

By: Representative Bain

To: Judiciary B

HOUSE BILL NO. 293

1 AN ACT TO CREATE SECTION 99-18-21, MISSISSIPPI CODE OF 1972,
2 TO CREATE THE INDIGENT APPEALS DIVISION WITHIN THE OFFICE OF THE
3 STATE PUBLIC DEFENDER; TO CREATE SECTION 99-18-23, MISSISSIPPI
4 CODE OF 1972, TO CREATE THE OFFICE OF THE STATE PUBLIC DEFENDER
5 TRAINING DIVISION WITHIN THE OFFICE OF THE STATE PUBLIC DEFENDER;
6 TO AMEND SECTION 99-18-1, MISSISSIPPI CODE OF 1972, TO REVISE THE
7 BUDGET TRANSPARENCY AND SIMPLIFICATION ACT; TO AMEND
8 QUALIFICATIONS OF THE STATE PUBLIC DEFENDER; TO AMEND SECTION
9 99-18-13, MISSISSIPPI CODE OF 1972, TO REVISE THE CONSOLIDATION OF
10 PROGRAMS; TO AMEND SECTION 99-18-17, MISSISSIPPI CODE OF 1972, TO
11 CONFORM TO THE PRECEDING SECTION; TO AMEND SECTION 43-21-203,
12 MISSISSIPPI CODE OF 1972, TO PROVIDE FOR THE OFFICE OF THE STATE
13 PUBLIC DEFENDER ACCESS TO YOUTH COURTS; TO AMEND SECTION
14 43-21-261, MISSISSIPPI CODE OF 1972, TO ALLOW THE OFFICE OF STATE
15 PUBLIC DEFENDER ACCESS TO MYCIDS DATABASE; TO REPEAL SECTION
16 99-40-1, MISSISSIPPI CODE OF 1972, WHICH PROVIDES FOR THE INDIGENT
17 APPEALS OFFICE; AND FOR RELATED PURPOSES.

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

19 **SECTION 1.** The following shall be codified as Section
20 99-18-21, Mississippi Code of 1972:

21 99-18-21. **Indigent Appeals Division created; director and**
22 **staff; compensation; duties.** (1) There is created the Indigent
23 Appeals Division within the Office of the State Public Defender.
24 This office shall consist of the Indigent Appeals Director, who
25 must be an attorney in good standing with The Mississippi Bar, and



26 staffed by any necessary personnel as determined and hired by the
27 State Defender. The Indigent Appeals Director shall be appointed
28 by the State Defender. The remaining attorneys and other staff
29 shall be appointed by the State Defender and shall serve at the
30 will and pleasure of the State Defender. Attorneys in the office
31 shall be active members of The Mississippi Bar. The attorneys in
32 the office shall practice law exclusively for the office and shall
33 not engage in any other practice. The office shall not engage in
34 any litigation other than that related to the office. The
35 Indigent Appeals Director shall be compensated at no more than the
36 State Defender, and other attorneys in the office shall be
37 compensated at no more than the maximum amount allowed by statute
38 for an assistant district attorney with comparable years of
39 practice experience.

40 (2) The office shall provide representation on appeal for
41 indigent persons convicted of felonies and indigent juveniles
42 adjudicated delinquent in youth court. The office may provide
43 advice and assistance to attorneys representing persons under
44 felony charges in the trial courts and juveniles in youth court
45 delinquency proceedings.

46 **SECTION 2.** The following shall be codified as Section
47 99-18-23, Mississippi Code of 1972:

48 99-18-23. There is created in the Office of the State Public
49 Defender the Public Defender Training Division. The division
50 shall be staffed by any necessary personnel as determined and



51 hired by the State Defender. The mission of the division shall be
52 to work closely with the Mississippi Public Defenders Association
53 to provide training and services to public defenders practicing in
54 all state, county and municipal courts. These services shall
55 include, but not be limited to, continuing legal education, case
56 updates and legal research. The division shall provide (i)
57 education and training for public defenders practicing in all
58 state, county, municipal and youth courts; (ii) technical
59 assistance for public defenders practicing in all state, county,
60 municipal and youth courts; and (iii) current and accurate
61 information for the Legislature pertaining to the needs of public
62 defenders practicing in all state, county, municipal and youth
63 courts.

