

By: Turner

To: Judiciary;
Appropriations

SENATE BILL NO. 2988

1 AN ACT TO AMEND THE STATEWIDE PUBLIC DEFENDER SYSTEM ACT OF
2 1998; TO REPEAL SECTIONS 25-32-31, 25-32-33, 25-32-35, 25-32-39,
3 25-32-41, 25-32-43, 25-32-45, 25-32-47, 25-32-49, 25-32-51,
4 25-32-53, 25-32-55, 25-32-57, 25-32-59, 25-32-61, 25-32-63 AND
5 25-32-65, MISSISSIPPI CODE OF 1972, WHICH COMPRISE THE MAJORITY OF
6 THE MISSISSIPPI STATEWIDE PUBLIC DEFENDER SYSTEM ACT OF 1998; TO
7 RETAIN THE PUBLIC DEFENDER COMMISSION; TO CREATE THE MISSISSIPPI
8 OFFICE OF DEATH PENALTY DEFENSE COUNSEL AND SPECIFY ITS PERSONNEL;
9 TO PROVIDE QUALIFICATIONS FOR ATTORNEYS IN THE OFFICE; TO PROVIDE
10 FOR COMPENSATION; TO SPECIFY OFFICE HOURS; TO AUTHORIZE THE
11 DIRECTOR TO ACQUIRE OFFICE SPACE, SUPPLIES AND EQUIPMENT; TO
12 REQUIRE THE DIRECTOR TO MAINTAIN A DOCKET; TO AUTHORIZE
13 APPOINTMENT OF ATTORNEYS IN SITUATIONS WHERE CONFLICTS ARISE; TO
14 CREATE THE SPECIAL DEATH PENALTY DEFENSE LITIGATION FUND; TO
15 PROVIDE THAT ATTORNEYS APPOINTED TO THE OFFICE SHALL BE FULL TIME;
16 TO REPEAL SECTION 21, CHAPTER 575, LAWS OF 1998, WHICH PROVIDES
17 THAT ALL NEW PROGRAMS AUTHORIZED UNDER SENATE BILL NO. 2239, 1998
18 REGULAR SESSION, SHALL BE SUBJECT TO APPROPRIATION OF FUNDS; AND
19 FOR RELATED PURPOSES.

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

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

23 SECTION 2. There is hereby created the Mississippi Office of
24 Death Penalty Defense Counsel under the direction and authority of
25 the Mississippi Public Defender Commission. This office shall
26 consist of attorneys, investigators, fiscal officers, secretaries
27 and paralegals as funding allows. One (1) of the attorneys shall
28 serve as director of the office. The director shall be appointed
29 by the Mississippi Public Defender Commission for a term of four
30 (4) years or until a successor takes office. The remaining
31 attorneys and other staff shall be appointed by the director of
32 the office and shall serve at the will and pleasure of the
33 director. The director and all other attorneys in the office
34 shall be active members of The Mississippi Bar. The director may

35 be removed by the Mississippi Public Defender Commission upon
36 finding that the director is not qualified under law, has failed
37 to perform the duties of the office, or has acted beyond the scope
38 of the authority granted by law for the office.

39 SECTION 3. The office of Death Penalty Defense Counsel is
40 created for the purpose of providing representation to indigent
41 parties under indictment for death penalty eligible offenses and
42 to perform such other duties as set forth by law.

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

59 SECTION 5. The director appointed under this act shall be
60 compensated at no more than the maximum amount allowed by statute
61 for a district attorney, and other attorneys in the office shall
62 be compensated at no more than the maximum amount allowed by
63 statute for an assistant district attorney.

64 SECTION 6. The Director of the Death Penalty Defense Counsel
65 office shall keep the office open Monday through Friday for not
66 less than eight (8) hours each day and observe such state holidays
67 as prescribed by statute.

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

72 salaries and expenses of the office; to incur and pay travel
73 expenses of staff necessary for the performance of the duties of
74 the office; to rent or lease on such terms as he may think proper
75 such office space as is necessary in the City of Jackson to
76 accommodate the staff; to enter into and perform contracts and to
77 purchase such necessary office supplies and equipment as may be
78 needed for the proper administration of said offices within the
79 funds appropriated for such purpose; and to incur and pay such
80 other expenses as are appropriate and customary to the operation
81 of the office.

82 SECTION 8. The director shall keep a docket of all indicted
83 death eligible cases originating in the courts of Mississippi
84 which must, at all reasonable times, be open to inspection by the
85 public and must show the county, district and court in which the
86 cause is pending. The director shall prepare and maintain a
87 roster of all death penalty cases in the courts of Mississippi
88 indicating the current status of each case and submit the report
89 to the Chief Justice of the Supreme Court as frequently as the
90 Chief Justice may direct.

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

105 the fund, and any interest accrued to the fund shall remain in the
106 fund.

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

117 SECTION 11. Sections 25-32-31, 25-32-33, 25-32-35, 25-32-39,
118 25-32-41, 25-32-43, 25-32-45, 25-32-47, 25-32-49, 25-32-51,
119 25-32-53, 25-32-55, 25-32-57, 25-32-59, 25-32-61, 25-32-63 and
120 25-32-65, Mississippi Code of 1972, which comprise the majority of
121 the Mississippi Statewide Public Defender System Act of 1998, are
122 repealed.

123 SECTION 12. Section 21, Chapter 575, Laws of 1998, which
124 provides that all new programs authorized under Senate Bill No.
125 2239, 1998 Regular Session, shall be subject to appropriation of
126 funds, is repealed.

127 SECTION 13. This act shall take effect and be in force from
128 and after July 1, 2000.