

By: Representatives Miles, Baker (74th),  
Franks, Hudson, Jennings, Markham,  
Montgomery, Moore, Smith (59th), Sullivan,  
Ward

To: Judiciary B;  
Appropriations

HOUSE BILL NO. 644

1 AN ACT TO AMEND SECTION 25-32-9, MISSISSIPPI CODE OF 1972, TO  
2 PROVIDE FOR RECOUPMENT OF INDIGENT DEFENSE COSTS WHEN A DEFENDANT  
3 IS FOUND NOT TO BE INDIGENT; AND FOR RELATED PURPOSES.

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

5 **SECTION 1.** Section 25-32-9, Mississippi Code of 1972, is  
6 amended as follows:

7 25-32-9. (1) When any person shall be arrested and charged  
8 with a felony, a misdemeanor or an act of delinquency, then the  
9 arresting authority shall afford such person an opportunity to  
10 sign an affidavit stating that such person is an indigent and  
11 unable to employ counsel. Upon the signing of such affidavit by  
12 such person, the public defender shall represent said person  
13 unless the right to counsel be waived by such person. Provided  
14 further, a statement shall be executed by the alleged indigent,  
15 under oath, listing all assets available to the indigent for the  
16 payment of attorney's fees, including the ownership of any  
17 property, real or personal, and setting out therein the alleged  
18 indigent's employment status, number of dependents, income from  
19 any source, the ability of his parents or spouse to provide an  
20 attorney's fee, and any other information which might prove or  
21 disprove a finding of indigency. The affidavit and statement  
22 shall be a part of the record in the case and shall be subject to  
23 review by the appropriate court. Based on review of the  
24 affidavit, statement or other appropriate evidence, if the  
25 appropriate court finds that the defendant is not indigent, said  
26 court shall terminate the representation of the defendant by the  
27 public defender and direct that the assets of the defendant be

28 used to pay all fees and costs incurred by the attorney appointed  
29 to provide representation for the defendant.

30       When any person shall be arrested and charged with a  
31 misdemeanor, the presiding judge or justice, upon determination  
32 that the person is indigent as provided in this section, and that  
33 representation of the indigent is required, shall appoint the  
34 public defender whose duty it shall be to provide such  
35 representation. No person determined to be an indigent as  
36 provided in this section shall be imprisoned as a result of a  
37 misdemeanor conviction unless he was represented by the public  
38 defender or waived the right to counsel.

39       (2) The accused shall have such representation available at  
40 every critical stage of the proceedings against him where a  
41 substantial right may be affected.

42       (3) The public defender shall also represent persons in need  
43 of mental treatment, as provided under Sections 41-21-61 et seq.  
44 The chancery court may tax costs as provided in Sections 41-21-79  
45 and 41-21-85.

46       **SECTION 2.** This act shall take effect and be in force from  
47 and after July 1, 2005.