

By: Representative Blackmon

To: Judiciary A;  
Appropriations

## HOUSE BILL NO. 1305

1 AN ACT TO CREATE THE MISSISSIPPI INDIGENT DEFENSE BOARD, TO  
2 PROVIDE FOR THE BOARDS MAKE-UP AND PRESCRIBE THE DUTIES AND POWERS  
3 OF THE BOARD; TO PROVIDE FOR A DIRECTOR AND OTHER STAFF FOR THE  
4 BOARD; TO PROVIDE THAT THE BOARD SHALL APPOINT THE DIRECTORS OF  
5 THE OFFICE OF INDIGENT APPEALS, THE OFFICE OF CAPITAL DEFENSE  
6 COUNSEL AND THE OFFICE OF CAPITAL POST-CONVICTION COUNSEL AND TO  
7 PROVIDE THAT THE BOARD SHALL PREPARE AND APPROVE THE BUDGETS OF  
8 SUCH OFFICES; TO REVISE COMPENSATION OF THE DIRECTORS OF SUCH  
9 OFFICES; TO REQUIRE THE BOARD TO ESTABLISH POLICIES, STANDARDS AND  
10 TRAINING REQUIREMENTS; TO AUTHORIZE THE ESTABLISHMENT OF DISTRICT  
11 INDIGENT DEFENDER OFFICES AND PROVIDE STAFFING THEREFOR; TO  
12 ADDRESS CONFLICT OF INTEREST SITUATIONS; TO REQUIRE COOPERATION  
13 WITH OTHER ENTITIES; TO REQUIRE THE BOARD TO ALLOCATE AND DISBURSE  
14 FUNDS; TO REQUIRE ANNUAL REPORTS AND RECORD KEEPING; TO AUTHORIZE  
15 PAYMENT OF PER DIEM AND EXPENSES TO BOARD MEMBERS; TO CREATE THE  
16 INDIGENT DEFENSE FUND AND PROVIDE FOR ITS ADMINISTRATION; TO  
17 REQUIRE PARTICIPATION BY ALL COUNTIES; TO AMEND SECTIONS 99-18-3,  
18 99-18-9, 99-18-13, 99-18-17, 99-39-103, 99-39-109, 99-39-113,  
19 99-39-117 AND 99-40-1, MISSISSIPPI CODE OF 1972, IN CONFORMITY; TO  
20 AMEND SECTION 99-19-73, MISSISSIPPI CODE OF 1972, TO PROVIDE  
21 CRIMINAL ASSESSMENTS TO FUND THE INDIGENT DEFENSE FUND; AND FOR  
22 RELATED PURPOSES.

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

24 **SECTION 1.** (1) There is created the Mississippi Indigent  
25 Defense Board.

26 (2) The purpose of the board shall be to provide oversight  
27 and administrative support for the indigent defense delivery  
28 system in Mississippi to ensure the system can deliver effective,  
29 efficient, high quality, ethical and conflict-free representation  
30 to accused persons who cannot afford to hire an attorney and are  
31 entitled to appointment of counsel under the state or federal  
32 constitution or laws of this state. The state funded indigent  
33 defense programs shall also provide legal representation for any  
34 juvenile indigent person who upon a conviction of guilt or  
35 adjudication of delinquency could be subject to incarceration.

36 (3) The board shall consist of nine (9) voting members, each  
37 of whom shall serve until his successor shall be appointed and

38 qualified. No active prosecutor or law enforcement professional  
39 may serve as a member of the board.

40 (4) The members of the board shall be selected as follows:

41 (a) The Governor shall appoint one (1) member whose  
42 initial term shall expire on September 30, 2010.

43 (b) The Lieutenant Governor shall appoint one (1)  
44 member whose initial term shall expire on September 30, 2010.

45 (c) The Speaker of the House of Representatives shall  
46 appoint one (1) member whose initial term shall expire on  
47 September 30, 2010.

48 (d) The Executive Director of the Mississippi  
49 Association of Supervisors shall appoint (1) member whose initial  
50 term shall expire on September 30, 2009.

51 (e) The Chief Justice of the Supreme Court of  
52 Mississippi shall appoint one (1) member whose initial term shall  
53 expire on September 30, 2009.

54 (f) The Mississippi Conference of Circuit Judges shall  
55 appoint one (1) member whose initial term shall expire on  
56 September 30, 2009.

57 (g) The Mississippi Council of Youth Court Judges shall  
58 appoint one (1) member whose initial term shall expire on  
59 September 30, 2008.

60 (h) The President of the Mississippi Public Defenders  
61 Association shall appoint one (1) member whose initial term shall  
62 expire on September 30, 2008.

63 (i) The President of the Magnolia Bar shall appoint one  
64 (1) member whose initial term shall expire on September 30, 2009.  
65 The successive term shall be filled by an appointee of the  
66 President of the Mississippi Bar Association. The appointments to  
67 this position shall alternate every term between the two (2) Bar  
68 Associations.

69 (j) The Chairman of the Senate Judiciary En Banc  
70 Committee, or his designee, and the Chairman of the House of

71 Representatives Judiciary En Banc Committee, or his designee,  
72 shall serve as legislative liaisons and nonvoting members.

