

By: Representatives Flaggs, Blackmon

To: Judiciary A;  
Appropriations

## HOUSE BILL NO. 298

1 AN ACT TO AMEND SECTION 99-40-1, MISSISSIPPI CODE OF 1972, TO  
2 CREATE THE STATE FUNDED POSITION OF INDIGENT JUVENILE APPEALS  
3 RESOURCE COUNSEL WITHIN THE MISSISSIPPI OFFICE OF INDIGENT  
4 APPEALS; TO AMEND SECTION 99-19-73, MISSISSIPPI CODE OF 1972, TO  
5 INCREASE THE STANDARD AMOUNT ASSESSED FOR CERTAIN VIOLATIONS BY  
6 THE STATE FOR THE INDIGENT APPEALS FUND TO FUND THE POSITION OF  
7 INDIGENT JUVENILE APPEALS RESOURCE COUNSEL; AND FOR RELATED  
8 PURPOSES.

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

10 **SECTION 1.** Section 99-40-1, Mississippi Code of 1972, is  
11 amended as follows:

12 99-40-1. (1) There is created the Mississippi Office of  
13 Indigent Appeals. This office shall consist of seven (7)  
14 attorneys, two (2) secretaries/paralegals and one (1) financial  
15 assistant. One (1) of the attorneys shall serve as director of  
16 the office. The director shall be appointed by the Governor and  
17 shall serve for a term of four (4) years. The remaining attorneys  
18 and other staff shall be appointed by the director and shall serve  
19 at the will and pleasure of the director. The director shall  
20 appoint one (1) staff attorney to serve as a full-time Indigent  
21 Juvenile Appeals Resource Counsel. The appointed attorney,  
22 described in this subsection, shall provide advice, education and  
23 support to attorneys representing juveniles named in delinquency  
24 petitions and shall develop performance guidelines for juvenile  
25 defense attorneys. The director and all other attorneys in the  
26 office shall either be active members of The Mississippi Bar, or,  
27 if a member in good standing of the bar of another jurisdiction,  
28 must apply to and secure admission to The Mississippi Bar within  
29 twelve (12) months of the commencement of the person's employment  
30 by the office. The attorneys in the office shall practice law

31 exclusively for the office and shall not engage in any other  
32 practice. The office shall not engage in any litigation other  
33 than that related to the office. The salary for the director  
34 shall be equivalent to the salary of district attorneys and the  
35 salary of the other attorneys in the office shall be equivalent to  
36 the salary of assistant district attorney.

37 (2) The office shall provide representation on appeal for  
38 indigent persons convicted of felonies or adjudicated delinquent  
39 but not under sentences of death. Representation shall be  
40 provided by staff attorneys, or, in the case of conflict or  
41 excessive workload, by attorneys selected, employed and  
42 compensated by the office on a contract basis. All fees charged  
43 by contract counsel and expenses incurred by attorneys in the  
44 office and contract counsel must be approved by the court. The  
45 office shall provide advice, education and support to attorneys  
46 representing persons under felony charges in the trial courts.

47 (3) There is created in the State Treasury a special fund to  
48 be known as the Indigent Appeals Fund. The purpose of the fund  
49 shall be to provide funding for the Mississippi Office of Indigent  
50 Appeals. Monies from the funds derived from assessments under  
51 Section 99-19-73 shall be distributed by the State Treasurer upon  
52 warrants issued by the Mississippi Office of Indigent Appeals.  
53 The fund shall be a continuing fund, not subject to fiscal-year  
54 limitations, and shall consist of:

- 55 (a) Monies appropriated by the Legislature for the  
56 purposes of funding the Office of Indigent Appeals;
- 57 (b) The interest accruing to the fund;
- 58 (c) Monies received under the provisions of Section  
59 99-19-73;
- 60 (d) Monies received from the federal government;
- 61 (e) Donations; and
- 62 (f) Monies received from such other sources as may be  
63 provided by law.

