Special Fund. In the presiding circuit judge's discretion, a  
553 determination of the absence of competent death penalty defense  
554 counsel having been made, counsel from the Office of Capital  
555 Defense Counsel may be appointed to assist local counsel to defend  
556 said case with all fees and expenses to be paid by the Capital  
557 Defense Counsel Special Fund.

558 SECTION 29. Sections 25-32-31, 25-32-33, 25-32-35, 25-32-37,  
559 25-32-39, 25-32-41, 25-32-43, 25-32-45, 25-32-47, 25-32-49,  
560 25-32-51, 25-32-53, 25-32-55, 25-32-57, 25-32-59, 25-32-61,  
561 25-32-63 and 25-32-65, Mississippi Code of 1972, which comprise  
562 the Mississippi Statewide Public Defender System Act, are  
563 repealed.

564 SECTION 30. This act shall take effect and be in force from  
565 and after July 1, 2000.