73 (5) Such selections and appointments shall be made by the  
74 respective appointing authorities not later than October 1, 2007.  
75 Vacancies on the board shall be filled by the respective selecting  
76 and appointing authorities. In the event that any selection or  
77 appointment is not timely made, the Chief Justice of the Supreme  
78 Court of the State of Mississippi shall make such selection or  
79 appointment, and any board member so appointed shall serve the  
80 remaining unexpired portion of the term for which he has been  
81 appointed. After the initial terms, all terms shall be three (3)  
82 years and shall commence on October 1 following the expiration of  
83 each prior term.

84 **SECTION 2.** The board shall employ a director and  
85 administrative assistant. The director shall be an attorney  
86 licensed to practice in the state courts of Mississippi and have a  
87 minimum of five (5) years legal experience in the area of criminal  
88 defense. The director shall be compensated at the maximum amount  
89 allowed by statute for a district attorney. The director shall be  
90 empowered to pay and disburse salaries, employment benefits and  
91 charges relating to employment of staff and to establish their  
92 salaries and expenses of the office; to incur and pay travel  
93 expenses of staff necessary for the performance of the duties of  
94 the office; to rent or lease office space as is necessary in the  
95 City of Jackson to accommodate the staff; to enter into and  
96 perform contracts and to purchase such necessary office supplies  
97 and equipment as may be needed for the proper administration of  
98 said office within the funds appropriated for such purpose; and to  
99 incur and pay such other expenses as are appropriate and customary  
100 to the operation of the office.

101 **SECTION 3.** Upon the expiration of the current terms of the  
102 directors of the Office of Indigent Appeals, the Office of Capital  
103 Defense Counsel and the Office of Capital Post-Conviction Counsel

104 the Board shall appoint the directors of those offices under the  
105 same terms and conditions as are currently provided by law.

106 **SECTION 4.** The board shall prepare and approve the annual  
107 budget for the operation of the Office of Indigent Appeals; the  
108 Office of Capital Defense Counsel and the Office of Capital  
109 Post-Conviction Counsel, and to administer and oversee the  
110 implementation of each such budget.

111 **SECTION 5.** The board shall establish, implement and enforce  
112 policies and standards for a comprehensive and effective indigent  
113 defense system throughout the State of Mississippi, including, but  
114 not limited to: standards for determining who qualifies as an  
115 indigent person; standards for determining which districts should  
116 be served by an indigent defense office; standards for maximum  
117 caseloads for full-time and part-time indigent defenders to  
118 include a uniform definition of what constitutes a case; standards  
119 for minimum education, training and experience of attorneys  
120 appointed or employed as indigent defenders and to establish a  
121 reasonable hourly rate to be paid appointed attorneys and  
122 nonattorney members of the defense team.

123 **SECTION 6.** The board shall establish a Division of Indigent  
124 Defender Training. The mission of the Division of Indigent  
125 Defender Training shall be to work closely with the Mississippi  
126 Public Defenders Association to provide training and services to  
127 indigent defenders practicing in all state, county and municipal  
128 courts of Mississippi. These services shall include but may not  
129 be limited to continuing legal education, case updates and legal  
130 research for public defenders practicing in all state, county and  
131 municipal courts of Mississippi, as well as their support staff.

132 **SECTION 7.** Upon recommendation of the board and  
133 appropriation of funds by the Legislature, the circuit judge or  
134 senior circuit judge, if there be more than one (1) circuit judge,  
135 shall establish a district indigent defender office.

136           **SECTION 8.** (1) When the office of indigent defender is  
137 established, the circuit judge or senior circuit judge, if there  
138 be more than one (1) circuit judge, shall appoint a practicing  
139 attorney to serve as indigent defender until the end of the term  
140 of office of the district attorney and thereafter for a term of  
141 four (4) years and said term shall coincide with the term of the  
142 district attorney. The indigent defender may be removed from  
143 office by the circuit judge or senior circuit judge, if there be  
144 more than one (1) circuit judge, upon a finding that the indigent  
145 defender is not qualified under law including any rules or  
146 regulations established by the Indigent Defender Board under  
147 authority of this act; has failed to perform the duties of the  
148 office; or has acted beyond the scope of the authority granted by  
149 law for the office.

150           (2) Such appointee shall be selected from a list of two (2)  
151 or more attorneys recommended by the Mississippi Indigent Defender  
152 Board. In the event a vacancy shall occur in the office of the  
153 indigent defender, the circuit judge or senior circuit judge if  
154 there be more than one (1) circuit judge, shall appoint another  
155 person from a new list of two (2) or more qualified attorneys  
156 recommended by the board to serve as indigent defender until the  
157 end of the regular term of office. In the event that a circuit  
158 judge does not make an appointment within four (4) months of  
159 having been provided the above described list of candidates, the  
160 board will select the district defender to fill the vacancy. The  
161 district indigent defender shall be compensated at ninety-five  
162 percent (95%) of the pay of the district attorney.

