

By: Watson, Fillingane

To: Judiciary A;
AppropriationsHOUSE BILL NO. 1228
(As Sent to Governor)

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; TO CREATE THE
37 MISSISSIPPI PUBLIC DEFENDERS SYSTEM TASK FORCE TO MAKE A
38 COMPREHENSIVE STUDY OF THE EXISTING PUBLIC DEFENDER LAW IN
39 MISSISSIPPI; TO EXAMINE AND STUDY APPROACHES TAKEN IN OTHER STATES
40 REGARDING THE IMPLEMENTATION AND COST OF STATEWIDE PUBLIC DEFENDER
41 SYSTEMS; TO MAKE RECOMMENDATIONS FOR ACTION BY THE LEGISLATURE TO
42 STUDY THE RELATIONSHIP BETWEEN THE ESTABLISHMENT OF DISTRICT
43 PUBLIC DEFENDERS AND CIRCUIT JUDGES; TO ANALYZE DISTRICT NEEDS; TO
44 PROVIDE FOR THE COMPENSATION OF THE TASK FORCE; TO PROVIDE THAT
45 THE TASK FORCE SHALL MAKE A REPORT OF ITS WORK; AND FOR RELATED
46 PURPOSES.

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

48 SECTION 1. Sections 1 through 18 of this act may be cited as

49 the "Mississippi Capital Post-Conviction Counsel Act."

50 SECTION 2. There is created the Mississippi Office of
51 Capital Post-Conviction Counsel. This office shall consist of
52 three (3) attorneys, one (1) investigator, one (1) fiscal officer
53 and one (1) secretary/paralegal. One of those attorneys shall
54 serve as director of the office. The director shall be appointed
55 by the Chief Justice of the Supreme Court with the approval of a
56 majority of the justices voting, for a term of four (4) years, or
57 until a successor takes office. The remaining attorneys and other
58 staff shall be appointed by the director of the office and shall
59 serve at the will and pleasure of the director. The director and
60 all other attorneys in the office shall be active members of The
61 Mississippi Bar and shall meet all qualifications necessary to
62 serve as post-conviction counsel for persons under a sentence of
63 death. The director may be removed from office by the Chief
64 Justice upon finding that the director is not qualified under law
65 to serve as post-conviction counsel for persons under sentences of
66 death, has failed to perform the duties of the office or has acted
67 beyond the scope of the authority granted by law for the office.

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

72 SECTION 4. The Office of Capital Post-Conviction Counsel
73 shall limit its activities to the representation of inmates under
74 sentence of death in post-conviction proceedings and ancillary
75 matters related directly to post-conviction review of their
76 convictions and sentences and other activities explicitly
77 authorized in statute. Representation by the office or by private
78 counsel under appointment by the office will end upon the filing
79 of proceeding for federal habeas corpus review or for appointment
80 of counsel to represent the defendant in federal habeas corpus
81 proceedings. However, the office may continue representation if

82 the office or a staff attorney employed by the office shall be
83 appointed by a federal court to represent the inmate in federal
84 habeas corpus proceedings. In such event, the office or the
85 employee attorney shall apply to the federal court for
86 compensation and expenses and shall upon receipt of payments by
87 the federal court pay all sums received over to the office for
88 deposit in the Special Capital Post-Conviction Counsel Fund as
89 provided in Section 9 of this act, from which all expenses for
90 investigation and litigation shall be disbursed. Representation
91 in post-conviction proceedings shall further include
92 representation of the inmate from the exhaustion of all state and
93 federal post-conviction litigation until execution of the sentence
94 or an adjudication resulting in either a new trial or a vacation
95 of the death sentence. The attorneys appointed to serve in the
96 Office of Capital Post-Conviction Counsel shall devote their
97 entire time to the duties of the office, shall not represent any
98 persons in other litigation, civil or criminal, nor in any other
99 way engage in the practice of law, and shall in no manner,
100 directly or indirectly, participate in the trial of any person
101 charged with capital murder or direct appeal of any person under
102 sentence of death in the state, nor engage in lobbying activities
103 for or against the death penalty. Any violation of this provision
104 shall be grounds for termination from employment, in the case of
105 the director, by the Chief Justice, and in the case of other
106 attorneys, by the director, with approval of the Chief Justice.

