

By: Senator(s) Bryan

To: Judiciary, Division B;
Appropriations

SENATE BILL NO. 2755

1 AN ACT TO AMEND SECTION 25-32-71, MISSISSIPPI CODE OF 1972,
2 TO EXTEND THE SUNSET PROVISION FOR THE PUBLIC DEFENDER TASK FORCE;
3 TO AMEND SECTION 99-18-1, MISSISSIPPI CODE OF 1972, TO REMOVE
4 REFERENCES TO THE CAPITAL DEFENSE COUNSEL FUND, WHICH NO LONGER
5 EXISTS; TO AMEND SECTION 99-18-17, MISSISSIPPI CODE OF 1972, TO
6 REMOVE REFERENCES TO THE CAPITAL DEFENSE COUNSEL FUND, WHICH NO
7 LONGER EXISTS, AND TO REMOVE THE LANGUAGE OSTENSIBLY CREATING THAT
8 FUND; TO CREATE NEW SECTION 99-18-21, MISSISSIPPI CODE OF 1972, TO
9 CODIFY AND REENACT LANGUAGE CREATING THE INDIGENT APPEALS
10 DIVISION, PROVIDING FOR THE DIRECTOR AND STAFF THEREOF, AND THE
11 COMPENSATION AND DUTIES OF THE DIRECTOR AND STAFF; TO REPEAL
12 SECTION 99-40-1, MISSISSIPPI CODE OF 1972, WHICH PROVIDES FOR THE
13 DIRECTOR AND STAFF AND FOR THE COMPENSATION AND DUTIES OF THE
14 DIRECTOR AND STAFF, CREATES THE INDIGENT APPEALS FUND, CREATES THE
15 PUBLIC DEFENDER TRAINING DIVISION, AND CREATES THE PUBLIC
16 DEFENDERS EDUCATION FUND; AND FOR RELATED PURPOSES.

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

18 **SECTION 1.** Section 25-32-71, Mississippi Code of 1972, is
19 amended as follows:

20 25-32-71. (1) There is created the Mississippi Public
21 Defender Task Force which shall be composed of thirteen (13)
22 members as follows:

23 (a) The President of the Mississippi Public Defender
24 Association, or his designee;



(b) The President of the Mississippi Prosecutors Association, or his designee;

(c) A representative of the Administrative Office of Courts;

(d) A representative of the Mississippi Supreme Court;

(e) A representative of the Conference of Circuit Judges;

(f) A representative of the Mississippi Attorney General's Office;

(g) A representative of the Mississippi Association of Supervisors;

(h) A representative of The Mississippi Bar;

(i) A representative of the Magnolia Bar Association;

(j) The Chairman of the Senate Judiciary Committee, Division B, or his designee;

(k) The Chairman of the Senate Appropriations Committee, or his designee;

(l) The Chairman of the House Judiciary En Banc Committee, or his designee;

(m) The Chairman of the House Appropriations Committee, or his designee.

(2) At its first meeting, the task force shall elect a chairman and vice chairman from its membership and shall adopt rules for transacting its business and keeping records. Members of the task force shall receive a per diem in the amount provided



in Section 25-3-69 for each day engaged in the business of the task force. Members of the task force other than the legislative members shall receive reimbursement for travel expenses incurred while engaged in official business of the task force in accordance with Section 25-3-41 and the legislative members of the task force shall receive the expense allowance provided for in Section 5-1-47.

(3) The duties of the task force shall be to:

(a) Make a comprehensive study of the needs by circuit court districts for state-supported indigent defense counsel to examine existing public defender programs, including indigent defense provided in the youth courts. Reports shall be provided to the Legislature each year at least one (1) month before the convening of the regular session.

(b) Examine and study approaches taken by other states in the implementation and costs of state-supported indigent criminal and delinquency cases.

(c) To study the relationship between presiding circuit and youth court judges and the appointment of criminal and delinquency indigent defense counsel.

(4) This section shall stand repealed on July 1, * * * 2023.

SECTION 2. Section 99-18-1, Mississippi Code of 1972, is amended as follows:

99-18-1. (1) There is hereby created the Office of State Public Defender. The Office of State Public Defender shall



75 consist of a State Defender who shall be appointed by the Governor
76 with the advice and consent of the Senate for a term of four (4)
77 years and staffed by any necessary personnel as determined and
78 hired by the State Defender.

79 * * *

80 (* * *2) The State Defender must be a duly licensed
81 attorney admitted to the practice of law in this state, have
82 practiced in the area of criminal law for at least five (5) years
83 and shall meet all qualifications to serve as lead trial and
84 appellate counsel in death penalty cases as may be set by the
85 Supreme Court of Mississippi. The salary of the State Defender
86 shall be no more than the maximum amount allowed by statute for a
87 district attorney.

88 (* * *3) The State Defender may be removed by the Governor
89 upon finding that the State Defender is not qualified under law,
90 has failed to perform the duties of the office, or has acted
91 beyond the scope of the authority granted by law for the office.

