

By: Turner

To: Judiciary;
AppropriationsCOMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 2988

1 AN ACT TO CREATE THE MISSISSIPPI CAPITAL DEFENSE LITIGATION
2 ACT; TO CREATE THE MISSISSIPPI OFFICE OF CAPITAL DEFENSE COUNSEL
3 AND SPECIFY ITS PERSONNEL; TO PROVIDE QUALIFICATIONS FOR ATTORNEYS
4 IN THE OFFICE; TO PROVIDE FOR COMPENSATION; TO SPECIFY OFFICE
5 HOURS; TO AUTHORIZE THE DIRECTOR TO ACQUIRE OFFICE SPACE, SUPPLIES
6 AND EQUIPMENT; TO REQUIRE THE DIRECTOR TO MAINTAIN A DOCKET; TO
7 AUTHORIZE APPOINTMENT OF ATTORNEYS IN SITUATIONS WHERE CONFLICTS
8 ARISE; TO CREATE THE SPECIAL CAPITAL DEFENSE LITIGATION FUND; TO
9 PROVIDE THAT ATTORNEYS APPOINTED TO THE OFFICE SHALL BE FULL TIME;
10 AND FOR RELATED PURPOSES.

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

12 SECTION 1. This act may be cited as the "Mississippi Capital
13 Defense Litigation Act."

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

29 SECTION 3. The Office of Capital Defense Counsel is created
30 for the purpose of providing representation to indigent parties

31 under indictment for death penalty eligible offenses and to
32 perform such other duties as set forth by law.

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

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

52 SECTION 6. The Director of the Capital Defense Counsel
53 office shall keep the office open Monday through Friday for not
54 less than eight (8) hours each day and observe such holidays as
55 prescribed by statute.

56 SECTION 7. In addition to the authority to represent persons
57 under indictment for death eligible offenses, the director is
58 hereby empowered to pay and disburse salaries, employment benefits
59 and charges relating to employment of staff and to establish their
60 salaries and expenses of the office; to incur and pay travel
61 expenses of staff necessary for the performance of the duties of
62 the office; to rent or lease on such terms as he may think proper
63 such office space as is necessary in the City of Jackson to
64 accommodate the staff; to enter into and perform contracts and to
65 purchase such necessary office supplies and equipment as may be
66 needed for the proper administration of said offices within the
67 funds appropriated for such purpose, and to incur and pay such

68 other expenses as are appropriate and customary to the operation
69 of the office.

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

81 SECTION 9. If, at any time, during the representation of two
82 (2) or more defendants the director determines that the interests
83 of those persons are so adverse or hostile they cannot all be
84 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 approved by order of the court of original
90 jurisdiction, including investigative and expert witness expenses
91 of such private counsel, shall be paid by funds appropriated to a
92 Capital Defense Counsel Special Fund for this purpose, which fund
93 is hereby created. Monies in this fund shall not lapse into the
94 general fund at the end of the fiscal year but shall remain in the
95 fund, and any interest accrued to the fund shall remain in the
96 fund.

97 SECTION 10. Upon determination of indigence the circuit
98 court may in its discretion, appoint local counsel for the purpose
99 of defending eligible indigent defendants, the fees and expenses
100 of which shall be paid by the Capital Defense Counsel Special

101 Fund. In the presiding circuit judge's discretion, a
102 determination of the absence of competent death penalty defense
103 counsel having been made, counsel from the Office of Capital
104 Defense Counsel may be appointed to assist local counsel to defend
105 said case with appropriate fees and expenses to be paid by the
106 Capital Defense Counsel Special Fund.

107 SECTION 11. This act shall take effect and be in force from
108 and after July 1, 2000.