107 SECTION 5. The director appointed under this act shall be
108 compensated at no more than the maximum amount allowed by statute
109 for a district attorney, and other attorneys in the office shall
110 be compensated at no more than the maximum amount allowed by
111 statute for an assistant district attorney.

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

115 SECTION 7. In addition to the authority to represent persons
116 under sentence of death in state post-conviction proceedings, the
117 director is hereby empowered to pay and disburse salaries,
118 employment benefits and charges relating to employment of staff
119 and to establish their salaries, and expenses of the office; to
120 incur and pay travel expenses of staff necessary for the
121 performance of the duties of the office; to rent or lease on such
122 terms as he may think proper such office space as is necessary in
123 the City of Jackson to accommodate the staff; to solicit and
124 accept monies, gifts, grants or services from any public or
125 private sources for the purpose of funding, operating and
126 executing the statutory duties of the office; to enter into and
127 perform contracts, including but not limited to, contracts and
128 agreements necessary to obtain and receive monies, gifts, grants
129 or services from federal, public and private sources, and to
130 purchase such necessary office supplies and equipment as may be
131 needed for the proper administration of said offices; and to incur
132 and pay such other expenses as are appropriate and customary to
133 the operations of the office. The director shall be required to
134 obtain a surety bond in the amount of not less than One Hundred
135 Thousand Dollars (\$100,000.00) payable to the state. The cost of
136 such bond shall be paid out of funds appropriated for the
137 operations of the office. All salaries and other expenditures
138 shall be paid from funds appropriated for such purposes augmented
139 by funds received as gifts and grants from public and private
140 sources.

141 SECTION 8. The director shall, as prescribed by the Chief
142 Justice, keep a docket of all death penalty cases originating in
143 the courts of Mississippi, which must at all reasonable times be
144 open to the inspection of the public and must show the county,
145 district and court in which the causes have been instituted. The
146 director shall prepare and maintain a roster of all death penalty
147 cases originating in the courts of Mississippi and pending in

148 state and federal courts indicating the current status of each
149 such case, and a history of those death penalty cases filed since
150 1976. Copies of such dockets and rosters shall be submitted to
151 the Supreme Court in such format and with such appropriate
152 information and as frequently as the Chief Justice may direct.
153 The director shall also report monthly to the Chief Justice the
154 activities, receipts and expenditures of the office.

155 SECTION 9. If, at any time during the representation of two
156 (2) or more defendants, the director determines that the interest
157 of those persons are so adverse or hostile that they cannot all be
158 represented by the director or his staff without conflict of
159 interest, or if the director shall determine that the volume or
160 number of representations shall so require, the director, in his
161 sole discretion, notwithstanding any statute or regulation to the
162 contrary, shall be authorized to employ qualified private counsel.
163 Fees and expenses, approved by order of the appropriate court,
164 including investigative and expert witness expenses of such
165 private counsel shall be paid from funds appropriated to a Special
166 Capital Post-Conviction Counsel Fund for this purpose, which fund
167 is hereby created. Monies in this fund shall not lapse into the
168 General Fund at the end of a fiscal year but shall remain in the
169 fund and any interest which accrues to the fund shall remain in
170 the fund.

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

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

177 99-19-105. (1) Whenever the death penalty is imposed, and
178 upon the judgment becoming final in the trial court, the sentence
179 shall be reviewed on the record by the Mississippi Supreme Court.
180 The clerk of the trial court, within ten (10) days after receiving

181 the transcript, shall transmit the entire record and transcript to
182 the Mississippi Supreme Court together with a notice prepared by
183 the clerk and a report prepared by the trial judge. The notice
184 shall set forth the title and docket number of the case, the name
185 of the defendant and the name and address of his attorney, a
186 narrative statement of the judgment, the offense, and the
187 punishment prescribed. The report shall be in the form of a
188 standard questionnaire prepared and supplied by the Mississippi
189 Supreme Court, a copy of which shall be served upon counsel for
190 the state and counsel for the defendant.

