

By: Blackmon

To: Judiciary A;
Appropriations

HOUSE BILL NO. 1377

1 AN ACT TO CREATE THE MISSISSIPPI OFFICE OF APPELLATE
2 DEFENDER AND SPECIFY ITS PERSONNEL; TO PROVIDE FOR QUALIFICATIONS
3 OF ATTORNEYS IN THE OFFICE; TO PROVIDE FOR COMPENSATION; TO
4 SPECIFY OFFICE HOURS; TO AUTHORIZE THE DIRECTOR TO ACQUIRE OFFICE
5 SPACE, SUPPLIES AND EQUIPMENT; TO AUTHORIZE APPOINTMENT OF
6 ATTORNEYS IN SITUATIONS WHERE CONFLICTS ARISE; TO PROVIDE THAT
7 ATTORNEYS APPOINTED TO THE OFFICE SHALL BE FULL-TIME; AND FOR
8 RELATED PURPOSES.

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

10 SECTION 1. This act may be cited as the "Mississippi
11 Appellate Defender Act."

12 SECTION 2. There is created the Mississippi Office of
13 Appellate Defender. This office shall consist of seven (7)
14 attorneys, one (1) fiscal officer and two (2)
15 secretaries/paralegals. One of these attorneys shall serve as
16 director of the office. The director shall be appointed by the
17 Chief Justice of the Mississippi Supreme Court with the approval
18 of the majority of the justices voting for a term of four(4) years
19 or until a successor takes office. The remaining attorneys and
20 other staff shall be appointed by the director of the office and
21 shall serve at the will and pleasure of the director. The
22 director and all other attorneys in the office shall be active
23 members of the Mississippi Bar. The director may be removed by
24 the chief justice upon finding the director is not qualified under
25 law, has failed to perform the duties of the office, or has acted
26 beyond the scope of the authority granted by law for the office.

27 SECTION 3. The Mississippi Office of Appellate Defender is
28 created for the purpose of providing representation to indigent
29 parties convicted of felonies in the state courts of Mississippi

30 where the conviction is being appealed to the State Supreme Court
31 and to perform such duties as set forth by law. The circuit court
32 of original jurisdiction may, in its discretion and pursuant to
33 Rule 6 of the Mississippi Rules of Appellate Procedure, appoint
34 the office of appellate defender to represent an indigent party.

35 SECTION 4. The office of appellate defender may perfect and
36 prosecute direct appeals, petitions for rehearing, petitions for
37 writs of certiorari and perform such other duties as authorized by
38 law. The attorneys appointed to serve in the office of appellate
39 defender shall devote their entire time to the duties of the
40 office, shall not represent any persons in other litigation, civil
41 or criminal, nor in any other way engage in the practice of law.
42 Nor shall the office of appellate defender be appointed to a case
43 in which a death sentence has been imposed.

44 SECTION 5. The office of appellate defender may provide
45 assistance and counsel to an attorney representing an indigent
46 felony criminal defendant in state court regarding the handling of
47 matters and issues that may be unusually difficult or complex or
48 that may likely affect or become a part of any appeal to the same
49 extent the Attorney General of Mississippi is authorized to
50 provide assistance to the district attorneys in the prosecution of
51 offenders.

52 SECTION 6. The director appointed under this act shall be
53 compensated at no more than the maximum amount allowed by statute
54 for a deputy attorney general, and other attorneys in the office
55 shall be compensated at no more than the maximum amount allowed by
56 statute for an assistant attorney general.

57 SECTION 7. The director of the office of appellate defender
58 shall keep the office open Monday through Friday for not less than
59 eight (8) hours each day and observe such holidays as prescribed
60 by statute.

61 SECTION 8. In addition to the authority to represent persons
62 on appeal of felony state court convictions, the director is
63 hereby empowered to pay and disburse salaries, employment benefits
64 and charges relating to employment of staff and to establish their
65 salaries and expenses of the office; to incur and pay travel
66 expenses of staff necessary for the performance of the duties of

67 the office; to rent or lease on such terms as he may think proper
68 such office space as is necessary in the City of Jackson to
69 accommodate the staff, to enter into and perform contracts and to
70 purchase such necessary office supplies and equipment as may be
71 needed for the proper administration of said purpose, and to incur
72 and pay such other expenses as are appropriate and customary to
73 the operation of the office.

74 SECTION 9. The director shall keep a docket of all felony
75 appeals pending before the State Supreme Court and court of
76 appeals in which a death sentence has not been imposed. The
77 docket shall be, at all reasonable times, open to inspection of
78 the public. The director shall also report monthly to the
79 Administrative Office of the Courts the activities, receipts and
80 expenditures of the office.

81 SECTION 10. If, at any time, during the representation of
82 two (2) or more defendants the director determines that the
83 interest of those persons are so adverse or hostile they cannot be
84 all represented by the director or his staff without conflict of
85 interest, or if the director shall determine that the volume or
86 number of representations shall so require, the director in his
87 sole discretion, notwithstanding any statute or regulation to the
88 contrary, shall be authorized to employ qualified private counsel.
89 Fees and expenses of such counsel approved by order of the court
90 of original jurisdiction shall be paid by the State General Fund
91 as provided for in Section 99-15-17.

92 SECTION 11. This Act shall take effect and be in force from
93 and after July 1, 2000.