

By: Representatives Karriem, Taylor

To: Judiciary B

HOUSE BILL NO. 1321

1 AN ACT TO AMEND SECTIONS 25-31-21 AND 99-3-28, MISSISSIPPI  
2 CODE OF 1972, TO PROVIDE A PROCEDURE FOR APPOINTMENT OF AN  
3 ATTORNEY WHEN THE DISTRICT ATTORNEY IS ABSENT OR UNABLE TO PERFORM  
4 THE DUTIES OF HIS OR HER OFFICE; AND FOR RELATED PURPOSES.

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

6 **SECTION 1.** Section 25-31-21, Mississippi Code of 1972, is  
7 amended as follows:

8 25-31-21. If, at the time of impaneling the grand jury in  
9 any circuit court, the district attorney be absent or unable to  
10 perform his or her duties or, if after impaneling of the grand  
11 jury, the district attorney be absent or unable to perform his or  
12 her duties or be disqualified, the court shall forthwith appoint  
13 some attorney at law to act for the state in the place of the  
14 district attorney during his absence or inability or  
15 disqualification, and the person appointed shall have the power to  
16 discharge all the duties of the office during the absence or  
17 inability or disqualification of the district attorney, and shall  
18 receive a reasonable compensation for his services, to be allowed  
19 by the court and certified to the auditor, who shall issue his or



20 her warrant therefor. Such allowance shall be deducted from the  
21 salary of the district attorney, and shall not exceed the amount  
22 of the salary of the district attorney for the number of days  
23 allotted by law for the term of the court at which such appointees  
24 shall act. If the term of office ends for the district attorney  
25 who is determined by the court to be absent or unable to perform  
26 his or her duties of the office, the court shall authorize the  
27 newly elected district attorney to perform all necessary duties of  
28 such office as provided by Sections 23-15-883 and 23-15-843,  
29 Mississippi Code of 1972.

30 (2) The court on its own motion, or an interested person in  
31 a cause or proceeding, civil or criminal, may file a petition  
32 alleging that the district attorney is sick, absent, or unable to  
33 fulfill his or her duties. The court shall consider the petition,  
34 any documents filed in response, and if necessary, grant a hearing  
35 to determine whether the district attorney is sick, absent, or  
36 otherwise unable to fulfill his or her duties. If the court finds  
37 that the district attorney is sick, absent, or otherwise unable to  
38 fulfill his or her duties, the court may appoint an attorney to  
39 prosecute or defend the cause or proceeding.

40 (3) (a) The court on its own motion, or an interested  
41 person in a cause or proceeding, civil or criminal, may file a  
42 petition alleging that the district attorney has an actual  
43 conflict of interest in the cause or proceeding. The court shall  
44 consider the petition, any documents filed in response, and if



45 necessary, grant a hearing to determine whether the district  
46 attorney has an actual conflict of interest in the cause or  
47 proceeding. If the court finds that the petitioner has proven by  
48 sufficient facts and evidence that the district attorney has an  
49 actual conflict of interest in a specific case, the court may  
50 appoint an attorney to prosecute or defend the cause or  
51 proceeding.

52 (b) An actual conflict of interest is presumed in lieu  
53 of a filed petition in cases relating to the death of a person  
54 caused by a law enforcement officer while in the performance of  
55 official duties. In such cases, the court shall consider the  
56 petition, any documents filed in response, and if necessary, grant  
57 a hearing to determine whether the district attorney has an actual  
58 conflict of interest in the cause or proceeding.

59 (4) Any district attorney may file a petition to recuse  
60 himself or herself from a cause or proceeding for any other reason  
61 he or she deems appropriate and the court shall appoint a special  
62 prosecutor as provided in this act.

63 (5) Before any private attorney is appointed by the court  
64 for purposes of this act, the court shall contact the Office of  
65 Attorney General, Administrative Office of the Courts, or a local  
66 district attorney to determine the availability of an attorney  
67 employed by such agency. An attorney so appointed shall have the  
68 same power and authority in relation to the cause or proceeding as  
69 the district attorney would.



70           (6) An order granting authority to a special prosecutor must  
71 be construed strictly and narrowly by the court. The power and  
72 authority of a special prosecutor shall not be expanded without  
73 prior notice.

74           **SECTION 2.** Section 99-3-28, Mississippi Code of 1972, is  
75 amended as follows:

76           99-3-28. (1) (a) Except as provided in subsection (2) of  
77 this section, before an arrest warrant shall be issued against any  
78 teacher who is a licensed public school employee as defined in  
79 Section 37-9-1, a certified jail officer as defined in Section  
80 45-4-9, a counselor at an adolescent opportunity program created  
81 under Section 43-27-201 et seq., or a sworn law enforcement  
82 officer within this state as defined in Section 45-6-3 for a  
83 criminal act, whether misdemeanor or felony, which is alleged to  
84 have occurred while the teacher, jail officer, counselor at an  
85 adolescent opportunity program or law enforcement officer was in  
86 the performance of official duties, a probable cause hearing shall  
87 be held before a circuit court judge. The purpose of the hearing  
88 shall be to determine if adequate probable cause exists for the  
89 issuance of a warrant. All parties testifying in these  
90 proceedings shall do so under oath. The accused shall have the  
91 right to enter an appearance at the hearing, represented by legal  
92 counsel at his own expense, to hear the accusations and evidence  
93 against him or her; he or she may present evidence or testify in  
94 his or her own behalf.



95           (b) The authority receiving any such charge or  
96 complaint against a teacher, jail officer, counselor at an  
97 adolescent offender program or law enforcement officer shall  
98 immediately present same to the county prosecuting attorney having  
99 jurisdiction who shall immediately present the charge or complaint  
100 to a circuit judge in the judicial district where the action arose  
101 for disposition pursuant to this section. In cases relating to  
102 the death of a person caused by a law enforcement officer while in  
103 performance of official duties, a special prosecutor, appointed by  
104 the court having jurisdiction, shall have the authority normally  
105 vested to the county prosecuting attorney in such dispositions.

106           (2) Nothing in this section shall prohibit the issuance of  
107 an arrest warrant by a circuit court judge upon presentation of  
108 probable cause, without the holding of a probable cause hearing,  
109 if adequate evidence is presented to satisfy the court that there  
110 is a significant risk that the accused will flee the court's  
111 jurisdiction or that the accused poses a threat to the safety or  
112 well-being of the public.

113           **SECTION 3.** This act shall take effect and be in force from  
114 and after July 1, 2018.