163           **SECTION 9.** Based on caseload standards set by the board,  
164 assistant indigent defenders may be authorized. The district  
165 indigent defender shall appoint all assistant indigent defenders.  
166 Such assistant indigent defenders shall be compensated according  
167 to the experience-based salary scale of the prosecutor's office.  
168 The indigent defender shall also be provided with office space,

169 secretarial and investigative assistance, and all reasonable  
170 expenses of operating the office on a pro-rata basis with the  
171 district attorney. In no event shall there be more assistant  
172 district defenders appointed in any district than there are  
173 prosecutors in that same district.

174 **SECTION 10.** As an alternative to a defender office and for  
175 cases of conflict of interest with a defender office or excessive  
176 caseload of a defender office, the board shall maintain for each  
177 circuit court district a current list of private attorneys who are  
178 competent in the defense of criminal charges and are willing to  
179 accept appointments for individual representations, and who meet  
180 any other qualifications established by the board. The board  
181 shall maintain a separate list of attorney qualified to handle  
182 capital cases noting whether counsel is qualified to serve as lead  
183 counsel and a list of attorneys qualified to handle Youth Court  
184 cases. To these ends the board shall:

185 (a) Notify once a year all licensed attorneys residing  
186 in Mississippi by publication or otherwise that a list is being  
187 prepared and maintained of attorneys willing to represent indigent  
188 persons;

189 (b) Afford attorneys notified under this section a  
190 reasonable time to submit the information requested by the board;

191 (c) Prepare, certify and update annually a list of such  
192 attorneys for each circuit court district and provide such lists  
193 to each circuit, county and justice court judge;

194 (d) Recommend attorneys from this list for individual  
195 representations; and

196 (e) Ensure that all persons entitled to appointment of  
197 counsel have competent counsel assigned as soon as feasible after  
198 being taken into custody.

199 **SECTION 11.** The board shall cooperate with any individual,  
200 private or public agency, whether state, local or federal, or with  
201 any law school, public or private, or with any institution of

202 higher learning, public or private, to obtain by gift, grant or  
203 otherwise any financial, professional, investigatory, training,  
204 educational or research or other assistance; provided, however,  
205 that any grants or any financial assistance whatever for the  
206 purpose herein set out shall be paid over to the board and  
207 administered by the board consistent with the provisions of the  
208 Chapter and the Rules and Regulations of the Mississippi  
209 Department of Finance and Administration.

210       **SECTION 12.** The board shall receive, allocate and disburse  
211 funds appropriated for the operation of the Office of Indigent  
212 Appeals; Office of Capital Defense Counsel and Office of Capital  
213 Post-Conviction Counsel, and to reallocate available resources as  
214 may be necessary to carryout and implement more effectively and  
215 efficiently the purposes and policies of this chapter.

216       **SECTION 13.** The board shall present an annual report which  
217 shall include a report of the operation of the indigent defender  
218 system in the State of Mississippi, and recommendations for  
219 improvement of the system; appear before and provide assistance to  
220 the Legislature and other relevant bodies regarding matters  
221 related to the indigent defender system.

222       **SECTION 14.** The board shall maintain records of the  
223 operation of the indigent defender system, including, but not  
224 limited to, the following:

- 225               (a) Detailed descriptions of each county's and  
226 district's indigent defender system;
- 227               (b) Caseloads of each indigent defender and number of  
228 cases assigned to private attorneys; and
- 229               (c) Expenditures on indigent defense in each county and  
230 district.

231       **SECTION 15.** The board shall adopt and promulgate reasonable  
232 and necessary rules and regulations, formally or informally, as  
233 may be appropriate, to perform its duties and powers hereunder,  
234 and to implement the provisions of this act; and to propose forms

235 for the use of the courts, and other persons with powers and  
236 duties hereunder.

237         SECTION 16. Members of the board shall receive a per diem as  
238 provided in Section 25-3-69, Mississippi Code of 1972, for actual  
239 attendance upon meetings of the board, together with reimbursement  
240 for traveling and subsistence expenses incurred as provided in  
241 Section 25-3-41, Mississippi Code of 1972, except that members of  
242 the board who are members of the Legislature shall not receive per  
243 diem for attendance while the Legislature is in session and no  
244 member whose regular compensation is payable by the state or any  
245 political subdivision of the state shall receive per diem for  
246 attendance upon meetings of the board.

247         SECTION 17. There is created in the State Treasury a special  
248 fund to be known as the Indigent Defense Fund. The purpose of the  
249 fund shall be to provide funding for the Mississippi Indigent  
250 Defender Board; the Mississippi Office of Indigent Appeals; the  
251 Mississippi Office of Capital Post-Conviction Counsel; the  
252 Mississippi Office of Capital Defense Counsel; any district  
253 indigent defender office established by the board and related  
254 purposes. The fund shall be a continuing fund, not subject to  
255 fiscal-year limitations, and shall consist of:

256                 (a) Monies appropriated by the Legislature for the  
257 purposes of funding the Mississippi Indigent Defender Board; the  
258 Mississippi Office of Indigent Appeals; the Mississippi Office of  
259 Capital Post-Conviction Counsel; and the Mississippi Office of  
260 Capital Defense Counsel;

261                 (b) The interest accruing to the fund;

262                 (c) Monies received under the provisions of Section  
263 99-19-73;

264                 (d) Monies transferred to this fund from the counties;

265                 (e) Monies received from the federal government;

266                 (f) Donations; and



267 (g) Monies received from such other sources as may be  
268 provided by law.

