

By: Representative Blackmon

To: Judiciary B;
Appropriations

HOUSE BILL NO. 459

1 AN ACT TO CREATE THE MISSISSIPPI OFFICE OF INDIGENT APPEALS
2 AND SPECIFY ITS PERSONNEL; TO PROVIDE FOR QUALIFICATIONS FOR
3 ATTORNEYS IN THE OFFICE; TO PROVIDE FOR COMPENSATION; TO SPECIFY
4 OFFICE HOURS; TO AUTHORIZE THE DIRECTOR TO ACQUIRE OFFICE SPACE,
5 SUPPLIES AND EQUIPMENT; TO REQUIRE THE DIRECTOR TO MAINTAIN A
6 DOCKET; TO AUTHORIZE APPOINTMENT OF ATTORNEYS IN SITUATIONS WHERE
7 CONFLICTS ARISE; TO CREATE THE INDIGENT APPEALS SPECIAL FUND; TO
8 PROVIDE FOR PAYMENT OF SALARIES AND EXPENSES FROM THE FUND; TO
9 PROVIDE THAT ATTORNEYS APPOINTED TO THE OFFICE SHALL BE FULL TIME;
10 TO AMEND SECTION 99-19-73, MISSISSIPPI CODE OF 1972, TO PROVIDE AN
11 ASSESSMENT ON CERTAIN OFFENSES TO FUND THE MISSISSIPPI OFFICE OF
12 INDIGENT APPEALS; AND FOR RELATED PURPOSES.

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

14 SECTION 1. This chapter may be cited as the "Mississippi
15 Indigent Appeals Act."

16 SECTION 2. There is hereby created the Mississippi Office of
17 Indigent Appeals. This office shall consist of six (6) attorneys,
18 one (1) fiscal officer and two (2) secretaries/paralegals. One of
19 these attorneys shall serve as director of the office. The
20 director shall be appointed by the Governor with the advice and
21 consent of the Senate for a term of four (4) years or until a
22 successor takes office. The remaining attorneys and other staff
23 shall be appointed by the director of the office and shall serve
24 at the will and pleasure of the director. The director and all
25 other attorneys in the office shall be active members of The
26 Mississippi Bar. The director may be removed by the Governor upon
27 finding that the director is not qualified under law, has failed
28 to perform the duties of the office, or has acted beyond the scope
29 of the authority granted by law for the office.

30 SECTION 3. The Office of Indigent Appeals is created for the
31 purpose of providing representation to indigent parties under
32 indictment for indigent persons convicted of felonies but not



33 under sentence of death and to perform such other duties as set
34 forth by law.

35 SECTION 4. The Office of Indigent Appeals shall limit its
36 activities to representation of defendants accused of felony
37 offenses not involving a sentence of death and ancillary matters
38 related directly to such eligible offenses and other activities
39 expressly authorized by statute. Representation by the office or
40 by other court appointed counsel under this act shall terminate
41 upon completion of appeal. The attorneys appointed to serve in
42 the Office of Indigent Appeals shall devote their entire time to
43 the duties of the office, shall not represent any persons in other
44 litigation, civil or criminal, nor in any other way engage in the
45 practice of law. Any violation of this provision shall be grounds
46 for termination from employment, in the case of the director by
47 the Governor and in the case of other attorneys by the director
48 with approval of the Governor.

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

54 SECTION 6. The Director of the Office of Indigent Appeals
55 shall keep the office open Monday through Friday for not less than
56 eight (8) hours each day and observe such holidays as prescribed
57 by statute.

58 SECTION 7. In addition to the authority to represent persons
59 convicted of felonies but not under sentence of death, the
60 director is hereby empowered to pay and disburse salaries,
61 employment benefits and charges relating to employment of staff
62 and to establish their salaries and expenses of the office; to
63 incur and pay travel expenses of staff necessary for the
64 performance of the duties of the office; to rent or lease on such
65 terms as he may think proper such office space as is necessary in



66 the City of Jackson to accommodate the staff; to enter into and
67 perform contracts and to purchase such necessary office supplies
68 and equipment as may be needed for the proper administration of
69 said offices within the funds appropriated for such purpose, and
70 to incur and pay such other expenses as are appropriate and
71 customary to the operation of the office.