92 (* * *4) The Office of State Public Defender shall be
93 responsible for the administration, budget and finances of the
94 Divisions of Capital Defense Counsel, Indigent Appeals and Public
95 Defender Training, which shall be divisions of the Office of State
96 Public Defender.

97 (* * *5) The State Defender may simultaneously serve as
98 State Defender and as director of one or more divisions but shall
99 receive no additional compensation for doing so. Nothing in this



chapter shall prohibit the State Defender from directly representing clients of the office. Nothing in this chapter shall be construed to prevent an employee of one (1) division of the Office of the State Public Defender from working, in whole or in part, for another division.

(* * *6) The State Defender shall coordinate the collection and dissemination of statistical data and make such reports as are required of the divisions, develop plans and proposals for further development of a statewide public defender system in coordination with the Mississippi Public Defenders Task Force and to act as spokesperson for all matters relating to indigent defense representation.

(* * *7) From and after July 1, 2016, the expenses of this agency shall be defrayed by appropriation from the State General Fund and all user charges and fees authorized under this section shall be deposited into the State General Fund as authorized by law.

(* * *8) From and after July 1, 2016, no state agency shall charge another state agency a fee, assessment, rent or other charge for services or resources received by authority of this section.

SECTION 3. Section 99-18-17, Mississippi Code of 1972, is amended as follows:

99-18-17. * * * If at any time during the representation of two (2) or more defendants, the State Defender determines that the



interests of those persons are so adverse or hostile they cannot all be represented by the staff of the Capital Counsel Division without conflict of interest, or if the State Defender determines that the volume or number of representations shall so require, the State Defender, in his sole discretion, notwithstanding any statute or regulation to the contrary, shall be authorized to employ qualified private counsel. Fees and expenses approved by order of the court of original jurisdiction, including investigative and expert witness expenses of such private counsel, shall be paid by funds appropriated * * * for this purpose.

* * *

SECTION 4. The following shall be codified as Section 99-18-21, Mississippi Code of 1972:

99-18-21. (1) There is created the Indigent Appeals Division within the Office of the State Public Defender. This office shall consist of the Indigent Appeals Director who must be an attorney in good standing with The Mississippi Bar, and staffed by any necessary personnel as determined and hired by the State Defender. The Indigent Appeals Director shall be appointed by the State Defender. The remaining attorneys and other staff shall be appointed by the State Defender and shall serve at the will and pleasure of the State Defender. The Indigent Appeals Director and all other attorneys in the office shall either be active members of The Mississippi Bar, or, if a member in good standing of the bar of another jurisdiction, must apply to and secure admission to



150 The Mississippi Bar within twelve (12) months of the commencement
151 of the person's employment by the office. The attorneys in the
152 office shall practice law exclusively for the office and shall not
153 engage in any other practice. The office shall not engage in any
154 litigation other than that related to the office. The salary for
155 the Indigent Appeals Director shall be equivalent to the salary of
156 district attorneys and the salary of the other attorneys in the
157 office shall be equivalent to the salary of an assistant district
158 attorney.

159 (2) The office shall provide representation on appeal for
160 indigent persons convicted of felonies but not under sentences of
161 death. Representation shall be provided by staff attorneys, or,
162 in the case of conflict or excessive workload as determined by the
163 State Defender, by attorneys selected, employed and compensated by
164 the office on a contract basis. All fees charged by contract
165 counsel and expenses incurred by attorneys in the office and
166 contract counsel must be approved by the court. At the sole
167 discretion of the State Defender, the office may also represent
168 indigent juveniles adjudicated delinquent on appeals from a county
169 court or chancery court to the Mississippi Supreme Court or the
170 Mississippi Court of Appeals. The office shall provide advice,
171 education and support to attorneys representing persons under
172 felony charges in the trial courts.

173 (3) There is created in the Office of the State Public
174 Defender the Public Defender Training Division. The division



shall be staffed by any necessary personnel as determined and hired by the State Defender. The mission of the division shall be to work closely with the Mississippi Public Defenders Association to provide training and services to public defenders practicing in all state, county and municipal courts. These services shall include, but not be limited to, continuing legal education, case updates and legal research. The division shall provide (a) education and training for public defenders practicing in all state, county, municipal and youth courts; (b) technical assistance for public defenders practicing in all state, county, municipal and youth courts; and (c) current and accurate information for the Legislature pertaining to the needs of public defenders practicing in all state, county, municipal and youth courts.

SECTION 5. Section 99-40-1, Mississippi Code of 1972, which creates the Indigent Appeals Division, provides for the director and staff and for the compensation and duties of the director and staff, creates the Indigent Appeals Fund, creates the Public Defender Training Division, and creates the Public Defenders Education Fund, is repealed.

SECTION 6. This act shall take effect and be in force from and after July 1, 2018.