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

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

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

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

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

202 (d) Should one or more of the aggravating circumstances
203 be found invalid on appeal, the Mississippi Supreme Court shall
204 determine whether the remaining aggravating circumstances are
205 outweighed by the mitigating circumstances or whether the
206 inclusion of any invalid circumstance was harmless error, or both.

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

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

214 (a) Affirm the sentence of death;
215 (b) Reweigh the remaining aggravating circumstances
216 against the mitigating circumstances should one or more of the
217 aggravating circumstances be found to be invalid, and (i) affirm
218 the sentence of death or (ii) hold the error in the sentence phase
219 harmless error and affirm the sentence of death or (iii) remand
220 the case for a new sentencing hearing; or
221 (c) Set the sentence aside and remand the case for
222 modification of the sentence to imprisonment for life.

223 (6) The sentence review shall be in addition to direct
224 appeal, if taken, and the review and appeal shall be consolidated
225 for consideration. The court shall render its decision on legal
226 errors enumerated, the factual substantiation of the verdict, and
227 the validity of the sentence.

228 * * *

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

231 99-39-5. (1) Any prisoner in custody under sentence of a
232 court of record of the State of Mississippi who claims:

233 (a) That the conviction or the sentence was imposed in
234 violation of the Constitution of the United States or the
235 Constitution or laws of Mississippi;

236 (b) That the trial court was without jurisdiction to
237 impose sentence;

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

240 (d) That the sentence exceeds the maximum authorized by
241 law;

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

245 (f) That his plea was made involuntarily;

246 (g) That his sentence has expired; his probation,

247 parole or conditional release unlawfully revoked; or he is
248 otherwise unlawfully held in custody;

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

250 (i) That the conviction or sentence is otherwise
251 subject to collateral attack upon any grounds of alleged error
252 heretofore available under any common law, statutory or other
253 writ, motion, petition, proceeding or remedy; may file a motion to
254 vacate, set aside or correct the judgment or sentence, or for an
255 out-of-time appeal.

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

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

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

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

284 99-39-23. (1) If an evidentiary hearing is required the
285 judge may appoint counsel for a petitioner who qualifies for the
286 appointment of counsel under Section 99-15-15, Mississippi Code of
287 1972.

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

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

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

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

304 (6) The order as provided in subsection (5) of this section
305 or any order dismissing the prisoner's motion or otherwise denying
306 relief under this chapter is a final judgment and shall be
307 conclusive until reversed. It shall be a bar to a second or
308 successive motion under this chapter. Excepted from this
309 prohibition is a motion filed pursuant to Section 99-19-57(2),
310 Mississippi Code of 1972, raising the issue of the convict's
311 supervening insanity prior to the execution of a sentence of
312 death. A dismissal or denial of a motion relating to insanity

313 under Section 99-19-57(2), Mississippi Code of 1972, shall be res
314 judicata on the issue and shall likewise bar any second or
315 successive motions on the issue. Likewise excepted from this
316 prohibition are those cases in which the prisoner can demonstrate
317 either that there has been an intervening decision of the Supreme
318 Court of either the State of Mississippi or the United States
319 which would have actually adversely affected the outcome of his
320 conviction or sentence or that he has evidence, not reasonably
321 discoverable at the time of trial, which is of such nature that it
322 would be practically conclusive that had such been introduced at
323 trial it would have caused a different result in the conviction or
324 sentence. Likewise excepted are those cases in which the prisoner
325 claims that his sentence has expired or his probation, parole or
326 conditional release has been unlawfully revoked.

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

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

332 (9) In cases resulting in a sentence of death and upon a
333 determination of indigence, appointment of post-conviction counsel
334 shall be made by the Office of Capital Post-Conviction Counsel
335 upon order entered by the Supreme Court promptly upon announcement
336 of the decision on direct appeal affirming the sentence of death.
337 The order shall direct the trial court to immediately determine
338 indigence and whether the inmate will accept counsel.

