

By: Blackmon, McBride, Reynolds

To: Judiciary B;
Appropriations

HOUSE BILL NO. 1376

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 DEATH PENALTY DEFENSE LITIGATION ACT; TO CREATE THE MISSISSIPPI
29 OFFICE OF DEATH PENALTY DEFENSE COUNSEL AND SPECIFY ITS PERSONNEL;
30 TO PROVIDE QUALIFICATIONS FOR ATTORNEYS IN THE OFFICE; TO PROVIDE
31 FOR COMPENSATION; TO SPECIFY OFFICE HOURS; TO AUTHORIZE THE
32 DIRECTOR TO ACQUIRE OFFICE SPACE, SUPPLIES AND EQUIPMENT; TO
33 REQUIRE THE DIRECTOR TO MAINTAIN A DOCKET; TO AUTHORIZE
34 APPOINTMENT OF ATTORNEYS IN SITUATIONS WHERE CONFLICTS ARISE; TO
35 CREATE THE SPECIAL DEATH PENALTY DEFENSE LITIGATION FUND; TO
36 PROVIDE THAT ATTORNEYS APPOINTED TO THE OFFICE SHALL BE FULL TIME;
37 AND FOR RELATED 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 or 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 28 of this act may be cited
462 as the "Mississippi Death Penalty Defense Litigation Act."

463 SECTION 20. There is hereby created the Mississippi Office
464 of Death Penalty Defense Counsel. This office shall consist of
465 twelve (12) attorneys, four (4) investigators, one (1) fiscal
466 officer and four (4) secretaries/paralegals. One of these
467 attorneys shall serve as director of the office. The director
468 shall be appointed by the Governor for a term of four (4) years or
469 until a successor takes office. The remaining attorneys and other
470 staff shall be appointed by the director of the office and shall
471 serve at the will and pleasure of the director. Two (2) of the
472 attorneys shall work on appeals only. The director and all other
473 attorneys in the office shall be active members of The Mississippi
474 Bar. The director may be removed by the Governor upon finding
475 that the director is not qualified under law, has failed to
476 perform the duties of the office, or has acted beyond the scope of

477 the authority granted by law for the office.

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

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

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 Death Penalty Defense
504 Counsel office shall keep the office open Monday through Friday
505 for not less than eight (8) hours each day and observe such
506 holidays as 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 hire experts upon court
516 approval; to enter into and perform contracts and to purchase such
517 necessary office supplies and equipment as may be needed for the
518 proper administration of said offices within the funds
519 appropriated for such purpose, and to incur and pay such other
520 expenses as are appropriate and customary to the operation of the
521 office.

522 SECTION 26. The director shall keep a docket of all indicted
523 death eligible cases originating in the courts of Mississippi
524 which must, at all reasonable times, be open to inspection by the
525 public and must show the county, district and court in which the
526 cause is pending. The director shall prepare and maintain a
527 roster of all death penalty cases in the courts of Mississippi
528 indicating the current status of each case and submit this report
529 to the Governor as frequently as the Governor may direct. The
530 director shall also report monthly to the Administrative Office of
531 Courts the 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 Death Penalty Defense Counsel Special Fund for this purpose, which
544 fund is hereby created. Monies in this fund shall not lapse into
545 the General Fund at the end of the fiscal year but shall remain in
546 the 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 Death Penalty Defense
552 Counsel Special Fund. In the presiding circuit judge's
553 discretion, a determination of the absence of competent death
554 penalty defense counsel having been made, counsel from the Office
555 of Death Penalty Defense Counsel may be appointed to assist local
556 counsel to defend said case with all fees and expenses to be paid
557 by the Death Penalty Defense Counsel Special Fund.

558 SECTION 29. This act shall take effect and be in force from
559 and after July 1, 2000.