64           **SECTION 2.** Section 99-19-73, Mississippi Code of 1972, is  
65 amended as follows:

66           99-19-73. (1) **Traffic violations.** In addition to any  
67 monetary penalties and any other penalties imposed by law, there  
68 shall be imposed and collected the following state assessment from  
69 each person upon whom a court imposes a fine or other penalty for  
70 any violation in Title 63, Mississippi Code of 1972, except  
71 offenses relating to the Mississippi Implied Consent Law (Section  
72 63-11-1 et seq.) and offenses relating to vehicular parking or  
73 registration:

74	FUND	AMOUNT
75	State Court Education Fund.....	\$ 1.50
76	State Prosecutor Education Fund.....	1.00
77	Vulnerable Adults Training, 78           Investigation and Prosecution Trust Fund.....	.50
79	Child Support Prosecution Trust Fund.....	.50
80	Driver Training Penalty Assessment Fund.....	7.00
81	Law Enforcement Officers Training Fund.....	5.00
82	Spinal Cord and Head Injury Trust Fund 83           (for all moving violations).....	6.00
84	Emergency Medical Services Operating Fund.....	15.00
85	Mississippi Leadership Council on Aging Fund.....	1.00
86	Law Enforcement Officers and Fire Fighters Death 87           Benefits Trust Fund.....	.50
88	Law Enforcement Officers <u>and Fire Fighters</u> Disability 89           Benefits Trust Fund.....	1.00
90	State Prosecutor Compensation Fund for the purpose 91           of providing additional compensation for legal 92           assistants to district attorneys.....	1.50
93	Crisis Intervention Mental Health Fund.....	10.00
94	Drug Court Fund.....	10.00
95	Capital Defense Counsel Fund.....	1.89
96	Indigent Appeals Fund.....	<u>2.79</u>

97	Capital Post-Conviction Counsel Fund.....	2.33
98	Victims of Domestic Violence Fund.....	.49
99	TOTAL STATE ASSESSMENT.....	\$ <u>68.00</u>

100       (2) **Implied Consent Law violations.** In addition to any  
101 monetary penalties and any other penalties imposed by law, there  
102 shall be imposed and collected the following state assessment from  
103 each person upon whom a court imposes a fine or any other penalty  
104 for any violation of the Mississippi Implied Consent Law (Section  
105 63-11-1 et seq.):

106	FUND	AMOUNT
107	Crime Victims' Compensation Fund.....	\$ 10.00
108	State Court Education Fund.....	1.50
109	State Prosecutor Education Fund.....	1.00
110	Vulnerable Adults Training,	
111	Investigation and Prosecution Trust Fund.....	.50
112	Child Support Prosecution Trust Fund.....	.50
113	Driver Training Penalty Assessment Fund.....	22.00
114	Law Enforcement Officers Training Fund.....	11.00
115	Emergency Medical Services Operating Fund.....	15.00
116	Mississippi Alcohol Safety Education Program Fund....	5.00
117	Federal-State Alcohol Program Fund.....	10.00
118	Mississippi Crime Laboratory	
119	Implied Consent Law Fund.....	25.00
120	Spinal Cord and Head Injury Trust Fund.....	25.00
121	Capital Defense Counsel Fund.....	1.89
122	Indigent Appeals Fund.....	<u>2.79</u>
123	Capital Post-Conviction Counsel Fund.....	2.33
124	Victims of Domestic Violence Fund.....	.49
125	State General Fund.....	35.00
126	Law Enforcement Officers and Fire Fighters Death	
127	Benefits Trust Fund.....	.50
128	Law Enforcement Officers <u>and Fire Fighters</u> Disability	
129	Benefits Trust Fund.....	1.00

130	State Prosecutor Compensation Fund for the purpose	
131	of providing additional compensation for legal	
132	assistants to district attorneys.....	1.50
133	Crisis Intervention Mental Health Fund.....	10.00
134	Drug Court Fund.....	10.00
135	TOTAL STATE ASSESSMENT.....	<u>\$192.00</u>