269 **SECTION 18.** Each county shall pay annually into the Indigent  
270 Defense Fund an amount equal to its total actual expenses for  
271 indigent defense services in fiscal year 2007 (October 1, 2006 -  
272 September 30, 2007). For purposes of this section, "total actual  
273 expenses" includes all amounts paid by counties for attorneys,  
274 staff, investigators, expert witnesses, office space and expenses,  
275 and other related expenditures. Such transfers shall begin  
276 October 1, 2008, and shall be made in equal monthly installments  
277 deposited with the Treasurer of the State of Mississippi on or  
278 before the fifth day of each month.

279 **SECTION 19.** On and after October 1, 2008, the counties shall  
280 not be responsible for any costs of indigent defense beyond the  
281 amount as provided for in this act. Each county shall provide an  
282 accounting to the board of all fines and assessments collected  
283 from indigent defendants for the purpose of defraying the cost of  
284 court appointed counsel. If an annual collection exceeds the  
285 counties annual payment to the Indigent Defense Fund the excess  
286 amount shall be transferred to the fund. In no event shall the  
287 amount expended on indigent defense in a county be less than the  
288 counties contribution to the Indigent Defense Fund.

289 **SECTION 20.** Section 99-18-3, Mississippi Code of 1972, is  
290 amended as follows:

291 99-18-3. There is hereby created the Mississippi Office of  
292 Capital Defense Counsel. This office shall consist of four (4)  
293 attorneys, two (2) investigators, one (1) fiscal officer and two  
294 (2) secretaries/paralegals. One of these attorneys shall serve as  
295 director of the office. The director shall be appointed by the  
296 Mississippi Indigent Defense Board for a term of four (4) years or  
297 until a successor takes office. The remaining attorneys and other  
298 staff shall be appointed by the director of the office and shall  
299 serve at the will and pleasure of the director. The director and

300 all other attorneys in the office shall be active members of The  
301 Mississippi Bar. The director may be removed by the Governor upon  
302 finding that the director is not qualified under law, has failed  
303 to perform the duties of the office, or has acted beyond the scope  
304 of the authority granted by law for the office.

305 **SECTION 21.** Section 99-18-9, Mississippi Code of 1972, is  
306 amended as follows:

307 99-18-9. The director appointed under this chapter shall be  
308 compensated at ninety-five percent (95%) of the amount allowed by  
309 statute for a district attorney, and other attorneys in the office  
310 shall be compensated at no more than the maximum amount allowed by  
311 statute for an assistant district attorney.

312 **SECTION 22.** Section 99-18-13, Mississippi Code of 1972, is  
313 amended as follows:

314 99-18-13. In addition to the authority to represent persons  
315 under indictment for death eligible offenses, the director is  
316 hereby empowered to pay and disburse salaries, employment benefits  
317 and charges relating to employment of staff and to establish their  
318 salaries and expenses of the office; to incur and pay travel  
319 expenses of staff necessary for the performance of the duties of  
320 the office; to rent or lease on such terms as he may think proper  
321 such office space as is necessary in the City of Jackson to  
322 accommodate the staff; to enter into and perform contracts and to  
323 purchase such necessary office supplies and equipment as may be  
324 needed for the proper administration of said offices within the  
325 funds appropriated for such purpose; and to incur and pay such  
326 other expenses as are appropriate and customary to the operation  
327 of the office. The Mississippi Indigent Defense Board shall  
328 prepare and approve the annual budget for the Office of Capital  
329 Defense Counsel.

330 **SECTION 23.** Section 99-18-17, Mississippi Code of 1972, is  
331 amended as follows:

332           99-18-17. (1) If at any time during the representation of  
333 two (2) or more defendants, the director determines that the  
334 interests of those persons are so adverse or hostile they cannot  
335 all be represented by the director or his staff without conflict  
336 of interest, or if the director shall determine that the volume or  
337 number of representations shall so require, the director in his  
338 sole discretion, notwithstanding any statute or regulation to the  
339 contrary, shall be authorized to employ qualified private counsel.  
340 Fees and expenses approved by order of the court of original  
341 jurisdiction, including investigative and expert witness expenses  
342 of such private counsel, shall be paid by funds appropriated to  
343 the Capital Defense Counsel Fund for this purpose.

