

By: Senator(s) Tollison

To: Judiciary, Division B;
Appropriations

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 2563

1 AN ACT TO CONSOLIDATE THE OFFICE OF CAPITAL DEFENSE COUNSEL,
2 THE OFFICE OF INDIGENT APPEALS, AND THE DIVISION OF PUBLIC
3 DEFENDER TRAINING INTO THE OFFICE OF STATE PUBLIC DEFENDER; TO
4 PROVIDE ADMINISTRATIVE, BUDGETING AND FINANCIAL SERVICES SUPPORT
5 TO THE OFFICE OF CAPITAL DEFENSE COUNSEL, THE OFFICE OF INDIGENT
6 APPEALS, AND THE DIVISION OF PUBLIC DEFENDER TRAINING; TO AMEND
7 SECTION 99-18-1, MISSISSIPPI CODE OF 1972, TO ACCOMPLISH THE
8 CONSOLIDATION, TO COORDINATE THE COLLECTION AND DISSEMINATION OF
9 STATISTICAL DATA RELATED TO THE INDIGENT DEFENSE SYSTEM, AND TO
10 DEVELOP PLANS AND PROPOSALS FOR A STATEWIDE PUBLIC DEFENDER SYSTEM
11 IN COORDINATION WITH THE MISSISSIPPI PUBLIC DEFENDER TASK FORCE;
12 TO AMEND SECTIONS 99-18-3, 99-18-5, 99-18-7, 99-18-9, 99-18-11,
13 99-18-13, 99-18-15, 99-18-17 AND 99-40-1, MISSISSIPPI CODE OF
14 1972, IN CONFORMITY; TO AMEND SECTION 99-39-103, MISSISSIPPI CODE
15 OF 1972, TO PROVIDE FOR THE ORGANIZATION OF THE MISSISSIPPI OFFICE
16 OF CAPITAL POST-CONVICTION COUNSEL; TO REPEAL SECTION 99-18-19,
17 MISSISSIPPI CODE OF 1972, WHICH PROVIDES THAT, UPON DETERMINATION
18 OF INDIGENCE, THE CIRCUIT COURT MAY APPOINT LOCAL COUNSEL FOR THE
19 PURPOSE OF DEFENDING DEATH-ELIGIBLE INDIGENT DEFENDANTS AT THE
20 EXPENSE OF THE CAPITAL DEFENSE COUNSEL SPECIAL FUND, AND THAT UPON
21 DETERMINATION OF LACK OF COMPETENT LOCAL COUNSEL, A STATE DEFENDER
22 MAY BE APPOINTED; AND FOR RELATED PURPOSES.

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

24 **SECTION 1.** Section 99-18-1, Mississippi Code of 1972, is
25 amended as follows:

26 99-18-1. (1) There is hereby created the Office of State
27 Public Defender. The Office of State Public Defender shall
28 consist of a State Defender who shall be appointed by the Governor
29 with the advice and consent of the Senate for a term of four (4)
30 years and staffed by any necessary personnel as determined and
31 hired by the State Defender.

32 (2) Funding for the Office of State Public Defender shall
33 come from funds available in the Capital Defense Counsel Fund, the
34 Indigent Appeals Fund and the Public Defenders Education Fund as
35 determined by the State Defender. The State Defender shall have



36 the authority to transfer funds between the various funds to
37 efficiently and effectively accomplish the mission of the Office
38 of State Public Defender and its divisions.

39 (3) The State Defender must be a duly licensed attorney
40 admitted to the practice of law in this state, have practiced in
41 the area of criminal law for at least five (5) years and shall
42 meet all qualifications to serve as lead trial and appellate
43 counsel in death penalty cases as may be set by the Supreme Court
44 of Mississippi. The salary of the State Defender shall be no
45 greater than ninety percent (90%) of the salary of the Attorney
46 General and no less than the salary of a district attorney.

47 (4) The State Defender may be removed by the Governor upon
48 finding that the State Defender is not qualified under law, has
49 failed to perform the duties of the office, or has acted beyond
50 the scope of the authority granted by law for the office.

51 (5) The Office of State Public Defender shall be responsible
52 for the administration, budget and finances of the Divisions of
53 Capital Defense Counsel, Indigent Appeals and Public Defender
54 Training, which shall be divisions of the Office of State Public
55 Defender.