64 **SECTION 3.** Section 99-18-1, Mississippi Code of 1972, is
65 amended as follows:

66 99-18-1. (1) There is hereby created the Office of State
67 Public Defender. The Office of State Public Defender shall
68 consist of a State Defender who shall be appointed by the Governor
69 with the advice and consent of the Senate for a term of four (4)
70 years and staffed by any necessary personnel as determined and
71 hired by the State Defender.

72 * * * ~~(2) Funding for the Office of State Public Defender shall~~
73 ~~come from funds available in the Capital Defense Counsel Fund, the~~
74 ~~Indigent Appeals Fund and the Public Defenders Education Fund as~~
75 ~~determined by the State Defender. The State Defender shall have~~



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

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

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

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

(* * *65) The State Defender may simultaneously serve as State Defender and as director of one or more divisions but shall 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.

(* * *76) 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.

(* * *87) 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.

(* * *98) 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 4. Section 99-18-13, Mississippi Code of 1972, is amended as follows:

99-18-13. (1) The State Defender is hereby empowered to pay and disburse salaries, employment benefits and charges relating to employment of division staff and to establish their salaries and expenses of the office; to incur and pay travel expenses of staff



necessary for the performance of the duties of the office; to rent or lease on such terms as he may think proper such office space as is necessary in the City of Jackson to accommodate the staff; to enter into and perform contracts and to purchase such necessary office supplies and equipment as may be needed for the proper administration of said offices within the funds appropriated for such purpose; and to incur and pay such other expenses as are appropriate and customary to the operation of the office. The State Defender is further authorized to solicit and accept monies, gifts, grants or services from any public or private source, for the purpose of funding, operating and executing the duties of the office.

(2) The State Defender may represent indigent persons in criminal or youth court matters where the person has a constitutional right to appointed counsel and provide representation to parents or guardians who have been determined * * *by the youth court judge to be indigent and in need of representation in an abuse, neglect or termination of parental rights proceeding or appeal therefrom. In determining whether a person is indigent the agency shall substantially follow the procedure set forth in Section 99-19-20.1(1).

(3) Representation may be provided by staff or contract counsel including, but not limited to, by contract with legal services organizations and/or county public defender programs.



150 **SECTION 5.** Section 99-18-17, Mississippi Code of 1972, is
151 amended as follows:

152 99-18-17. * * *~~(1)~~ If at any time during the representation
153 of two (2) or more defendants, the State Defender determines that
154 the interests of those persons are so adverse or hostile they
155 cannot all be represented by the staff of the Capital Counsel
156 Division without conflict of interest, or if the State Defender
157 determines that the volume or number of representations shall so
158 require, the State Defender, in his sole discretion,
159 notwithstanding any statute or regulation to the contrary, shall
160 be authorized to employ qualified private counsel. Fees and
161 expenses approved by order of the court of original jurisdiction,
162 including investigative and expert witness expenses of such
163 private counsel, shall be paid by funds appropriated to the
164 Capital Defense Counsel Fund for this purpose.

165 * * * ~~— (2) There is created in the State Treasury a special~~
166 ~~fund to be known as the Capital Defense Counsel Fund. The purpose~~
167 ~~of the fund shall be to provide funding for the Capital Defense~~
168 ~~Counsel Division. Monies from the funds derived from assessments~~
169 ~~under Section 99-19-73 shall be distributed by the State Treasurer~~
170 ~~upon warrants issued by the State Defender. The fund shall be a~~
171 ~~continuing fund, not subject to fiscal-year limitations, and shall~~
172 ~~consist of:~~

173 ~~— (a) Monies appropriated by the Legislature for the~~
174 ~~purposes of funding the Capital Defense Counsel Division;~~



~~(b) The interest accruing to the fund;~~
~~(c) Monies received under the provisions of Section~~
~~99-19-73;~~
~~(d) Monies received from the federal government;~~
~~(e) Donations; and~~
~~(f) Monies received from such other sources as may be~~
~~provided by law.~~

SECTION 6. Section 43-21-203, Mississippi Code of 1972, is amended as follows:

43-21-203. (1) The youth court shall be in session at all times.

(2) All cases involving children shall be heard at any place the judge deems suitable but separately from the trial of cases involving adults.

(3) Hearings in all cases involving children shall be conducted without a jury and may be recessed from time to time.

(4) All hearings shall be conducted under such rules of evidence and rules of court as may comply with applicable constitutional standards.

