

By: Representative Watson

To: Judiciary A;
Appropriations

HOUSE BILL NO. 1264

1 AN ACT TO AMEND SECTION 25-1-85, MISSISSIPPI CODE OF 1972, TO
2 PROVIDE VEHICLES FOR THE OFFICE OF POST-CONVICTION COUNSEL AND THE
3 OFFICE OF CAPITAL DEFENSE COUNSEL; TO AMEND SECTION 99-15-18,
4 MISSISSIPPI CODE OF 1972, TO AMEND COMPENSATION PROCEDURES IN
5 POST-CONVICTION RELIEF CASES INVOLVING THE DEATH PENALTY; TO AMEND
6 SECTIONS 99-39-5 AND 99-39-23, MISSISSIPPI CODE OF 1972, TO REVISE
7 FILING LIMITATIONS FOR POST-CONVICTION RELIEF IN CAPITAL CASES AND
8 THE APPOINTMENT OF POST-CONVICTION COUNSEL; TO AMEND SECTION
9 99-39-103, MISSISSIPPI CODE OF 1972, TO REVISE THE PERSONNEL OF
10 THE OFFICE OF POST-CONVICTION COUNSEL; AND FOR RELATED PURPOSES.

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

12 SECTION 1. Section 25-1-85, Mississippi Code of 1972, is
13 amended as follows:

14 25-1-85. The following state departments, agencies or
15 institutions are hereby allowed to purchase, own and operate, in
16 strict accordance with the provisions hereof, passenger vehicles
17 not to exceed the following numbers:

18	Office of the Attorney General	15
19	Agriculture and Commerce	23
20	Department of Economic and Community Development.....	14
21	Experiment Stations.....	16
22	Extension Service.....	1
23	Forestry Commission.....	48
24	Department of Transportation.....	115
25	Military Department.....	5
26	Department of Corrections.....	13
27	Parole Board.....	2
28	Mississippi Department of Public Safety.....	600
29	Division of Plant Industry.....	23
30	State Board of Mental Health.....	4

31	East Mississippi State Hospital.....	1
32	Mississippi State Hospital.....	2
33	Alcoholic Beverage Control Division of the	
34	Mississippi State Tax Commission.....	30
35	Soil and Water Conservation Commission.....	5
36	Ellisville State School.....	1
37	North Mississippi Retardation Center.....	1
38	South Mississippi Retardation Center.....	1
39	Board of Health.....	13
40	State Oil and Gas Board.....	3
41	Each institution of higher learning, for police	
42	purposes, except that the University of	
43	Southern Mississippi may have 6 and any	
44	other institution with more than 6,000	
45	students may have 4.....	2
46	Wildlife, Fisheries and Parks.....	60
47	Surplus Property Procurement Commission.....	4
48	State Tax Commission-station wagons.....	2
49	State Tax Commission-automobiles.....	6
50	Mississippi Gaming Commission.....	60
51	Department of Environmental Quality.....	12
52	Pearl River Valley Water Supply District.....	7
53	Pearl River Basin Development District.....	2
54	Pat Harrison Waterway District.....	1
55	Department of Transportation -	
56	Office of State Aid Road Construction.....	10
57	Tennessee-Tombigbee Waterway Development Authority.....	2
58	Fair Commission.....	1
59	State Civil Defense Office (including	
60	communications vehicle).....	4
61	Bureau of Narcotics.....	167
62	Mississippi State Port Authority at Gulfport.....	6
63	Tombigbee Water Supply District.....	3