56 (6) The State Defender may simultaneously serve as State
57 Defender and as director of one or more divisions but shall
58 receive no additional compensation for doing so. Nothing in this
59 act shall prohibit the State Defender from directly representing
60 clients of the office. Nothing in this act shall be construed to
61 prevent an employee of one (1) division of the Office of the State
62 Public Defender from working in part or in whole for another
63 division.

64 (7) The State Defender shall coordinate the collection and
65 dissemination of statistical data and make such reports as are
66 required of the divisions, develop plans and proposals for further
67 development of a statewide public defender system in coordination
68 with the Mississippi Public Defenders Task Force and to act as



69 spokesperson for all matters relating to indigent defense
70 representation.

71 **SECTION 2.** Section 99-18-3, Mississippi Code of 1972, is
72 amended as follows:

73 99-18-3. There is hereby created the * * * Capital Defense
74 Counsel Division within the Office of the State Public Defender.
75 This office shall consist of a director, sometimes referred to as
76 Capital Defender, who shall be an attorney qualified to serve as
77 lead counsel in death penalty eligible cases and staffed by any
78 necessary personnel as determined and hired by the State Defender.
79 The Capital Defender shall be appointed by the State
80 Defender * * *. The remaining attorneys and other staff shall be
81 appointed by the State Defender and shall serve at the will and
82 pleasure of the State Defender. The Capital Defender and all
83 other attorneys in the office shall be active members of The
84 Mississippi Bar, or, if a member in good standing of the bar of
85 another jurisdiction, must apply to and secure admission to The
86 Mississippi Bar within twelve (12) months of the commencement of
87 the person's employment by the office. The Capital Defender may
88 be removed by the State Defender upon finding that the Capital
89 Defender is not qualified under law, has failed to perform the
90 duties of the office, or has acted beyond the scope of the
91 authority granted by law for the office.

92 **SECTION 3.** Section 99-18-5, Mississippi Code of 1972, is
93 amended as follows:

94 99-18-5. The * * * Capital Defense Counsel Division is
95 created within the Office of the State Public Defender for the
96 purpose of providing representation to indigent parties under
97 indictment for death penalty eligible offenses and to perform such
98 other duties as set forth by law.

99 **SECTION 4.** Section 99-18-7, Mississippi Code of 1972, is
100 amended as follows:



101 99-18-7. The * * * Capital Defense Counsel Division shall
102 limit its activities to representation of defendants accused of
103 death-eligible offenses and ancillary matters related directly to
104 death-eligible offenses and other activities expressly authorized
105 by statute. Representation by the division or by other
106 court-appointed counsel under this chapter shall terminate upon
107 completion of trial * * * or direct appeal. The attorneys
108 appointed to serve in the * * * Capital Defense Counsel Division
109 shall devote their entire time to the duties of the division,
110 shall not represent any persons in other litigation, civil or
111 criminal, nor in any other way engage in the practice of law, and
112 shall in no manner, directly or indirectly, engage in lobbying
113 activities for or against the death penalty. Any violation of
114 this provision shall be grounds for termination from
115 employment * * * by the State Defender * * *.

116 **SECTION 5.** Section 99-18-9, Mississippi Code of 1972, is
117 amended as follows:

118 99-18-9. The Capital Defense Director appointed under this
119 chapter shall be compensated at no more than the maximum amount
120 allowed by statute for a district attorney, and other attorneys in
121 the office shall be compensated at no more than the maximum amount
122 allowed by statute for an assistant district attorney.

123 **SECTION 6.** Section 99-18-11, Mississippi Code of 1972, is
124 amended as follows:

125 99-18-11. The * * * Capital Defense Counsel Division
126 shall * * * be open Monday through Friday for not less than eight
127 (8) hours each day and observe such holidays and closings as
128 prescribed by statute.

129 **SECTION 7.** Section 99-18-13, Mississippi Code of 1972, is
130 amended as follows:

131 99-18-13. * * * The State Defender is hereby empowered to
132 pay and disburse salaries, employment benefits and charges
133 relating to employment of division staff and to establish their



134 salaries and expenses of the office; to incur and pay travel
135 expenses of staff necessary for the performance of the duties of
136 the office; to rent or lease on such terms as he may think proper
137 such office space as is necessary in the City of Jackson to
138 accommodate the staff; to enter into and perform contracts and to
139 purchase such necessary office supplies and equipment as may be
140 needed for the proper administration of said offices within the
141 funds appropriated for such purpose; and to incur and pay such
142 other expenses as are appropriate and customary to the operation
143 of the office.

