

By: Senator(s) Gordon

To: Judiciary;
Appropriations

SENATE BILL NO. 2088

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 Office of Death Penalty
57 Defense Counsel shall keep the office open Monday through Friday
58 for not less than eight (8) hours each day and observe such
59 holidays as 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, in its discretion, may appoint local counsel for the
103 purpose of defending death eligible indigent defendants, the fees
104 and 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. This act shall take effect and be in force from
112 and after July 1, 2001.