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

341 99-39-27. (1) The application for leave to proceed in the
342 trial court filed with the Supreme Court under Section 99-39-7
343 shall name the State of Mississippi as the respondent.

344 (2) The application shall contain the original and two (2)
345 executed copies of the motion proposed to be filed in the trial

346 court together with such other supporting pleadings and
347 documentation as the Supreme Court by rule may require.

348 (3) The prisoner shall serve an executed copy of the
349 application upon the Attorney General simultaneously with the
350 filing of the application with the court.

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

354 (5) Unless it appears from the face of the application,
355 motion, exhibits and the prior record that the claims presented by
356 such are not procedurally barred under Section 99-39-21 and that
357 they further present a substantial showing of the denial of a
358 state or federal right, the court shall by appropriate order deny
359 the application. The court may, in its discretion, require the
360 Attorney General upon sufficient notice to respond to the
361 application.

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

364 (7) In granting the application the court, in its
365 discretion, may:

366 (a) Where sufficient facts exist from the face of the
367 application, motion, exhibits, the prior record and the state's
368 response, together with any exhibits submitted therewith, or upon
369 stipulation of the parties, grant or deny any or all relief
370 requested in the attached motion.

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

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

375 (9) The dismissal or denial of an application under this
376 section is a final judgment and shall be a bar to a second or
377 successive application under this chapter. Excepted from this
378 prohibition is an application filed pursuant to Section

379 99-19-57(2), Mississippi Code of 1972, raising the issue of the
380 convict's supervening insanity prior to the execution of a
381 sentence of death. A dismissal or denial of an application
382 relating to insanity under Section 99-19-57(2), Mississippi Code
383 of 1972, shall be res judicata on the issue and shall likewise bar
384 any second or successive applications on the issue. Likewise
385 excepted from this prohibition are those cases in which the
386 prisoner can demonstrate either that there has been an intervening
387 decision of the Supreme Court of either the State of Mississippi
388 or the United States which would have actually adversely affected
389 the outcome of his conviction or sentence or that he has evidence,
390 not reasonably discoverable at the time of trial, which is of such
391 nature that it would be practically conclusive that had such been
392 introduced at trial it would have caused a different result in the
393 conviction or sentence. Likewise exempted are those cases in
394 which the prisoner claims that his sentence has expired or his
395 probation, parole or conditional release has been unlawfully
396 revoked.

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

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

402 SECTION 15. The following shall be codified as Section
403 99-15-18, Mississippi Code of 1972:

404 99-15-18. (1) Counsel employed by an office funded by the
405 State of Mississippi or any county shall receive no compensation
406 or expenses for representation of a party seeking post-conviction
407 relief while under a sentence of death other than the compensation
408 attendant to his office.

409 (2) Unless employed by such an office, counsel appointed to
410 represent a party seeking post-conviction relief while under a
411 sentence of death shall be paid at an hourly rate not to exceed

412 eighty percent (80%) of the hourly rate allowed in the United
413 States District Courts of the Northern and Southern Districts of
414 Mississippi to attorneys appointed to represent defendants seeking
415 habeas corpus relief. Money shall not be paid to court appointed
416 counsel unless either (a) a petition is timely filed, or (b) if a
417 petition is not filed, a notice is timely filed stating that
418 counsel has reviewed the record and found no meritorious claim.
419 Prior to payment of any fees in a case in excess of Seven Thousand
420 Five Hundred Dollars (\$7,500.00) or expenses of investigation and
421 experts in excess of Two Thousand Five Hundred Dollars
422 (\$2,500.00), the application for such fees and expenses will be
423 submitted to the Supreme Court for review of the award of the
424 convicting court. If counsel believes that the court has failed
425 to allow reasonable compensation, counsel may petition the Supreme
426 Court for review. If counsel is appointed in successive
427 post-conviction proceedings, such counsel shall receive reasonable
428 compensation considering the services performed.