344           (2) There is created in the State Treasury a special fund to  
345 be known as the Capital Defense Counsel Fund. The purpose of the  
346 fund shall be to provide funding for the Office of Capital Defense  
347 Counsel. Monies from the funds derived from assessments under  
348 Section 99-19-73 shall be distributed by the State Treasurer upon  
349 warrants issued by the Mississippi Office of Capital Defense  
350 Counsel. The fund shall be a continuing fund, not subject to  
351 fiscal-year limitations, and shall consist of:

- 352           (a) Monies appropriated by the Legislature for the  
353 purposes of funding the Office of Capital Defense Counsel;  
354           (b) The interest accruing to the fund;  
355           (c) Monies received under the provisions of Section  
356 99-19-73;  
357           (d) Monies received from the federal government;  
358           (e) Donations; and  
359           (f) Monies received from such other sources as may be  
360 provided by law.

361           (3) The Mississippi Indigent Defense Board shall prepare and  
362 approve the annual budget for the Office of Capital Defense  
363 Counsel.

364           **SECTION 24.** Section 99-39-103, Mississippi Code of 1972, is  
365 amended as follows:

366           99-39-103. There is created the Mississippi Office of  
367 Capital Post-Conviction Counsel. This office shall consist of  
368 three (3) attorneys, one (1) investigator, one (1) fiscal officer  
369 and one (1) secretary/paralegal. One of the attorneys shall serve  
370 as director of the office. The director shall be appointed by the  
371 Mississippi Indigent Defense Board, for a term of four (4) years,  
372 or until a successor takes office. The remaining attorneys and  
373 other staff shall be appointed by the director of the office and  
374 shall serve at the will and pleasure of the director. The  
375 director and all other attorneys in the office shall either be  
376 active members of The Mississippi Bar, or, if a member in good  
377 standing of the bar of another jurisdiction, must apply to and  
378 secure admission to The Mississippi Bar within twelve (12) months  
379 of the commencement of the person's employment by the office. At  
380 least three (3) of the attorneys in the office shall meet all  
381 qualifications necessary to serve as post-conviction counsel for  
382 persons under a sentence of death. The director may be removed  
383 from office by the Chief Justice upon finding that the director is  
384 not qualified under law to serve as post-conviction counsel for  
385 persons under sentences of death, has failed to perform the duties  
386 of the office or has acted beyond the scope of the authority  
387 granted by law for the office.

388           **SECTION 25.** Section 99-39-109, Mississippi Code of 1972, is  
389 amended as follows:

390           99-39-109. The director appointed under this article shall  
391 be compensated at ninety-five percent (95%) of the salary for a  
392 district attorney, and other attorneys in the office shall be  
393 compensated at no more than the maximum amount allowed by statute  
394 for an assistant district attorney.

395           **SECTION 26.** Section 99-39-113, Mississippi Code of 1972, is  
396 amended as follows:

397           99-39-113. In addition to the authority to represent persons  
398 under sentence of death in state post-conviction proceedings, the  
399 director is hereby empowered to pay and disburse salaries,  
400 employment benefits and charges relating to employment of staff  
401 and to establish their salaries and expenses of the office; to  
402 incur and pay travel expenses of staff necessary for the  
403 performance of the duties of the office; to rent or lease on such  
404 terms as he may think proper such office space as is necessary in  
405 the City of Jackson to accommodate the staff; to solicit and  
406 accept monies, gifts, grants or services from any public or  
407 private sources for the purpose of funding, operating and  
408 executing the statutory duties of the office; to enter into and  
409 perform contracts, including, but not limited to, contracts and  
410 agreements necessary to obtain and receive monies, gifts, grants  
411 or services from federal, public and private sources, and to  
412 purchase such necessary office supplies and equipment as may be  
413 needed for the proper administration of said offices; and to incur  
414 and pay such other expenses as are appropriate and customary to  
415 the operations of the office. The director shall be required to  
416 obtain a surety bond in the amount of not less than One Hundred  
417 Thousand Dollars (\$100,000.00) payable to the state. The cost of  
418 such bond shall be paid out of funds appropriated for the  
419 operations of the office. All salaries and other expenditures  
420 shall be paid from funds appropriated for such purposes augmented  
421 by funds received as gifts and grants from public and private  
422 sources. The Mississippi Indigent Defense Board shall prepare and  
423 approve the annual budget for the Office of Capital  
424 Post-Conviction Counsel.

425           **SECTION 27.** Section 99-39-117, Mississippi Code of 1972, is  
426 amended as follows:

427           99-39-117. (1) If at any time during the representation of  
428 two (2) or more defendants, the director determines that the  
429 interest of those persons are so adverse or hostile that they

430 cannot all be represented by the director or his staff without  
431 conflict of interest, or if the director shall determine that the  
432 volume or number of representations shall so require, the  
433 director, in his sole discretion, notwithstanding any statute or  
434 regulation to the contrary, shall be authorized to employ  
435 qualified private counsel. Fees and expenses, approved by order  
436 of the appropriate court, including investigative and expert  
437 witness expenses of such private counsel shall be paid from funds  
438 appropriated to the Capital Post-Conviction Counsel Fund for this  
439 purpose.