144 **SECTION 8.** Section 99-18-15, Mississippi Code of 1972, is
145 amended as follows:

146 99-18-15. The Capital Defense Director shall keep a docket
147 of all indicted death-eligible cases originating in the courts of
148 Mississippi which must, at all reasonable times, be open to
149 inspection by the public and must show the county, district and
150 court in which the cause is pending. The director shall prepare
151 and maintain a roster of all death penalty cases in the courts of
152 Mississippi indicating the current status of each case and submit
153 this report to the Governor, Chief Justice of the Supreme Court
154 and the Administrative Office of * * * Courts monthly. The
155 director shall also report monthly to the Administrative Office of
156 Courts the activities, receipts and expenditures of the office.

157 **SECTION 9.** Section 99-18-17, Mississippi Code of 1972, is
158 amended as follows:

159 99-18-17. (1) If at any time during the representation of
160 two (2) or more defendants, the State Defender determines that the
161 interests of those persons are so adverse or hostile they cannot
162 all be represented by the * * * staff of the Capital Counsel
163 Division without conflict of interest, or if the State
164 Defender * * * determines that the volume or number of
165 representations shall so require, the State Defender, in his sole
166 discretion, notwithstanding any statute or regulation to the



167 contrary, shall be authorized to employ qualified private counsel.
168 Fees and expenses approved by order of the court of original
169 jurisdiction, including investigative and expert witness expenses
170 of such private counsel, shall be paid by funds appropriated to
171 the Capital Defense Counsel Fund for this purpose.

172 (2) There is created in the State Treasury a special fund to
173 be known as the Capital Defense Counsel Fund. The purpose of the
174 fund shall be to provide funding for the * * * Capital Defense
175 Counsel Division. Monies from the funds derived from assessments
176 under Section 99-19-73 shall be distributed by the State Treasurer
177 upon warrants issued by the State Defender. The fund shall be a
178 continuing fund, not subject to fiscal-year limitations, and shall
179 consist of:

- 180 (a) Monies appropriated by the Legislature for the
181 purposes of funding the Capital Defense Counsel Division;
- 182 (b) The interest accruing to the fund;
- 183 (c) Monies received under the provisions of Section
184 99-19-73;
- 185 (d) Monies received from the federal government;
- 186 (e) Donations; and
- 187 (f) Monies received from such other sources as may be
188 provided by law.

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

191 99-40-1. (1) There is created the * * * Indigent Appeals
192 Division within the Office of the State Public Defender. This
193 office shall consist of the Indigent Appeals Director who must be
194 an attorney in good standing with The Mississippi Bar, and staffed
195 by any necessary personnel as determined and hired by the State
196 Defender. The Indigent Appeals Director shall be appointed by the
197 State Defender * * *. The remaining attorneys and other staff
198 shall be appointed by the State Defender and shall serve at the
199 will and pleasure of the State Defender. The Indigent Appeals



200 Director and all other attorneys in the office shall either be
201 active members of The Mississippi Bar, or, if a member in good
202 standing of the bar of another jurisdiction, must apply to and
203 secure admission to The Mississippi Bar within twelve (12) months
204 of the commencement of the person's employment by the office. The
205 attorneys in the office shall practice law exclusively for the
206 office and shall not engage in any other practice. The office
207 shall not engage in any litigation other than that related to the
208 office. The salary for the Indigent Appeals Director shall be
209 equivalent to the salary of district attorneys and the salary of
210 the other attorneys in the office shall be equivalent to the
211 salary of an assistant district attorney.

212 (2) The office shall provide representation on appeal for
213 indigent persons convicted of felonies but not under sentences of
214 death. Representation shall be provided by staff attorneys, or,
215 in the case of conflict or excessive workload as determined by the
216 State Defender, by attorneys selected, employed and compensated by
217 the office on a contract basis. All fees charged by contract
218 counsel and expenses incurred by attorneys in the office and
219 contract counsel must be approved by the court. At the sole
220 discretion of the State Defender, the office may also represent
221 indigent juveniles adjudicated delinquent on appeals from a county
222 court or chancery court to the Mississippi Supreme Court * * * or
223 the Mississippi Court of Appeals. The office shall provide
224 advice, education and support to attorneys representing persons
225 under felony charges in the trial courts.