64	Board of Pharmacy.....	4
65	Yellow Creek State Inland Port Authority.....	1
66	Boat and Water Safety Commission.....	2
67	Department of Archives and History.....	2
68	State Fire Fighters Academy (station wagon).....	1
69	Office of Capitol Facilities - Capitol Police.....	5
70	Office of Building, Grounds and Real Property.....	1
71	State Veterans Affairs Board.....	15
72	Employment Security Commission.....	1
73	Forest Product Utilization Lab.....	1
74	Mississippi Board of Nursing.....	3
75	Certified Development Company of Mississippi, Inc.....	1
76	State Board of Medical Licensure.....	5
77	Mississippi Public Employees' Retirement System.....	4
78	Mississippi Public Service Commission.....	42
79	Department of Human Services.....	3
80	Department of Rehabilitation Services.....	4
81	Real Estate Commission.....	2
82	Mississippi Library Commission - station wagons.....	5
83	Boswell Regional Center.....	1
84	Hudspeth Regional Center.....	1
85	North Mississippi State Hospital.....	1
86	South Mississippi State Hospital.....	1
87	Motor Vehicle Commission.....	1
88	Office of the State Auditor.....	20
89	Division of Medicaid, Office of the Governor.....	3
90	Department of Marine Resources.....	10
91	Central Mississippi Residential Center.....	1
92	Juvenile Rehabilitation Center.....	1
93	Department of Education.....	1
94	Office of the State Fire Marshal.....	15
95	Liquified Compressed Gas Division of the	
96	Department of Insurance.....	10

97 Office of Capital Post-Conviction Counsel-station wagon.....1

98 Office of Capital Defense Counsel-station wagons.....2

99 Except as provided in Sections 25-1-77 through 25-1-93, no
100 state department, institution or agency shall purchase, operate or
101 maintain any passenger vehicle out of any funds available for the
102 use of such department, institution or agency, unless same has
103 been or may be donated.

104 For purposes of this section, "passenger vehicle" shall be
105 defined as a vehicle which is designed to transport four (4) or
106 more persons and/or provides adequate seating for at least four
107 (4) persons. The terms "luxury vehicle," "full-size vehicle,"
108 "utility vehicle" and "carryall vehicle" shall be as defined by
109 the industry.

110 Nothing in Sections 25-1-77 through 25-1-93 shall be
111 construed to prohibit agencies, departments and institutions from
112 purchasing and operating passenger vehicles when used exclusively
113 to transport patients, prisoners, students, faculty or staff of
114 state institutions, blind and sighted employees essential to
115 operate blind training programs or material, products and
116 client-trainees in the sheltered workshop program, or bookmobiles.
117 The superintendents of the Columbia Training School and Oakley
118 Training School and the Commissioner of Corrections, or staff
119 members designated by them, may use such passenger vehicles for
120 other official functions and operations of those institutions at
121 their discretion. Passenger vehicles or similar vehicles used for
122 any other purposes shall be considered as automobiles and subject
123 to the restrictions set forth in the aforesaid sections.

124 In addition to the motor vehicles authorized to be owned and
125 operated by the Mississippi Department of Public Safety, said
126 department is also authorized to receive, own and operate special
127 purpose motor vehicles to be used solely in investigations.

128 Of the motor vehicles authorized to be owned and operated by
129 the Mississippi Highway Safety Patrol, no more than twenty-one

130 (21) vehicles may be kept for use by administrative personnel of
131 the patrol whose principal duties are performed at the Highway
132 Safety Patrol Headquarters Building and the Drivers' License
133 Examining Station in Hinds County to commute to and from the
134 residence of said personnel to the office at which such duties are
135 regularly performed.

136 Of the motor vehicles authorized to be owned and operated by
137 the Mississippi Department of Transportation, not more than five
138 (5) vehicles may be kept for use by administrative personnel of
139 the department to commute between their residences and the offices
140 at which their duties are regularly performed. The executive
141 director of the department is authorized to allow additional
142 department personnel to commute to and from their residences in
143 department vehicles due to the nature of their job and for the
144 safety of the traveling public.

145 Of the motor vehicles authorized to be owned and operated by
146 the State Tax Commission, no more than four (4) vehicles may be
147 kept for use by administrative personnel whose principal duties
148 are performed at State Tax Commission offices in Hinds County to
149 commute to and from the residence of said personnel to the office
150 at which such duties are regularly performed.