136 (3) **Game and Fish Law violations.** In addition to any  
137 monetary penalties and any other penalties imposed by law, there  
138 shall be imposed and collected the following state assessment from  
139 each person upon whom a court imposes a fine or other penalty for  
140 any violation of the game and fish statutes or regulations of this  
141 state:

142	FUND	AMOUNT
143	State Court Education Fund.....	\$ 1.50
144	State Prosecutor Education Fund.....	1.00
145	Law Enforcement Officers Training Fund.....	5.00
146	Hunter Education and Training Program Fund.....	5.00
147	State General Fund.....	30.00
148	Law Enforcement Officers and Fire Fighters Death	
149	Benefits Trust Fund.....	.50
150	Law Enforcement Officers <u>and Fire Fighters</u> Disability	
151	Benefits Trust Fund.....	1.00
152	State Prosecutor Compensation Fund for the purpose	
153	of providing additional compensation for legal	
154	assistants to district attorneys.....	1.00
155	Crisis Intervention Mental Health Fund.....	10.00
156	Drug Court Fund.....	10.00
157	Capital Defense Counsel Fund.....	1.89
158	Indigent Appeals Fund.....	<u>2.79</u>
159	Capital Post-Conviction Counsel Fund.....	2.33
160	Victims of Domestic Violence Fund.....	.49
161	TOTAL STATE ASSESSMENT.....	\$ <u>72.50</u>

162 (4) **Litter Law violations.** In addition to any monetary  
 163 penalties and any other penalties imposed by law, there shall be  
 164 imposed and collected the following state assessment from each  
 165 person upon whom a court imposes a fine or other penalty for any  
 166 violation of Section 97-15-29 or 97-15-30:

167 FUND	AMOUNT
168 Statewide Litter Prevention Fund.....	\$ 25.00
169 TOTAL STATE ASSESSMENT.....	\$ 25.00

170 (5) **Other misdemeanors.** In addition to any monetary  
 171 penalties and any other penalties imposed by law, there shall be  
 172 imposed and collected the following state assessment from each  
 173 person upon whom a court imposes a fine or other penalty for any  
 174 misdemeanor violation not specified in subsection (1), (2) or (3)  
 175 of this section, except offenses relating to vehicular parking or  
 176 registration:

177 FUND	AMOUNT
178 Crime Victims' Compensation Fund.....	\$ 10.00
179 State Court Education Fund.....	1.50
180 State Prosecutor Education Fund.....	1.00
181 Vulnerable Adults Training, Investigation and Prosecution Trust Fund.....	.50
183 Child Support Prosecution Trust Fund.....	.50
184 Law Enforcement Officers Training Fund.....	5.00
185 Capital Defense Counsel Fund.....	1.89
186 Indigent Appeals Fund.....	<u>2.79</u>
187 Capital Post-Conviction Counsel Fund.....	2.33
188 Victims of Domestic Violence Fund.....	.49
189 State General Fund.....	30.00
190 State Crime Stoppers Fund.....	1.50
191 Law Enforcement Officers and Fire Fighters Death Benefits Trust Fund.....	.50
193 Law Enforcement Officers <u>and Fire Fighters</u> Disability Benefits Trust Fund.....	1.00

195	State Prosecutor Compensation Fund for the purpose	
196	of providing additional compensation for legal	
197	assistants to district attorneys.....	1.50
198	Crisis Intervention Mental Health Fund.....	10.00
199	Drug Court Fund.....	8.00
200	Judicial Performance Fund.....	2.00
201	TOTAL STATE ASSESSMENT.....	\$ <u>80.50</u>

202 (6) **Other felonies.** In addition to any monetary penalties  
203 and any other penalties imposed by law, there shall be imposed and  
204 collected the following state assessment from each person upon  
205 whom a court imposes a fine or other penalty for any felony  
206 violation not specified in subsection (1), (2) or (3) of this  
207 section:

208	FUND	AMOUNT
209	Crime Victims' Compensation Fund.....	\$ 10.00
210	State Court Education Fund.....	1.50
211	State Prosecutor Education Fund.....	1.00
212	Vulnerable Adults Training,	
213	Investigation and Prosecution Trust Fund.....	.50
214	Child Support Prosecution Trust Fund.....	.50
215	Law Enforcement Officers Training Fund.....	5.00
216	Capital Defense Counsel Fund.....	1.89
217	Indigent Appeals Fund.....	<u>2.79</u>
218	Capital Post-Conviction Counsel Fund.....	2.33
219	Victims of Domestic Violence Fund.....	.49
220	State General Fund.....	60.00
221	Criminal Justice Fund.....	50.00
222	Law Enforcement Officers and Fire Fighters Death	
223	Benefits Trust Fund.....	.50
224	Law Enforcement Officers <u>and Fire Fighters</u> Disability	
225	Benefits Trust Fund.....	1.00
226	State Prosecutor Compensation Fund for the purpose	
227	of providing additional compensation for legal	

228	assistants to district attorneys.....	1.50
229	Crisis Intervention Mental Health Fund.....	10.00
230	Drug Court Fund.....	10.00
231	TOTAL STATE ASSESSMENT.....	<u>\$159.00</u>

232 (7) If a fine or other penalty imposed is suspended, in  
233 whole or in part, such suspension shall not affect the state  
234 assessment under this section. No state assessment imposed under  
235 the provisions of this section may be suspended or reduced by the  
236 court.

237 (8) After a determination by the court of the amount due, it  
238 shall be the duty of the clerk of the court to promptly collect  
239 all state assessments imposed under the provisions of this  
240 section. The state assessments imposed under the provisions of  
241 this section may not be paid by personal check. It shall be the  
242 duty of the chancery clerk of each county to deposit all such  
243 state assessments collected in the circuit, county and justice  
244 courts in such county on a monthly basis with the State Treasurer  
245 pursuant to appropriate procedures established by the State  
246 Auditor. The chancery clerk shall make a monthly lump-sum deposit  
247 of the total state assessments collected in the circuit, county  
248 and justice courts in such county under this section, and shall  
249 report to the Department of Finance and Administration the total  
250 number of violations under each subsection for which state  
251 assessments were collected in the circuit, county and justice  
252 courts in such county during such month. It shall be the duty of  
253 the municipal clerk of each municipality to deposit all such state  
254 assessments collected in the municipal court in such municipality  
255 on a monthly basis with the State Treasurer pursuant to  
256 appropriate procedures established by the State Auditor. The  
257 municipal clerk shall make a monthly lump-sum deposit of the total  
258 state assessments collected in the municipal court in such  
259 municipality under this section, and shall report to the  
260 Department of Finance and Administration the total number of

261 violations under each subsection for which state assessments were  
262 collected in the municipal court in such municipality during such  
263 month.

264 (9) It shall be the duty of the Department of Finance and  
265 Administration to deposit on a monthly basis all such state  
266 assessments into the proper special fund in the State Treasury.  
267 The monthly deposit shall be based upon the number of violations  
268 reported under each subsection and the pro rata amount of such  
269 assessment due to the appropriate special fund. The Department of  
270 Finance and Administration shall issue regulations providing for  
271 the proper allocation of these special funds.

272 (10) The State Auditor shall establish by regulation  
273 procedures for refunds of state assessments, including refunds  
274 associated with assessments imposed before July 1, 1990, and  
275 refunds after appeals in which the defendant's conviction is  
276 reversed. The Auditor shall provide in such regulations for  
277 certification of eligibility for refunds and may require the  
278 defendant seeking a refund to submit a verified copy of a court  
279 order or abstract by which such defendant is entitled to a refund.  
280 All refunds of state assessments shall be made in accordance with  
281 the procedures established by the Auditor.

282 **SECTION 3.** This act shall take effect and be in force from  
283 and after July 1, 2006.