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

83 SECTION 9. If, at any time, during the representation of two
84 (2) or more defendants the director determines that the interests
85 of those persons are so adverse or hostile they cannot all be
86 represented by the director or his staff without conflict of
87 interest, or if the director shall determine that the volume or
88 number of representations shall so require, the director in his
89 sole discretion, notwithstanding any statute or regulation to the
90 contrary, shall be authorized to employ qualified private counsel.
91 Fees and expenses approved by order of the court of original
92 jurisdiction, including investigative and expert witness expenses
93 of such private counsel, shall be paid by funds assessed under
94 Section 99-19-73 to the Indigent Appeals Special Fund for this
95 purpose, which fund is hereby created. The salaries of all
96 employees and expenses of operation of the Mississippi Office of
97 Indigent Appeals shall be paid from this fund. Monies in this
98 fund shall not lapse into the General Fund at the end of the



99 fiscal year but shall remain in the fund, and any interest accrued
100 to the fund shall remain in the fund.

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

111 SECTION 11. Section 99-19-73, Mississippi Code of 1972, is
112 amended as follows:

113 99-19-73. (1) **Traffic Violations.** In addition to any
114 monetary penalties and any other penalties imposed by law, there
115 shall be imposed and collected the following state assessment from
116 each person upon whom a court imposes a fine or other penalty for
117 any violation in Title 63, Mississippi Code of 1972, except
118 offenses relating to the Mississippi Implied Consent Law (Section
119 63-11-1 et seq.) and offenses relating to vehicular parking or
120 registration:

121	FUND	AMOUNT
122	State Court Education Fund.....	\$ 1.50
123	State Prosecutor Education Fund.....	.50
124	Driver Training Penalty Assessment Fund.....	7.00
125	Law Enforcement Officers Training Fund.....	5.00
126	Spinal Cord and Head Injury Trust Fund	
127	(for all moving violations).....	4.00
128	Emergency Medical Services Operating Fund.....	10.00
129	Mississippi Leadership Council on Aging Fund.....	1.00
130	<u>Indigent Appeals Special Fund.....</u>	<u>2.50</u>
131	TOTAL STATE ASSESSMENT.....	\$ <u>31.50</u>



132 (2) **Implied Consent Law Violations.** In addition to any
 133 monetary penalties and any other penalties imposed by law, there
 134 shall be imposed and collected the following state assessment from
 135 each person upon whom a court imposes a fine or any other penalty
 136 for any violation of the Mississippi Implied Consent Law (Section
 137 63-11-1 et seq.):

138 FUND	AMOUNT
139 Crime Victims' Compensation Fund.....	\$ 10.00
140 State Court Education Fund.....	1.50
141 State Prosecutor Education Fund.....	.50
142 Driver Training Penalty Assessment Fund.....	22.00
143 Law Enforcement Officers Training Fund.....	11.00
144 Emergency Medical Services Operating Fund.....	10.00
145 Mississippi Alcohol Safety Education Program Fund.....	5.00
146 Federal-State Alcohol Program Fund.....	10.00
147 Mississippi Crime Laboratory	
148 Implied Consent Law Fund.....	25.00
149 Spinal Cord and Head Injury Trust Fund.....	25.00
150 State General Fund.....	35.00
151 <u>Indigent Appeals Special Fund.....</u>	<u>2.50</u>
152 TOTAL STATE ASSESSMENT.....	\$ <u>157.50</u>

153 (3) **Game and Fish Law Violations.** In addition to any
 154 monetary penalties and any other penalties imposed by law, there
 155 shall be imposed and collected the following state assessment from
 156 each person upon whom a court imposes a fine or other penalty for
 157 any violation of the game and fish statutes or regulations of this
 158 state:

159 FUND	AMOUNT
160 State Court Education Fund.....	\$ 1.50
161 State Prosecutor Education Fund.....	.50
162 Law Enforcement Officers Training Fund.....	5.00
163 Hunter Education and Training Program Fund.....	5.00
164 State General Fund.....	30.00



165 Indigent Appeals Special Fund..... 2.50
 166 TOTAL STATE ASSESSMENT..... \$ 44.50

167 (4) **Litter Law Violations.** In addition to any monetary
 168 penalties and any other penalties imposed by law, there shall be
 169 imposed and collected the following state assessment from each
 170 person upon whom a court imposes a fine or other penalty for any
 171 violation of Section 97-15-29 or 97-15-30:

172 FUND	AMOUNT
173 Statewide Litter Prevention Fund.....	\$ 25.00
174 TOTAL STATE ASSESSMENT.....	\$ 25.00

175 (5) **Other Misdemeanors.** In addition to any monetary
 176 penalties and any other penalties imposed by law, there shall be
 177 imposed and collected the following state assessment from each
 178 person upon whom a court imposes a fine or other penalty for any
 179 misdemeanor violation not specified in subsection (1), (2) or (3)
 180 of this section, except offenses relating to vehicular parking or
 181 registration:

182 FUND	AMOUNT
183 Crime Victims' Compensation Fund.....	\$ 10.00
184 State Court Education Fund.....	1.50
185 State Prosecutor Education Fund.....	.50
186 Law Enforcement Officers Training Fund.....	5.00
187 State General Fund.....	30.00
188 State Crime Stoppers Fund.....	1.50
189 <u>Indigent Appeals Special Fund..... 2.50</u>	
190 TOTAL STATE ASSESSMENT.....	\$ <u>51.00</u>

191 (6) **Other Felonies.** In addition to any monetary penalties
 192 and any other penalties imposed by law, there shall be imposed and
 193 collected the following state assessment from each person upon
 194 whom a court imposes a fine or other penalty for any felony
 195 violation not specified in subsection (1), (2) or (3) of this
 196 section:

197 FUND	AMOUNT
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198	Crime Victims' Compensation Fund.....	\$ 10.00
199	State Court Education Fund.....	1.50
200	State Prosecutor Education Fund.....	.50
201	Law Enforcement Officers Training Fund.....	5.00
202	State General Fund.....	60.00
203	Criminal Justice Fund.....	50.00
204	<u>Indigent Appeals Special Fund.....</u>	<u>2.50</u>
205	TOTAL STATE ASSESSMENT.....	<u>\$129.50</u>

206 (7) If a fine or other penalty imposed is suspended, in
207 whole or in part, such suspension shall not affect the state
208 assessment under this section. No state assessment imposed under
209 the provisions of this section may be suspended or reduced by the
210 court.

211 (8) After a determination by the court of the amount due, it
212 shall be the duty of the clerk of the court to promptly collect
213 all state assessments imposed under the provisions of this
214 section. The state assessments imposed under the provisions of
215 this section may not be paid by personal check. It shall be the
216 duty of the chancery clerk of each county to deposit all such
217 state assessments collected in the circuit, county and justice
218 courts in such county on a monthly basis with the State Treasurer
219 pursuant to appropriate procedures established by the State
220 Auditor. The chancery clerk shall make a monthly lump-sum deposit
221 of the total state assessments collected in the circuit, county
222 and justice courts in such county under this section, and shall
223 report to the Department of Finance and Administration the total
224 number of violations under each subsection for which state
225 assessments were collected in the circuit, county and justice
226 courts in such county during such month. It shall be the duty of
227 the municipal clerk of each municipality to deposit all such state
228 assessments collected in the municipal court in such municipality
229 on a monthly basis with the State Treasurer pursuant to
230 appropriate procedures established by the State Auditor. The



231 municipal clerk shall make a monthly lump-sum deposit of the total
232 state assessments collected in the municipal court in such
233 municipality under this section, and shall report to the
234 Department of Finance and Administration the total number of
235 violations under each subsection for which state assessments were
236 collected in the municipal court in such municipality during such
237 month.

238 (9) It shall be the duty of the Department of Finance and
239 Administration to deposit on a monthly basis all such state
240 assessments into the proper special fund in the State Treasury.
241 The monthly deposit shall be based upon the number of violations
242 reported under each subsection and the pro rata amount of such
243 assessment due to the appropriate special fund. The Department of
244 Finance and Administration shall issue regulations providing for
245 the proper allocation of these special funds.

246 (10) The State Auditor shall establish by regulation
247 procedures for refunds of state assessments, including refunds
248 associated with assessments imposed before July 1, 1990, and
249 refunds after appeals in which the defendant's conviction is
250 reversed. The Auditor shall provide in such regulations for
251 certification of eligibility for refunds and may require the
252 defendant seeking a refund to submit a verified copy of a court
253 order or abstract by which such defendant is entitled to a refund.
254 All refunds of state assessments shall be made in accordance with
255 the procedures established by the Auditor.

256 SECTION 12. This act shall take effect and be in force from
257 and after July 1, 2001.