151 The provisions of Chapter 226, Laws of 1964, remain in force
152 and are not affected by this section.

153 Any state officer, employee or board member who violates any
154 of the foregoing provisions of Sections 25-1-77 through 25-1-85
155 shall be liable on his or her official bond for the total amount
156 of the purchase price of the passenger vehicle, plus the total
157 amount of funds expended in violation of said sections for the
158 operating costs of such vehicle.

159 SECTION 2. Section 99-15-18, Mississippi Code of 1972, is
160 amended as follows:

161 99-15-18. (1) Counsel employed by an office funded by the
162 State of Mississippi or any county shall receive no compensation

163 or expenses for representation of a party seeking post-conviction
164 relief while under a sentence of death other than the compensation
165 attendant to his office.

166 (2) Unless employed by such an office, counsel appointed to
167 represent a party seeking post-conviction relief while under a
168 sentence of death shall be paid at an hourly rate not to exceed
169 eighty percent (80%) of the hourly rate allowed in the United
170 States District Courts of the Northern and Southern Districts of
171 Mississippi to attorneys appointed to represent defendants seeking
172 habeas corpus relief.

173 (3) Counsel shall submit to the trial court, once each
174 month, an interim invoice. Compensation earned and reimbursable
175 expenses incurred each month shall be claimed on an interim
176 invoice submitted no later than the fifteenth day of the following
177 month, or the first business day thereafter. All interim vouchers
178 shall be supported by detailed and itemized time and expense
179 statements. The trial court shall review the interim invoices
180 when submitted and will authorize compensation to be paid for
181 seventy-five percent of the approved number of hours. The court
182 shall also authorize for payment all reimbursable expenses,
183 including fees and expenses of experts and of investigators,
184 reasonably incurred. At the conclusion of the state
185 post-conviction representation, counsel shall submit a final
186 voucher seeking payment for representation provided during the
187 final interim period. The final invoice shall also set forth in
188 detail the time and expenses claimed for the entire case,
189 including all documentation. Counsel shall reflect all
190 compensation and reimbursement previously received on the
191 appropriate line of the final invoice. Upon review and approval
192 of the final invoice, the trial court shall authorize compensation
193 to be paid for the approved number of hours provided during the
194 final interim period, for all reasonable expenses reasonably
195 incurred during the final interim period, and for the withheld

196 twenty-five percent (25%) of hours approved in prior interim
197 periods.

198 (4) All interim invoices will be maintained under seal
199 during the pendency of state post-conviction proceedings. Upon
200 submission by defendant's counsel of a final invoice, the trial
201 court shall unseal the interim invoices unless the trial court
202 determines that petitioner's interests require a limited
203 disclosure. In determining whether limited disclosure is
204 appropriate, the trial court shall consider the need (i) to
205 protect the petitioner's 5th amendment right against
206 self-incrimination; (ii) to protect the petitioner's 6th amendment
207 right to effective assistance of counsel; (iii) the petitioner's
208 attorney-client privilege; (iv) the work product privilege of the
209 petitioner's counsel; (v) the safety of any person; (vi) whether
210 petitioner intends to seek federal habeas corpus relief; and (vii)
211 any other interest that justice may require.

212 (5) Prior to payment of any fees in a case in excess of
213 Seven Thousand Five Hundred Dollars (\$7,500.00) or expenses of
214 investigation and experts in excess of Two Thousand Five Hundred
215 Dollars (\$2,500.00), the application for such fees and expenses
216 will be submitted to the Supreme Court for review of the award of
217 the convicting court. If counsel believes that the court has
218 failed to allow reasonable compensation, counsel may petition the
219 Supreme Court for review. If counsel is appointed in successive
220 post-conviction proceedings, such counsel shall receive reasonable
221 compensation considering the services performed.