(5) No proceeding by the youth court in cases involving children shall be a criminal proceeding but shall be entirely of a civil nature.

(6) The general public shall be excluded from the hearing, and only those persons shall be admitted who are found by the youth court to have a direct interest in the cause or work of the



youth court. Any person found by the youth court to have a direct interest in the cause shall have the right to appear and be represented by legal counsel. To facilitate the mandates of Sections 43-21-201(3) and 99-18-13(2), all youth courts shall grant access to the Office of State Public Defender upon the representatives execution of a confidentiality oath as may be prescribed by the state supreme court.

(7) In all hearings, a complete record of all evidence shall be taken by stenographic reporting, by mechanical or electronic device or by some combination thereof.

(8) The youth court may exclude the attendance of a child from a hearing in neglect and abuse cases with consent of the child's counsel. The youth court may exclude the attendance of a child from any portion of a disposition hearing that would be injurious to the best interest of the child in delinquency and children in need of supervision cases with consent of the child's counsel.

(9) All parties to a youth court cause shall have the right at any hearing in which an investigation, record or report is admitted in evidence:

(a) To subpoena, confront and examine the person who prepared or furnished data for the report; and

(b) To introduce evidence controverting the contents of the report.



(10) Except as provided by Section 43-21-561(5) or as otherwise provided by this chapter, the disposition of a child's cause or any evidence given in the youth court in any proceedings concerning the child shall not be admissible against the child in any case or proceeding in any court other than a youth court.

(11) An order or ruling of the youth court judge delivered orally must be reduced to writing within forty-eight (48) hours, excluding Saturdays, Sundays and statutory state holidays.

SECTION 7. Section 43-21-261, Mississippi Code of 1972, is amended as follows:

43-21-261. (1) Except as otherwise provided in this section, records involving children shall not be disclosed, other than to necessary staff or officials of the youth court, a guardian ad litem appointed to a child by the court, or a Court-Appointed Special Advocate (CASA) volunteer who may be assigned in an abuse and neglect case, except pursuant to an order of the youth court specifying the person or persons to whom the records may be disclosed, the extent of the records which may be disclosed and the purpose of the disclosure. Such court orders for disclosure shall be limited to those instances in which the youth court concludes, in its discretion, that disclosure is required for the best interests of the child, the public safety, the functioning of the youth court, or to identify a person who knowingly made a false allegation of child abuse or neglect, and then only to the following persons:



249 (a) The judge of another youth court or member of
250 another youth court staff;

251 (b) The court of the parties in a child custody or
252 adoption cause in another court;

253 (c) A judge of any other court or members of another
254 court staff, including the chancery court that ordered a forensic
255 interview;

256 (d) Representatives of a public or private agency
257 providing supervision or having custody of the child under order
258 of the youth court;

259 (e) Any person engaged in a bona fide research purpose,
260 provided that no information identifying the subject of the
261 records shall be made available to the researcher unless it is
262 absolutely essential to the research purpose and the judge gives
263 prior written approval, and the child, through his or her
264 representative, gives permission to release the information;

265 (f) The Mississippi Department of Employment Security,
266 or its duly authorized representatives, for the purpose of a
267 child's enrollment into the Job Corps Training Program as
268 authorized by Title IV of the Comprehensive Employment Training
269 Act of 1973 (29 USCS Section 923 et seq.). However, no records,
270 reports, investigations or information derived therefrom
271 pertaining to child abuse or neglect shall be disclosed;

272 (g) Any person pursuant to a finding by a judge of the
273 youth court of compelling circumstances affecting the health,



safety or well-being of a child and that such disclosure is in the best interests of the child or an adult who was formerly the subject of a youth court delinquency proceeding;

(h) A person who was the subject of a knowingly made false allegation of child abuse or neglect which has resulted in a conviction of a perpetrator in accordance with Section 97-35-47 or which allegation was referred by the Department of Child Protection Services to a prosecutor or law enforcement official in accordance with the provisions of Section 43-21-353(4).

Law enforcement agencies may disclose information to the public concerning the taking of a child into custody for the commission of a delinquent act without the necessity of an order from the youth court. The information released shall not identify the child or his address unless the information involves a child convicted as an adult.

(2) Any records involving children which are disclosed under an order of the youth court or pursuant to the terms of this section and the contents thereof shall be kept confidential by the person or agency to whom the record is disclosed unless otherwise provided in the order. Any further disclosure of any records involving children shall be made only under an order of the youth court as provided in this section.

