

By: Senator(s) Tollison

To: Judiciary

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 2911

1 AN ACT TO AMEND SECTION 99-15-18, MISSISSIPPI CODE OF 1972,
2 TO REVISE THE MANNER OF PAYMENT OF EXPENSES OF DEFENSE COUNSEL; TO
3 AMEND SECTION 99-39-103, MISSISSIPPI CODE OF 1972, TO REVISE THE
4 NUMBER AND QUALIFICATIONS OF THE PERSONNEL OF THE OFFICE; AND FOR
5 RELATED PURPOSES.

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

7 SECTION 1. Section 99-15-18, Mississippi Code of 1972, is
8 amended as follows:

9 99-15-18. (1) Counsel employed by an office funded by the
10 State of Mississippi or any county shall receive no compensation
11 or expenses for representation of a party seeking post-conviction
12 relief while under a sentence of death other than the compensation
13 attendant to his office.

14 (2) Unless employed by such an office, counsel appointed to
15 represent a party seeking post-conviction relief while under a
16 sentence of death shall be paid at an hourly rate not to exceed
17 eighty percent (80%) of the hourly rate allowed in the United
18 States District Courts of the Northern and Southern Districts of
19 Mississippi to attorneys appointed to represent defendants seeking
20 habeas corpus relief. * * *

21 (3) Counsel shall submit to the trial court, once each
22 month, an interim invoice. Compensation earned and reimbursable
23 expenses incurred each month shall be claimed on an interim
24 invoice submitted not later than the fifteenth day of the
25 following month, or the first business day thereafter. All
26 interim vouchers shall be supported by detailed and itemized time
27 and expense statements. The trial court shall review the interim
28 invoices when submitted and will authorize compensation to be paid

29 for seventy-five percent (75%) of the approved number of hours.
30 The court shall also authorize for payment all reimbursable
31 expenses, including fees and expenses of experts and of
32 investigators, reasonably incurred. At the conclusion of the
33 state-paid post-conviction representation, counsel shall submit a
34 final voucher seeking payment for representation provided during
35 the final interim period. The final invoice shall also set forth
36 in detail the time and expenses claimed for the entire case,
37 including all documentation. Counsel shall reflect all
38 compensation and reimbursement previously received on the
39 appropriate line of the final invoice. Upon review and approval
40 of the final invoice, the trial court shall authorize compensation
41 to be paid for the approved number of hours provided during the
42 final interim period, for all reasonable expenses reasonably
43 incurred during the final interim period, and for the withheld
44 twenty-five percent (25%) of hours approved in prior interim
45 periods.

46 (4) All interim invoices will be maintained under seal
47 during the pendency of state post-conviction proceedings. Upon
48 submission by defendant's counsel of a final invoice, the trial
49 court shall unseal the interim invoices unless the trial court
50 determines that petitioner's interest requires a limited
51 disclosure. In determining whether limited disclosure is
52 appropriate, the trial court shall consider the need: (a) to
53 protect the petitioner's Fifth Amendment right against
54 self-incrimination; (b) to protect the petitioner's Sixth
55 Amendment right to effective assistance of counsel; (c) the
56 petitioner's attorney-client privilege; (d) the work product
57 privilege of the petitioner's counsel; (e) the safety of any
58 person; (f) whether petitioner intends to seek federal habeas
59 corpus relief; and (g) any other interest that justice may
60 require.

61 (5) Prior to payment of any fees in a case in excess of
62 Seven Thousand Five Hundred Dollars (\$7,500.00) or expenses of
63 investigation and experts in excess of Two Thousand Five Hundred
64 Dollars (\$2,500.00), the application for such fees and expenses
65 will be submitted to the Supreme Court for review of the award of
66 the convicting court. If counsel believes that the court has
67 failed to allow reasonable compensation, counsel may petition the
68 Supreme Court for review. If counsel is appointed in successive
69 post-conviction proceedings, such counsel shall receive reasonable
70 compensation considering the services performed.

71 (6) The trial court shall also, upon petition by the party
72 seeking post-conviction relief, authorize additional monies to pay
73 for investigative and expert services that are reasonably
74 necessary to adequately litigate the post-conviction claims. The
75 initial petition for such expenses shall present a credible
76 estimate of anticipated expenses, and such estimate shall be
77 updated from time to time as needed to inform the court of the
78 status of such expenses. Payment of such expenses shall be made
79 from funds in the Special Capital Post-Conviction Counsel Fund.

80 SECTION 2. Section 99-39-103, Mississippi Code of 1972, is
81 amended as follows:

82 99-39-103. There is created the Mississippi Office of
83 Capital Post-Conviction Counsel. This office shall consist of a
84 minimum of three (3), not to exceed five (5), attorneys, a minimum
85 of one (1), not to exceed three (3), investigators, one (1) fiscal
86 officer and a minimum of one (1), not to exceed two (2),
87 secretaries/paralegals. One of the attorneys shall serve as
88 director of the office. The director shall be appointed by the
89 Chief Justice of the Supreme Court with the approval of a majority
90 of the justices voting, for a term of four (4) years, or until a
91 successor takes office. The remaining attorneys and other staff
92 shall be appointed by the director of the office and shall serve
93 at the will and pleasure of the director. The director and all

94 other attorneys in the office shall either be active members of
95 The Mississippi Bar, or, if a member in good standing of the bar
96 of another jurisdiction, must apply to and secure admission to The
97 Mississippi Bar within twelve (12) months of the commencement of
98 the person's employment by the office. At least three (3) of the
99 attorneys in the office shall meet all qualifications necessary to
100 serve as post-conviction counsel for persons under a sentence of
101 death. The director may be removed from office by the Chief
102 Justice upon finding that the director is not qualified under law
103 to serve as post-conviction counsel for persons under sentences of
104 death, has failed to perform the duties of the office or has acted
105 beyond the scope of the authority granted by law for the office.

106 SECTION 3. This act shall take effect and be in force from
107 and after July 1, 2001.