

By: Blackmon, McBride, Reynolds

To: Judiciary B;
Appropriations

HOUSE BILL NO. 1374

1 AN ACT TO CREATE THE MISSISSIPPI DEATH PENALTY DEFENSE
2 LITIGATION ACT; TO CREATE THE MISSISSIPPI OFFICE OF DEATH PENALTY
3 DEFENSE COUNSEL AND SPECIFY ITS PERSONNEL; TO PROVIDE
4 QUALIFICATIONS FOR ATTORNEYS IN THE OFFICE; TO PROVIDE FOR
5 COMPENSATION; TO SPECIFY OFFICE HOURS; TO AUTHORIZE THE DIRECTOR
6 TO ACQUIRE OFFICE SPACE, SUPPLIES AND EQUIPMENT; TO REQUIRE THE
7 DIRECTOR TO MAINTAIN A DOCKET; TO AUTHORIZE APPOINTMENT OF
8 ATTORNEYS IN SITUATIONS WHERE CONFLICTS ARISE; TO CREATE THE
9 SPECIAL DEATH PENALTY DEFENSE LITIGATION FUND; TO PROVIDE THAT
10 ATTORNEYS APPOINTED TO THE OFFICE SHALL BE FULL TIME; TO REPEAL
11 SECTIONS 25-32-31 THROUGH 25-32-65, MISSISSIPPI CODE OF 1972,
12 WHICH COMPRISE THE MISSISSIPPI STATEWIDE PUBLIC DEFENDER SYSTEM
13 ACT; TO REPEAL SECTION 21, CHAPTER 575, LAWS OF 1998, WHICH
14 REQUIRES THE CERTIFICATION OF FUNDING OF THE MISSISSIPPI STATEWIDE
15 PUBLIC DEFENDER SYSTEM ACT; AND FOR RELATED PURPOSES.

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

17 SECTION 1. This act may be cited as the "Mississippi Death
18 Penalty Defense Litigation Act."

19 SECTION 2. There is hereby created the Mississippi Office of
20 Death Penalty Defense Counsel. This office shall consist of
21 twelve (12) attorneys, four (4) investigators, one (1) fiscal
22 officer and four (4) secretaries/paralegals. One of these
23 attorneys shall serve as director of the office. The director
24 shall be appointed by the Governor for a term of four (4) years or
25 until a successor takes office. The remaining attorneys and other
26 staff shall be appointed by the director of the office and shall
27 serve at the will and pleasure of the director. Two (2) of the
28 attorneys shall work on appeals only. The director and all other
29 attorneys in the office shall be active members of The Mississippi
30 Bar. The director may be removed by the Governor upon finding
31 that the director is not qualified under law, has failed to
32 perform the duties of the office, or has acted beyond the scope of

33 the authority granted by law for the office.

34 SECTION 3. The Office of Death Penalty Defense Counsel is
35 created for the purpose of providing representation to indigent
36 parties under indictment for death penalty eligible offenses and
37 to perform such other duties as set forth by law.

38 SECTION 4. The Office of Death Penalty Defense Counsel shall
39 limit its activities to representation of defendants accused of
40 death eligible offenses and ancillary matters related directly to
41 death eligible offenses and other activities expressly authorized
42 by statute. Representation by the office or by other court
43 appointed counsel under this act shall terminate upon the
44 exhaustion of all state court remedies. The attorneys appointed
45 to serve in the Office of Death Penalty Defense Counsel shall
46 devote their entire time to the duties of the office, shall not
47 represent any persons in other litigation, civil or criminal, nor
48 in any other way engage in the practice of law, and shall in no
49 manner, directly or indirectly, engage in lobbying activities for
50 or against the death penalty. Any violation of this provision
51 shall be grounds for termination from employment, in the case of
52 the director by the Governor and in the case of other attorneys by
53 the director.