440 (2) There is created in the State Treasury a special fund to  
441 be known as the Capital Post-Conviction Counsel Fund. The purpose  
442 of the fund shall be to provide funding for the Office of Capital  
443 Post-Conviction Counsel. Monies from the funds derived from  
444 assessments under Section 99-19-73 shall be distributed by the  
445 State Treasurer upon warrants issued by the Mississippi Office of  
446 Capital Post-Conviction Counsel. The fund shall be a continuing  
447 fund, not subject to fiscal-year limitations, and shall consist  
448 of:

449 (a) Monies appropriated by the Legislature for the  
450 purposes of funding the Office of Capital Post-Conviction Counsel;

451 (b) The interest accruing to the fund;

452 (c) Monies received under the provisions of Section  
453 99-19-73;

454 (d) Monies received from the federal government;

455 (e) Donations; and

456 (f) Monies received from such other sources as may be  
457 provided by law.

458 (3) The Mississippi Indigent Defense Board shall prepare and  
459 approve the annual budget for the Office of Post-Conviction  
460 Counsel.

461 **SECTION 28.** Section 99-40-1, Mississippi Code of 1972, is  
462 amended as follows:

463           99-40-1. (1) There is created the Mississippi Office of  
464 Indigent Appeals. This office shall consist of six (6) attorneys,  
465 two (2) secretaries/paralegals and one (1) financial assistant.  
466 One (1) of the attorneys shall serve as director of the office.  
467 The director shall be appointed by the Mississippi Indigent  
468 Defense Board and shall serve for a term of four (4) years. The  
469 remaining attorneys and other staff shall be appointed by the  
470 director and shall serve at the will and pleasure of the director.  
471 The director and all other attorneys in the office shall either be  
472 active members of The Mississippi Bar, or, if a member in good  
473 standing of the bar of another jurisdiction, must apply to and  
474 secure admission to The Mississippi Bar within twelve (12) months  
475 of the commencement of the person's employment by the office. The  
476 attorneys in the office shall practice law exclusively for the  
477 office and shall not engage in any other practice. The office  
478 shall not engage in any litigation other than that related to the  
479 office. The salary for the director shall be equivalent to  
480 ninety-five percent (95%) of the salary of district attorneys and  
481 the salary of the other attorneys in the office shall be  
482 equivalent to the salary of an assistant district attorney.

483           (2) The office shall provide representation on appeal for  
484 indigent persons convicted of felonies but not under sentences of  
485 death. Representation shall be provided by staff attorneys, or,  
486 in the case of conflict or excessive workload, by attorneys  
487 selected, employed and compensated by the office on a contract  
488 basis. All fees charged by contract counsel and expenses incurred  
489 by attorneys in the office and contract counsel must be approved  
490 by the court. At the sole discretion of the director, the office  
491 may also represent indigent juveniles adjudicated delinquent on  
492 appeals from a county court or chancery court to the Mississippi  
493 Supreme Court and/or the Mississippi Court of Appeals. The office  
494 shall provide advice, education and support to attorneys  
495 representing persons under felony charges in the trial courts.

496 (3) There is created in the State Treasury a special fund to  
497 be known as the Indigent Appeals Fund. The purpose of the fund  
498 shall be to provide funding for the Mississippi Office of Indigent  
499 Appeals. Monies from the funds derived from assessments under  
500 Section 99-19-73 shall be distributed by the State Treasurer upon  
501 warrants issued by the Mississippi Office of Indigent Appeals.  
502 The fund shall be a continuing fund, not subject to fiscal-year  
503 limitations, and shall consist of:

- 504 (a) Monies appropriated by the Legislature for the  
505 purposes of funding the Office of Indigent Appeals;
- 506 (b) The interest accruing to the fund;
- 507 (c) Monies received under the provisions of Section  
508 99-19-73;
- 509 (d) Monies received from the federal government;
- 510 (e) Donations; and
- 511 (f) Monies received from such other sources as may be  
512 provided by law.

513 **SECTION 29.** Section 99-19-73, Mississippi Code of 1972, is  
514 amended as follows:

515 99-19-73. (1) **Traffic violations.** In addition to any  
516 monetary penalties and any other penalties imposed by law, there  
517 shall be imposed and collected the following state assessment from  
518 each person upon whom a court imposes a fine or other penalty for  
519 any violation in Title 63, Mississippi Code of 1972, except  
520 offenses relating to the Mississippi Implied Consent Law (Section  
521 63-11-1 et seq.) and offenses relating to vehicular parking or  
522 registration:

523 FUND	AMOUNT
524 State Court Education Fund.....	\$ 1.50
525 State Prosecutor Education Fund.....	1.00
526 Vulnerable Adults Training, 527 Investigation and Prosecution Trust Fund.....	.50
528 Child Support Prosecution Trust Fund.....	.50