429 (3) The trial court shall also, upon petition by the party
430 seeking post-conviction relief, authorize additional monies to pay
431 for investigative and expert services that are reasonably
432 necessary to adequately litigate the post-conviction claims. The
433 initial petition for such expenses shall present a credible
434 estimate of anticipated expenses, and such estimate shall be
435 updated from time to time as needed to inform the court of the
436 status of such expenses. Payment of such expenses shall be made
437 from funds in the Special Capital Post-Conviction Counsel Fund.

438 SECTION 16. The following shall be codified as Section
439 99-39-28, Mississippi Code of 1972:

440 99-39-28. If application to proceed in the trial court is
441 granted, post-conviction proceedings on cases where the death
442 penalty has been imposed in the trial court and appeals from the
443 trial court shall be conducted in accordance with rules
444 established by the Supreme Court.

445 SECTION 17. When judgment of death becomes final and a writ
446 of certiorari to the United States Supreme Court has been denied
447 or the time for filing such petition has expired, the court shall
448 set an execution date for a person sentenced to the death penalty.
449 Within sixty (60) days following the appointment of
450 post-conviction counsel, upon declaration by counsel that he deems
451 post-conviction review to be meritorious and that he intends to
452 file an application for post-conviction review, the court may stay
453 execution pending the disposition of the post-conviction
454 proceeding. In the event no application for post-conviction
455 relief is filed within one (1) year of the date of the disposition
456 of the petition for writ of certiorari or the time for certiorari
457 has expired, any stay entered by the court will automatically
458 vacate. The filing of a declaration by counsel that he deems
459 post-conviction review to be meritorious and intends to file an
460 application for post-conviction review shall in no manner
461 constitute the filing of an application for post-conviction review
462 that would toll the running of any statute of limitations.
463 Setting or resetting the date of execution shall be made on motion
464 of the state that all state and federal remedies have been
465 exhausted, or that the defendant has failed to file for further
466 state or federal review within the time allowed by law.

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

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

472 SECTION 20. There is hereby created the Mississippi Office
473 of Capital Defense Counsel. This office shall consist of four (4)
474 attorneys, two (2) investigators, one (1) fiscal officer and two
475 (2) secretaries/paralegals. One of these attorneys shall serve as
476 director of the office. The director shall be appointed by the
477 Governor with the advise and consent of the Senate for a term of

478 four (4) years or until a successor takes office. The remaining
479 attorneys and other staff shall be appointed by the director of
480 the office and shall serve at the will and pleasure of the
481 director. The director and all other attorneys in the office
482 shall be active members of The Mississippi Bar. The director may
483 be removed by the Governor upon finding that the director is not
484 qualified under law, has failed to perform the duties of the
485 office, or has acted beyond the scope of the authority granted by
486 law for the office.

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

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

507 SECTION 23. The director appointed under this act shall be
508 compensated at no more than the maximum amount allowed by statute
509 for a district attorney, and other attorneys in the office shall
510 be compensated at no more than the maximum amount allowed by

511 statute for an assistant district attorney.

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

516 SECTION 25. In addition to the authority to represent
517 persons under indictment for death eligible offenses, the director
518 is hereby empowered to pay and disburse salaries, employment
519 benefits and charges relating to employment of staff and to
520 establish their salaries and expenses of the office; to incur and
521 pay travel expenses of staff necessary for the performance of the
522 duties of the office; to rent or lease on such terms as he may
523 think proper such office space as is necessary in the City of
524 Jackson to accommodate the staff; to enter into and perform
525 contracts and to purchase such necessary office supplies and
526 equipment as may be needed for the proper administration of said
527 offices within the funds appropriated for such purpose, and to
528 incur and pay such other expenses as are appropriate and customary
529 to the operation of the office.

530 SECTION 26. The director shall keep a docket of all indicted
531 death eligible cases originating in the courts of Mississippi
532 which must, at all reasonable times, be open to inspection by the
533 public and must show the county, district and court in which the
534 cause is pending. The director shall prepare and maintain a
535 roster of all death penalty cases in the courts of Mississippi
536 indicating the current status of each case and submit this report
537 to the Governor, Chief Justice of the Supreme Court and the
538 Administrative Office of the Courts monthly. The director shall
539 also report monthly to the Administrative Office of Courts the
540 activities, receipts and expenditures of the office.