222 (6) The trial court shall also, upon petition by the party
223 seeking post-conviction relief, authorize additional monies to pay
224 for investigative and expert services that are reasonably
225 necessary to adequately litigate the post-conviction claims. The
226 initial petition for such expenses shall present a credible
227 estimate of anticipated expenses, and such estimate shall be
228 updated from time to time as needed to inform the court of the

229 status of such expenses. Payment of such expenses shall be made
230 from funds in the Special Capital Post-Conviction Counsel Fund.

231 SECTION 3. Section 99-39-5, Mississippi Code of 1972, is
232 amended as follows:

233 99-39-5. (1) Any prisoner in custody under sentence of a
234 court of record of the State of Mississippi who claims:

235 (a) That the conviction or the sentence was imposed in
236 violation of the Constitution of the United States or the
237 Constitution or laws of Mississippi;

238 (b) That the trial court was without jurisdiction to
239 impose sentence;

240 (c) That the statute under which the conviction and/or
241 sentence was obtained is unconstitutional;

242 (d) That the sentence exceeds the maximum authorized by
243 law;

244 (e) That there exists evidence of material facts, not
245 previously presented and heard, that requires vacation of the
246 conviction or sentence in the interest of justice;

247 (f) That his plea was made involuntarily;

248 (g) That his sentence has expired; his probation,
249 parole or conditional release unlawfully revoked; or he is
250 otherwise unlawfully held in custody;

251 (h) That he is entitled to an out-of-time appeal; or

252 (i) That the conviction or sentence is otherwise
253 subject to collateral attack upon any grounds of alleged error
254 heretofore available under any common law, statutory or other
255 writ, motion, petition, proceeding or remedy; may file a motion to
256 vacate, set aside or correct the judgment or sentence, or for an
257 out-of-time appeal.

258 (2) A motion for relief under this chapter shall be made
259 within three (3) years after the time in which the prisoner's
260 direct appeal is ruled upon by the Supreme Court of Mississippi
261 or, in case no appeal is taken, within three (3) years after the

262 time for taking an appeal from the judgment of conviction or
263 sentence has expired, or in case of a guilty plea, within three
264 (3) years after entry of the judgment of conviction. Excepted
265 from this three-year statute of limitations are those cases in
266 which the prisoner can demonstrate either that there has been an
267 intervening decision of the Supreme Court of either the State of
268 Mississippi or the United States which would have actually
269 adversely affected the outcome of his conviction or sentence or
270 that he has evidence, not reasonably discoverable at the time of
271 trial, which is of such nature that it would be practically
272 conclusive that had such been introduced at trial it would have
273 caused a different result in the conviction or sentence. Likewise
274 excepted are those cases in which the prisoner claims that his
275 sentence has expired or his probation, parole or conditional
276 release has been unlawfully revoked. Likewise excepted are
277 filings for post-conviction relief in capital cases which shall be
278 made within one (1) year upon judgment of death becoming final and
279 a writ of certiorari to the United States Supreme Court having
280 been denied of the time for filing such petition having expired.

281 (3) This motion is not a substitute for, nor does it affect,
282 any remedy incident to the proceeding in the trial court, or
283 direct review of the conviction or sentence.

284 (4) Proceedings under this article shall be subject to the
285 provisions of Section 99-19-42.

286 SECTION 4. Section 99-39-23, Mississippi Code of 1972, is
287 amended as follows:

288 99-39-23. (1) If an evidentiary hearing is required the
289 judge may appoint counsel for a petitioner who qualifies for the
290 appointment of counsel under Section 99-15-15, Mississippi Code of
291 1972.

292 (2) The hearing shall be conducted as promptly as
293 practicable, having regard for the need of counsel for both
294 parties for adequate time for investigation and preparation.

295 (3) The parties shall be entitled to subpoena witnesses and
296 compel their attendance, including, but not being limited to,
297 subpoenas duces tecum.

298 (4) The court may receive proof by affidavits, depositions,
299 oral testimony or other evidence and may order the prisoner
300 brought before it for the hearing.