54 SECTION 5. The director appointed under this act shall be
55 compensated at no more than the maximum amount allowed by statute
56 for a district attorney, and other attorneys in the office shall
57 be compensated at no more than the maximum amount allowed by
58 statute for an assistant district attorney.

59 SECTION 6. The director of the Death Penalty Defense Counsel
60 office shall keep the office open Monday through Friday for not
61 less than eight (8) hours each day and observe such holidays as
62 prescribed by statute.

63 SECTION 7. In addition to the authority to represent persons
64 under indictment for death eligible offenses, the director is
65 hereby empowered to pay and disburse salaries, employment benefits
66 and charges relating to employment of staff and to establish their
67 salaries and expenses of the office; to incur and pay travel
68 expenses of staff necessary for the performance of the duties of
69 the office; to rent or lease on such terms as he may think proper

70 such office space as is necessary in the City of Jackson to
71 accommodate the staff; to hire experts upon court approval; to
72 enter into and perform contracts and to purchase such necessary
73 office supplies and equipment as may be needed for the proper
74 administration of said offices within the funds appropriated for
75 such purpose, and to incur and pay such other expenses as are
76 appropriate and customary to the operation of the office.

77 SECTION 8. The director shall keep a docket of all indicted
78 death eligible cases originating in the courts of Mississippi
79 which must, at all reasonable times, be open to inspection by the
80 public and must show the county, district and court in which the
81 cause is pending. The director shall prepare and maintain a
82 roster of all death penalty cases in the courts of Mississippi
83 indicating the current status of each case and submit this report
84 to the Governor as frequently as the Governor may direct. The
85 director shall also report monthly to the Administrative Office of
86 Courts the activities, receipts and expenditures of the office.

87 SECTION 9. If, at any time, during the representation of two
88 (2) or more defendants the director determines that the interests
89 of those persons are so adverse or hostile they cannot all be
90 represented by the director or his staff without conflict of
91 interest, or if the director shall determine that the volume or
92 number of representations shall so require, the director in his
93 sole discretion, notwithstanding any statute or regulation to the
94 contrary, shall be authorized to employ qualified private counsel.
95 Fees and expenses approved by order of the court of original
96 jurisdiction, including investigative and expert witness expenses
97 of such private counsel, shall be paid by funds appropriated to a
98 Death Penalty Defense Counsel Special Fund for this purpose, which
99 fund is hereby created. Monies in this fund shall not lapse into
100 the General Fund at the end of the fiscal year but shall remain in
101 the fund, and any interest accrued to the fund shall remain in the
102 fund.

103 SECTION 10. Upon determination of indigence the circuit
104 court may in its discretion, appoint local counsel for the purpose
105 of defending death eligible indigent defendants, the fees and
106 expenses of which shall be paid by the Death Penalty Defense
107 Counsel Special Fund. In the presiding circuit judge's
108 discretion, a determination of the absence of competent death
109 penalty defense counsel having been made, counsel from the Office
110 of Death Penalty Defense Counsel may be appointed to assist local
111 counsel to defend said case with all fees and expenses to be paid
112 by the Death Penalty Defense Counsel Special Fund.

113 SECTION 11. Sections 25-32-31, 25-32-33, 25-32-35, 25-32-37,
114 25-32-39, 25-32-41, 25-32-43, 25-32-45, 25-32-47, 25-32-49,
115 25-32-51, 25-32-53, 25-32-55, 25-32-57, 25-32-59, 25-32-61,
116 25-32-63 and 25-32-65, Mississippi Code of 1972, which comprise
117 the Mississippi Statewide Public Defender System Act, are
118 repealed.

119 SECTION 12. Section 21, Chapter 575, Laws 1998, which
120 provides for the certification of funding for the Statewide Public
121 Defender System Act, is repealed on July 1, 2000.

122 SECTION 13. Section 12 of this act shall take effect and be
123 in force from and after July 1, 2000, and Sections 1 through 11 of
124 this act shall take effect and be in force from and after July 2,
125 2000.