541 SECTION 27. If, at any time, during the representation of
542 two (2) or more defendants the director determines that the
543 interests of those persons are so adverse or hostile they cannot

544 all be represented by the director or his staff without conflict
545 of interest, or if the director shall determine that the volume or
546 number of representations shall so require, the director in his
547 sole discretion, notwithstanding any statute or regulation to the
548 contrary, shall be authorized to employ qualified private counsel.

549 Fees and expenses approved by order of the court of original
550 jurisdiction, including investigative and expert witness expenses
551 of such private counsel, shall be paid by funds appropriated to a
552 Capital Defense Counsel Special Fund for this purpose, which fund
553 is hereby created. Monies in this fund shall not lapse into the
554 General Fund at the end of the fiscal year but shall remain in the
555 fund, and any interest accrued to the fund shall remain in the
556 fund.

557 SECTION 28. Upon determination of indigence the circuit
558 court may in its discretion, appoint local counsel for the purpose
559 of defending death eligible indigent defendants, the fees and
560 expenses of which shall be paid by the Capital Defense Counsel
561 Special Fund. In the presiding circuit judge's discretion, a
562 determination of the absence of competent death penalty defense
563 counsel having been made, counsel from the Office of Capital
564 Defense Counsel may be appointed to assist local counsel to defend
565 said case with all fees and expenses to be paid by the Capital
566 Defense Counsel Special Fund.

567 SECTION 29. Sections 25-32-31, 25-32-33, 25-32-35, 25-32-37,
568 25-32-39, 25-32-41, 25-32-43, 25-32-45, 25-32-47, 25-32-49,
569 25-32-51, 25-32-53, 25-32-55, 25-32-57, 25-32-59, 25-32-61,
570 25-32-63 and 25-32-65, Mississippi Code of 1972, which comprise
571 the Mississippi Statewide Public Defender System Act, are
572 repealed.

573 SECTION 30. (1) There is created the Mississippi Public
574 Defender Task Force which shall be composed of eleven (11) members
575 as follows:

576 (a) The President of the Mississippi Public Defender

577 Association, or his designee;

578 (b) The President of the Mississippi Prosecutors
579 Association, or his designee;

580 (c) A representative of the Administrative Office of
581 Courts;

582 (d) A representative of the Mississippi Supreme Court;

583 (e) A representative of the Conference of Circuit
584 Judges;

585 (f) A representative of the Mississippi Attorney
586 General's Office;

587 (g) A representative of the Mississippi Association of
588 Supervisors;

589 (h) The Chairman of the Senate Judiciary Committee, or
590 his designee;

591 (i) The Chairman of the Senate Appropriations
592 Committee, or his designee;

593 (j) The Chairman of the House Judiciary En Banc
594 Committee, or his designee;

595 (k) The Chairman of the House Appropriations Committee,
596 or his designee.

597 (2) At its first meeting, the task force shall elect a
598 chairman and vice chairman from its membership and shall adopt
599 rules for transacting its business and keeping records. Members
600 of the task force shall receive a per diem in the amount provided
601 in Section 25-3-69 for each day engaged in the business of the
602 task force. Members of the task force other than the legislative
603 members shall receive reimbursement for travel expenses incurred
604 while engaged in official business of the task force in accordance
605 with Section 25-3-41 and the legislative members of the task force
606 shall receive the expense allowance provided for in Section
607 5-1-47.

608 (3) The duties of the task force shall be to:

609 (a) Make a comprehensive study of the needs by circuit

610 court districts for state-supported indigent defense counsel,
611 examining existing public defender programs. This report shall be
612 provided to the Legislature by September 29, 2000.

613 (b) Examine and study approaches taken by other states
614 in the implementation and costs of state-supported indigent
615 criminal cases.

616 (c) To study the relationship between presiding circuit
617 court judges and the appointment of criminal indigent defense
618 counsel.

619 SECTION 31. This act shall take effect and be in force from
620 and after July 1, 2000.