226 (3) There is created in the State Treasury a special fund to
227 be known as the Indigent Appeals Fund. The purpose of the fund
228 shall be to provide funding for the * * * Indigent Appeals
229 Division. Monies from the funds derived from assessments under
230 Section 99-19-73 shall be distributed by the State Treasurer upon
231 warrants issued by the State Defender. The fund shall be a



232 continuing fund, not subject to fiscal-year limitations, and shall
233 consist of:

234 (a) Monies appropriated by the Legislature for the
235 purposes of funding the * * * Indigent Appeals Division;

236 (b) The interest accruing to the fund;

237 (c) Monies received under the provisions of Section
238 99-19-73;

239 (d) Monies received from the federal government;

240 (e) Donations; and

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

243 (4) (a) There is created in the Office of the State Public
244 Defender the * * * Public Defender Training Division. The
245 division shall be staffed by any necessary personnel as determined
246 and hired by the State Defender. The mission of the division
247 shall be to work closely with the Mississippi Public Defenders
248 Association to provide training and services to public defenders
249 practicing in all state, county and municipal courts. These
250 services shall include, but not be limited to, continuing legal
251 education, case updates and legal research. The division shall
252 provide (i) education and training for public defenders practicing
253 in all state, county, municipal and youth courts; (ii) technical
254 assistance for public defenders practicing in all state, county,
255 municipal and youth courts; and (iii) current and accurate
256 information for the Legislature pertaining to the needs of public
257 defenders practicing in all state, county, municipal and youth
258 courts.

259 (b) There is created in the State Treasury a special
260 fund to be known as the Public Defenders Education Fund. The
261 purpose of the fund shall be to provide funding for the training
262 of public defenders. Monies from the funds derived from
263 assessments under Section 99-19-73 shall be distributed by the
264 State Treasurer upon warrants issued by the State Defender. The



265 fund shall be a continuing fund, not subject to fiscal-year
266 limitations, and shall consist of:

267 (i) Monies appropriated by the Legislature for the
268 purposes of public defender training;

269 (ii) The interest accruing to the fund;

270 (iii) Monies received under the provisions of
271 Section 99-19-73;

272 (iv) Monies received from the federal government;

273 (v) Donations; and

274 (vi) Monies received from such other sources as
275 may be provided by law.

276 **SECTION 11.** Section 99-39-103, Mississippi Code of 1972, is
277 amended as follows:

278 99-39-103. There is created the Mississippi Office of
279 Capital Post-Conviction Counsel. This office shall consist of a
280 director who shall be an attorney who shall meet all
281 qualifications necessary to serve as post-conviction counsel for
282 persons under a sentence of death and staffed by any necessary
283 personnel as determined and hired by the director. The director
284 shall be appointed by the Governor with the advice and consent of
285 the Senate for a term of four (4) years, or until a successor
286 takes office. The remaining attorneys and other staff shall be
287 appointed by the director of the office and shall serve at the
288 will and pleasure of the director. The director and all other
289 attorneys in the office shall either be active members of The
290 Mississippi Bar, or, if a member in good standing of the bar of
291 another jurisdiction, must apply to and secure admission to The
292 Mississippi Bar within twelve (12) months of the commencement of
293 the person's employment by the office. * * * The director may be
294 removed from office by the Governor upon finding that the director
295 is not qualified under law to serve as post-conviction counsel for
296 persons under sentences of death, has failed to perform the duties



297 of the office or has acted beyond the scope of the authority
298 granted by law for the office.

299 **SECTION 12.** Notwithstanding any other provision of this act,
300 it is the intent of the Legislature that the Directors of the
301 Mississippi Office of Capital Defense Counsel, the Mississippi
302 Office of Indigent Appeals and the Division of Public Defender
303 Training holding those offices as of the effective date of this
304 act shall continue as the directors of their respective offices or
305 division for the term to which appointed unless terminated for
306 cause, but that any vacancies in the office of division director
307 on or after the effective date of this act shall be filled as
308 provided in Sections 99-18-3 and 99-40-1, as amended by this act.

309 **SECTION 13.** Section 99-18-19, Mississippi Code of 1972,
310 which provides that, upon determination of indigence, the circuit
311 court may appoint local counsel for the purpose of defending
312 death-eligible indigent defendants at the expense of the Capital
313 Defense Counsel Special Fund, and that upon determination of lack
314 of competent local counsel a State Defender may be appointed, is
315 repealed.

316 **SECTION 14.** This act shall take effect and be in force from
317 and after July 1, 2011.

