

By: Senator(s) Gordon

To: Judiciary;
Appropriations

SENATE BILL NO. 2203

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; TO REPEAL
11 SECTIONS 99-18-1 THROUGH 99-18-19, MISSISSIPPI CODE OF 1972; AND
12 FOR RELATED PURPOSES.

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

14 **SECTION 1.** This act may be cited as the "Mississippi Death
15 Penalty Defense Litigation Act."

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



32 **SECTION 3.** The Office of Death Penalty Defense Counsel is
33 created for the purpose of providing representation to indigent
34 parties under indictment for death penalty eligible offenses and
35 to perform such other duties as set forth by law.

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

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

57 **SECTION 6.** The Director of the Office of Death Penalty
58 Defense Counsel shall keep the office open Monday through Friday
59 for not less than eight (8) hours each day and observe such
60 holidays as prescribed by statute.

61 **SECTION 7.** In addition to the authority to represent persons
62 under indictment for death eligible offenses, the director is
63 hereby empowered to pay and disburse salaries, employment benefits
64 and charges relating to employment of staff and to establish their



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

75 **SECTION 8.** The director shall keep a docket of all indicted
76 death eligible cases originating in the courts of Mississippi
77 which must, at all reasonable times, be open to inspection by the
78 public and must show the county, district and court in which the
79 cause is pending. The director shall prepare and maintain a
80 roster of all death penalty cases in the courts of Mississippi
81 indicating the current status of each case and submit this report
82 to the Chief Judge of the Court of Appeals as frequently as the
83 Chief Judge may direct. The director shall also report monthly to
84 the Administrative Office of Courts the activities, receipts and
85 expenditures of the office.

86 **SECTION 9.** If at any time during the representation of two
87 (2) or more defendants, the director determines that the interests
88 of those persons are so adverse or hostile they cannot all be
89 represented by the director or his staff without conflict of
90 interest, or if the director shall determine that the volume or
91 number of representations shall so require, the director in his
92 sole discretion, notwithstanding any statute or regulation to the
93 contrary, shall be authorized to employ qualified private counsel.
94 Fees and expenses approved by order of the court of original
95 jurisdiction, including investigative and expert witness expenses
96 of such private counsel, shall be paid by funds appropriated to a
97 Death Penalty Defense Counsel Special Fund for this purpose, which



98 fund is hereby created. Monies in this fund shall not lapse into
99 the General Fund at the end of the fiscal year but shall remain in
100 the fund, and any interest accrued to the fund shall remain in the
101 fund.

102 **SECTION 10.** Upon determination of indigence, the Circuit
103 Court, in its discretion, may appoint local counsel for the
104 purpose of defending death eligible indigent defendants, the fees
105 and expenses of which shall be paid by the Death Penalty Defense
106 Counsel Special Fund. In the presiding Circuit Judge's
107 discretion, a determination of the absence of competent death
108 penalty defense counsel having been made, counsel from the Office
109 of Death Penalty Defense Counsel may be appointed to assist local
110 counsel to defend said case with all fees and expenses to be paid
111 by the Death Penalty Defense Counsel Special Fund.

112 **SECTION 11.** Sections 99-18-1, 99-18-3, 99-18-5, 99-18-7,
113 99-18-9, 99-18-11, 99-18-13, 99-18-15, 99-18-17 and 99-18-19,
114 Mississippi Code of 1972, which create the Mississippi Capital
115 Defense Counsel and delineate the purpose and duties of the
116 office, the compensation of the staff, the office hours and the
117 duties of the director, require keeping of a docket, specify the
118 procedure in the event of conflict of interest and the appointment
119 of local counsel, are repealed.

120 **SECTION 12.** This act shall take effect and be in force from
121 and after July 1, 2002.