529	Driver Training Penalty Assessment Fund.....	7.00
530	Law Enforcement Officers Training Fund.....	5.00
531	Spinal Cord and Head Injury Trust Fund	
532	(for all moving violations).....	6.00
533	Emergency Medical Services Operating Fund.....	15.00
534	Mississippi Leadership Council on Aging Fund.....	1.00
535	Law Enforcement Officers and Fire Fighters Death	
536	Benefits Trust Fund.....	.50
537	Law Enforcement Officers and Fire Fighters	
538	Disability Benefits Trust Fund.....	1.00
539	State Prosecutor Compensation Fund for the purpose	
540	of providing additional compensation for legal	
541	assistants to district attorneys.....	1.50
542	Crisis Intervention Mental Health Fund.....	10.00
543	Drug Court Fund.....	10.00
544	Capital Defense Counsel Fund.....	1.89
545	Indigent Appeals Fund.....	2.29
546	Capital Post-Conviction Counsel Fund.....	2.33
547	Victims of Domestic Violence Fund.....	.49
548	<u>Indigent Defense Fund</u> .....	<u>10.00</u>
549	TOTAL STATE ASSESSMENT.....	\$ <u>77.50</u>

550 (2) **Implied Consent Law violations.** In addition to any  
551 monetary penalties and any other penalties imposed by law, there  
552 shall be imposed and collected the following state assessment from  
553 each person upon whom a court imposes a fine or any other penalty  
554 for any violation of the Mississippi Implied Consent Law (Section  
555 63-11-1 et seq.):

556	FUND	AMOUNT
557	Crime Victims' Compensation Fund.....	\$ 10.00
558	State Court Education Fund.....	1.50
559	State Prosecutor Education Fund.....	1.00
560	Vulnerable Adults Training,	
561	Investigation and Prosecution Trust Fund.....	.50

562	Child Support Prosecution Trust Fund.....	.50
563	Driver Training Penalty Assessment Fund.....	22.00
564	Law Enforcement Officers Training Fund.....	11.00
565	Emergency Medical Services Operating Fund.....	15.00
566	Mississippi Alcohol Safety Education Program Fund....	5.00
567	Federal-State Alcohol Program Fund.....	10.00
568	Mississippi Crime Laboratory	
569	Implied Consent Law Fund.....	25.00
570	Spinal Cord and Head Injury Trust Fund.....	25.00
571	Capital Defense Counsel Fund.....	1.89
572	Indigent Appeals Fund.....	2.29
573	Capital Post-Conviction Counsel Fund.....	2.33
574	Victims of Domestic Violence Fund.....	.49
575	State General Fund.....	35.00
576	Law Enforcement Officers and Fire Fighters Death	
577	Benefits Trust Fund.....	.50
578	Law Enforcement Officers and Fire Fighters Disability	
579	Benefits Trust Fund.....	1.00
580	State Prosecutor Compensation Fund for the purpose	
581	of providing additional compensation for legal	
582	assistants to district attorneys.....	1.50
583	Crisis Intervention Mental Health Fund.....	10.00
584	Drug Court Fund.....	10.00
585	<u>Indigent Defense Fund</u> .....	<u>10.00</u>
586	TOTAL STATE ASSESSMENT.....	\$ <u>201.50</u>

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

593	FUND	AMOUNT
594	State Court Education Fund.....	\$ 1.50

595	State Prosecutor Education Fund.....	1.00
596	Law Enforcement Officers Training Fund.....	5.00
597	Hunter Education and Training Program Fund.....	5.00
598	State General Fund.....	30.00
599	Law Enforcement Officers and Fire Fighters Death	
600	Benefits Trust Fund.....	.50
601	Law Enforcement Officers and Fire Fighters Disability	
602	Benefits Trust Fund.....	1.00
603	State Prosecutor Compensation Fund for the purpose	
604	of providing additional compensation for legal	
605	assistants to district attorneys.....	1.00
606	Crisis Intervention Mental Health Fund.....	10.00
607	Drug Court Fund.....	10.00
608	Capital Defense Counsel Fund.....	1.89
609	Indigent Appeals Fund.....	2.29
610	Capital Post-Conviction Counsel Fund.....	2.33
611	Victims of Domestic Violence Fund.....	.49
612	<u>Indigent Defense Fund</u> .....	<u>10.00</u>
613	TOTAL STATE ASSESSMENT.....	\$ <u>82.00</u>

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

619	FUND	AMOUNT
620	Statewide Litter Prevention Fund.....	\$ 25.00
621	<u>Indigent Defense Fund</u> .....	<u>10.00</u>
622	TOTAL STATE ASSESSMENT.....	\$ <u>35.00</u>

623       (5) **Other misdemeanors.** In addition to any monetary  
624 penalties and any other penalties imposed by law, there shall be  
625 imposed and collected the following state assessment from each  
626 person upon whom a court imposes a fine or other penalty for any  
627 misdemeanor violation not specified in subsection (1), (2) or (3)

628 of this section, except offenses relating to vehicular parking or  
 629 registration:

630 FUND	AMOUNT
631 Crime Victims' Compensation Fund.....	\$ 10.00
632 State Court Education Fund.....	1.50
633 State Prosecutor Education Fund.....	1.00
634 Vulnerable Adults Training, 635 Investigation and Prosecution Trust Fund.....	.50
636 Child Support Prosecution Trust Fund.....	.50
637 Law Enforcement Officers Training Fund.....	5.00
638 Capital Defense Counsel Fund.....	1.89
639 Indigent Appeals Fund.....	2.29
640 Capital Post-Conviction Counsel Fund.....	2.33
641 Victims of Domestic Violence Fund.....	.49
642 State General Fund.....	30.00
643 State Crime Stoppers Fund.....	1.50
644 Law Enforcement Officers and Fire Fighters Death 645 Benefits Trust Fund.....	.50
646 Law Enforcement Officers and Fire Fighters Disability 647 Benefits Trust Fund.....	1.00
648 State Prosecutor Compensation Fund for the purpose 649 of providing additional compensation for legal 650 assistants to district attorneys.....	1.50
651 Crisis Intervention Mental Health Fund.....	10.00
652 Drug Court Fund.....	8.00
653 Judicial Performance Fund.....	2.00
654 <u>Indigent Defense Fund</u> .....	<u>10.00</u>
655 TOTAL STATE ASSESSMENT.....	\$ <u>90.00</u>

656 (6) **Other felonies.** In addition to any monetary penalties  
 657 and any other penalties imposed by law, there shall be imposed and  
 658 collected the following state assessment from each person upon  
 659 whom a court imposes a fine or other penalty for any felony

660 violation not specified in subsection (1), (2) or (3) of this  
 661 section:

662 FUND	AMOUNT
663 Crime Victims' Compensation Fund.....	\$ 10.00
664 State Court Education Fund.....	1.50
665 State Prosecutor Education Fund.....	1.00
666 Vulnerable Adults Training,	
667       Investigation and Prosecution Trust Fund.....	.50
668 Child Support Prosecution Trust Fund.....	.50
669 Law Enforcement Officers Training Fund.....	5.00
670 Capital Defense Counsel Fund.....	1.89
671 Indigent Appeals Fund.....	2.29
672 Capital Post-Conviction Counsel Fund.....	2.33
673 Victims of Domestic Violence Fund.....	.49
674 State General Fund.....	60.00
675 Criminal Justice Fund.....	50.00
676 Law Enforcement Officers and Fire Fighters Death	
677       Benefits Trust Fund.....	.50
678 Law Enforcement Officers and Fire Fighters Disability	
679       Benefits Trust Fund.....	1.00
680 State Prosecutor Compensation Fund for the purpose	
681       of providing additional compensation for legal	
682       assistants to district attorneys.....	1.50
683 Crisis Intervention Mental Health Fund.....	10.00
684 Drug Court Fund.....	10.00
685 <u>Indigent Defense Fund</u> .....	<u>10.00</u>
686 TOTAL STATE ASSESSMENT.....	<u>\$168.50</u>

687 (7) If a fine or other penalty imposed is suspended, in  
 688 whole or in part, such suspension shall not affect the state  
 689 assessment under this section. No state assessment imposed under  
 690 the provisions of this section may be suspended or reduced by the  
 691 court.

692           (8) After a determination by the court of the amount due, it  
693 shall be the duty of the clerk of the court to promptly collect  
694 all state assessments imposed under the provisions of this  
695 section. The state assessments imposed under the provisions of  
696 this section may not be paid by personal check. It shall be the  
697 duty of the chancery clerk of each county to deposit all such  
698 state assessments collected in the circuit, county and justice  
699 courts in such county on a monthly basis with the State Treasurer  
700 pursuant to appropriate procedures established by the State  
701 Auditor. The chancery clerk shall make a monthly lump-sum deposit  
702 of the total state assessments collected in the circuit, county  
703 and justice courts in such county under this section, and shall  
704 report to the Department of Finance and Administration the total  
705 number of violations under each subsection for which state  
706 assessments were collected in the circuit, county and justice  
707 courts in such county during such month. It shall be the duty of  
708 the municipal clerk of each municipality to deposit all such state  
709 assessments collected in the municipal court in such municipality  
710 on a monthly basis with the State Treasurer pursuant to  
711 appropriate procedures established by the State Auditor. The  
712 municipal clerk shall make a monthly lump-sum deposit of the total  
713 state assessments collected in the municipal court in such  
714 municipality under this section, and shall report to the  
715 Department of Finance and Administration the total number of  
716 violations under each subsection for which state assessments were  
717 collected in the municipal court in such municipality during such  
718 month.

719           (9) It shall be the duty of the Department of Finance and  
720 Administration to deposit on a monthly basis all such state  
721 assessments into the proper special fund in the State Treasury.  
722 The monthly deposit shall be based upon the number of violations  
723 reported under each subsection and the pro rata amount of such  
724 assessment due to the appropriate special fund. The Department of

725 Finance and Administration shall issue regulations providing for  
726 the proper allocation of these special funds.

727 (10) The State Auditor shall establish by regulation  
728 procedures for refunds of state assessments, including refunds  
729 associated with assessments imposed before July 1, 1990, and  
730 refunds after appeals in which the defendant's conviction is  
731 reversed. The Auditor shall provide in such regulations for  
732 certification of eligibility for refunds and may require the  
733 defendant seeking a refund to submit a verified copy of a court  
734 order or abstract by which such defendant is entitled to a refund.  
735 All refunds of state assessments shall be made in accordance with  
736 the procedures established by the Auditor.

737 **SECTION 30.** This act shall take effect and be in force from  
738 and after July 1, 2007.