(3) Upon request, the parent, guardian or custodian of the child who is the subject of a youth court cause or any attorney for such parent, guardian or custodian, shall have the right to



inspect any record, report or investigation relevant to a matter to be heard by a youth court, except that the identity of the reporter shall not be released, nor the name of any other person where the person or agency making the information available finds that disclosure of the information would be likely to endanger the life or safety of such person. The attorney for the parent, guardian or custodian of the child, upon request, shall be provided a copy of any record, report or investigation relevant to a matter to be heard by a youth court, but the identity of the reporter must be redacted and the name of any other person must also be redacted if the person or agency making the information available finds that disclosure of the information would be likely to endanger the life, safety or well-being of the person. A record provided to the attorney under this section must remain in the attorney's control and the attorney may not provide copies or access to another person or entity except members of the attorney's multidisciplinary defense team including experts engaged by the attorney without prior consent of a court with appropriate jurisdiction.

(4) Upon request, the child who is the subject of a youth court cause shall have the right to have his counsel inspect and copy any record, report or investigation which is filed with the youth court or which is to be considered by the youth court at a hearing.



323 (5) (a) The youth court prosecutor or prosecutors, the
324 county attorney, the district attorney, the youth court defender
325 or defenders, or any attorney representing a child shall have the
326 right to inspect and copy any law enforcement record involving
327 children.

328 (b) The Department of Child Protection Services shall
329 disclose to a county prosecuting attorney or district attorney any
330 and all records resulting from an investigation into suspected
331 child abuse or neglect when the case has been referred by the
332 Department of Child Protection Services to the county prosecuting
333 attorney or district attorney for criminal prosecution.

334 (c) Agency records made confidential under the
335 provisions of this section may be disclosed to a court of
336 competent jurisdiction.

337 (d) Records involving children shall be disclosed to
338 the Division of Victim Compensation of the Office of the Attorney
339 General upon the division's request without order of the youth
340 court for purposes of determination of eligibility for victim
341 compensation benefits.

342 (6) Information concerning an investigation into a report of
343 child abuse or child neglect may be disclosed by the Department of
344 Child Protection Services without order of the youth court to any
345 attorney, physician, dentist, intern, resident, nurse,
346 psychologist, social worker, family protection worker, family
347 protection specialist, child caregiver, minister, law enforcement



348 officer, or a public or private school employee making that report
349 pursuant to Section 43-21-353(1) if the reporter has a continuing
350 professional relationship with the child and a need for such
351 information in order to protect or treat the child.

352 (7) Information concerning an investigation into a report of
353 child abuse or child neglect may be disclosed without further
354 order of the youth court to any interagency child abuse task force
355 established in any county or municipality by order of the youth
356 court of that county or municipality.

357 (8) Names and addresses of juveniles twice adjudicated as
358 delinquent for an act which would be a felony if committed by an
359 adult or for the unlawful possession of a firearm shall not be
360 held confidential and shall be made available to the public.

361 (9) Names and addresses of juveniles adjudicated as
362 delinquent for murder, manslaughter, burglary, arson, armed
363 robbery, aggravated assault, any sex offense as defined in Section
364 45-33-23, for any violation of Section 41-29-139(a)(1) or for any
365 violation of Section 63-11-30, shall not be held confidential and
366 shall be made available to the public.

367 (10) The judges of the circuit and county courts, and
368 presentence investigators for the circuit courts, as provided in
369 Section 47-7-9, shall have the right to inspect any youth court
370 records of a person convicted of a crime for sentencing purposes
371 only.



372 (11) The victim of an offense committed by a child who is
373 the subject of a youth court cause shall have the right to be
374 informed of the child's disposition by the youth court.

375 (12) A classification hearing officer of the State
376 Department of Corrections, as provided in Section 47-5-103, shall
377 have the right to inspect any youth court records, excluding abuse
378 and neglect records, of any offender in the custody of the
379 department who as a child or minor was a juvenile offender or was
380 the subject of a youth court cause of action, and the State Parole
381 Board, as provided in Section 47-7-17, shall have the right to
382 inspect such records when the offender becomes eligible for
383 parole.

384 (13) The youth court shall notify the Department of Public
385 Safety of the name, and any other identifying information such
386 department may require, of any child who is adjudicated delinquent
387 as a result of a violation of the Uniform Controlled Substances
388 Law.