301 (5) If the court finds in favor of the prisoner, it shall
302 enter an appropriate order with respect to the conviction or
303 sentence under attack, and any supplementary orders as to
304 rearraignment, retrial, custody, bail, discharge, correction of
305 sentence or other matters that may be necessary and proper. The
306 court shall make specific findings of fact, and state expressly
307 its conclusions of law, relating to each issue presented.

308 (6) The order as provided in subsection (5) of this section
309 or any order dismissing the prisoner's motion or otherwise denying
310 relief under this article is a final judgment and shall be
311 conclusive until reversed. It shall be a bar to a second or
312 successive motion under this article. Excepted from this
313 prohibition is a motion filed pursuant to Section 99-19-57(2),
314 Mississippi Code of 1972, raising the issue of the convict's
315 supervening insanity prior to the execution of a sentence of
316 death. A dismissal or denial of a motion relating to insanity
317 under Section 99-19-57(2), Mississippi Code of 1972, shall be res
318 judicata on the issue and shall likewise bar any second or
319 successive motions on the issue. Likewise excepted from this
320 prohibition are those cases in which the prisoner can demonstrate
321 either that there has been an intervening decision of the Supreme
322 Court of either the State of Mississippi or the United States
323 which would have actually adversely affected the outcome of his
324 conviction or sentence or that he has evidence, not reasonably
325 discoverable at the time of trial, which is of such nature that it
326 would be practically conclusive that had such been introduced at
327 trial it would have caused a different result in the conviction or

328 sentence. Likewise excepted are those cases in which the prisoner
329 claims that his sentence has expired or his probation, parole or
330 conditional release has been unlawfully revoked.

331 (7) No relief shall be granted under this article unless the
332 prisoner proves by a preponderance of the evidence that he is
333 entitled to such.

334 (8) Proceedings under this section shall be subject to the
335 provisions of Section 99-19-42.

336 (9) In cases resulting in a sentence of death and upon a
337 determination of indigence, appointment of post-conviction counsel
338 shall be made by the Office of Capital Post-Conviction Counsel
339 upon order entered by the Supreme Court promptly upon the judgment
340 of death becoming final and a writ of certiorari to the United
341 States Supreme Court having been denied or the time for filing
342 such petition having expired. The order shall direct the trial
343 court to immediately determine indigence and whether the inmate
344 will accept counsel.

345 SECTION 5. Section 99-39-103, Mississippi Code of 1972, is
346 amended as follows:

347 99-39-103. There is created the Mississippi Office of
348 Capital Post-Conviction Counsel. This office shall consist of a
349 minimum of three (3) and a maximum of five (5) attorneys, a
350 minimum of one (1) and a maximum of three (3) investigators, one
351 (1) fiscal officer and a minimum of one (1) and a maximum of two
352 (2) secretary/paralegals. One of those attorneys shall serve as
353 director of the office. The director shall be appointed by the
354 Chief Justice of the Supreme Court with the approval of a majority
355 of the justices voting, for a term of four (4) years, or until a
356 successor takes office. The remaining attorneys and other staff
357 shall be appointed by the director of the office and shall serve
358 at the will and pleasure of the director. The director and all
359 other attorneys in the office shall either be active members of
360 The Mississippi Bar, or, if a member in good standing of the bar

361 in another jurisdiction, be admitted to The Mississippi Bar within
362 twelve (12) months following the commencement of the person's
363 employment by the office. At least three (3) of the attorneys in
364 the office shall meet all qualifications necessary to serve as
365 post-conviction counsel for persons under a sentence of death.
366 The director may be removed from office by the Chief Justice upon
367 finding that the director is not qualified under law to serve as
368 post-conviction counsel for persons under sentences of death, has
369 failed to perform the duties of the office or has acted beyond the
370 scope of the authority granted by law for the office.

371 SECTION 6. This act shall take effect and be in force from
372 and after July 1, 2001.