

By: Watson

To: Judiciary B;  
Appropriations

## HOUSE BILL NO. 1448

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; AND FOR  
11 RELATED PURPOSES.

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

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

15 SECTION 2. There is hereby created the Mississippi Office of  
16 Death Penalty Defense Counsel. This office shall consist of four  
17 (4) attorneys, two (2) investigators, one (1) fiscal officer and  
18 two (2) secretaries/paralegals. One of these attorneys shall  
19 serve as director of the office. The director shall be appointed  
20 by the Chief Judge of the Mississippi Court of Appeals with the  
21 approval of the majority of the justices voting for a term of four  
22 (4) years or until a successor takes office. The remaining  
23 attorneys and other staff shall be appointed by the director of  
24 the office and shall serve at the will and pleasure of the  
25 director. The director and all other attorneys in the office  
26 shall be active members of The Mississippi Bar. The director may  
27 be removed by the Chief Judge of the Court of Appeals upon finding  
28 that the director is not qualified under law, has failed to  
29 perform the duties of the office, or has acted beyond the scope of  
30 the authority granted by law for the office.

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

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

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

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

60        SECTION 7. In addition to the authority to represent persons  
61 under indictment for death eligible offenses, the director is  
62 hereby empowered to pay and disburse salaries, employment benefits  
63 and charges relating to employment of staff and to establish their

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

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

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

97 fund is hereby created. Monies in this fund shall not lapse into  
98 the General Fund at the end of the fiscal year but shall remain in  
99 the fund, and any interest accrued to the fund shall remain in the  
100 fund.

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

111 SECTION 11. Sections 25-32-31, 25-32-33, 25-32-35, 25-32-37,  
112 25-32-39, 25-32-41, 25-32-43, 25-32-45, 25-32-47, 25-32-49,  
113 25-32-51, 25-32-53, 25-32-55, 25-32-57, 25-32-59, 25-32-61,  
114 25-32-63 and 25-32-65, Mississippi Code of 1972, which comprise  
115 the Mississippi Statewide Public Defender System Act, are  
116 repealed.

117 SECTION 12. This act shall take effect and be in force from  
118 and after July 1, 2000.