389 (14) The Administrative Office of Courts shall have the
390 right to inspect any youth court records in order that the number
391 of youthful offenders, abused, neglected, truant and dependent
392 children, as well as children in need of special care and children
393 in need of supervision, may be tracked with specificity through
394 the youth court and adult justice system, and to utilize tracking
395 forms for such purpose.



(15) Upon a request by a youth court, the Administrative Office of Courts shall disclose all information at its disposal concerning any previous youth court intakes alleging that a child was a delinquent child, child in need of supervision, child in need of special care, truant child, abused child or neglected child, as well as any previous youth court adjudications for the same and all dispositional information concerning a child who at the time of such request comes under the jurisdiction of the youth court making such request.

(16) The Administrative Office of Courts may, in its discretion, disclose to the Department of Public Safety any or all of the information involving children contained in the office's youth court data management system known as Mississippi Youth Court Information Delivery System or "MYCIDS."

(17) The youth courts of the state shall disclose to the Joint Legislative Committee on Performance Evaluation and Expenditure Review (PEER) any youth court records in order that the number of youthful offenders, abused, neglected, truant and dependent children, as well as children in need of special care and children in need of supervision, may be tracked with specificity through the youth court and adult justice system, and to utilize tracking forms for such purpose. The disclosure prescribed in this subsection shall not require a court order and shall be made in sortable, electronic format where possible. The PEER Committee may seek the assistance of the Administrative



Office of Courts in seeking this information. The PEER Committee shall not disclose the identities of any youth who have been adjudicated in the youth courts of the state and shall only use the disclosed information for the purpose of monitoring the effectiveness and efficiency of programs established to assist adjudicated youth, and to ascertain the incidence of adjudicated youth who become adult offenders.

(18) In every case where an abuse or neglect allegation has been made, the confidentiality provisions of this section shall not apply to prohibit access to a child's records by any state regulatory agency, any state or local prosecutorial agency or law enforcement agency; however, no identifying information concerning the child in question may be released to the public by such agency except as otherwise provided herein.

(19) In every case of child abuse or neglect, if a child's physical condition is medically labeled as medically "serious" or "critical" or a child dies, the confidentiality provisions of this section shall not apply. In such cases, the following information may be released by the Mississippi Department of Child Protection Services: the cause of the circumstances regarding the fatality or medically serious or critical physical condition; the age and gender of the child; information describing any previous reports of child abuse or neglect investigations that are pertinent to the child abuse or neglect that led to the fatality or medically serious or critical physical condition; the result of any such



investigations; and the services provided by and actions of the state on behalf of the child that are pertinent to the child abuse or neglect that led to the fatality or medically serious or critical physical condition.

(20) Any member of a foster care review board designated by the Department of Child Protection Services shall have the right to inspect youth court records relating to the abuse, neglect or child in need of supervision cases assigned to such member for review.

(21) Information concerning an investigation into a report of child abuse or child neglect may be disclosed without further order of the youth court in any administrative or due process hearing held, pursuant to Section 43-21-257, by the Department of Child Protection Services for individuals whose names will be placed on the central registry as substantiated perpetrators.

(22) The Department of Child Protection Services may disclose records involving children to the following:

(a) A foster home, residential child-caring agency or child-placing agency to the extent necessary to provide such care and services to a child;

(b) An individual, agency or organization that provides services to a child or the child's family in furtherance of the child's permanency plan to the extent necessary in providing those services;



470 (c) Health and mental health care providers of a child
471 to the extent necessary for the provider to properly treat and
472 care for the child;

473 (d) An educational institution or educational services
474 provider where the child is enrolled or where enrollment is
475 anticipated to the extent necessary for the school to provide
476 appropriate services to the child; and

477 (e) Any other state agency if the disclosure is
478 necessary to the department in fulfilling its statutory
479 responsibilities in protecting the best interests of the child.

480 (23) The Administrative Office of Courts shall provide to
481 the Office of State Public Defender read-only access to the youth
482 court data management system known as Mississippi Youth Court
483 Information Delivery System or "MYCIDS."

484 **SECTION 8.** Section 99-40-1, Mississippi Code of 1972, which
485 provides for the Indigent Appeals Division, is repealed.

486 **SECTION 9.** This act shall take effect and be in force from
487 and after July 1, 2021.

