

By: Representative Bain

To: Judiciary B

HOUSE BILL NO. 360

1 AN ACT TO AMEND SECTION 99-18-1, MISSISSIPPI CODE OF 1972, TO
2 REVISE THE QUALIFICATIONS OF THE STATE PUBLIC DEFENDER; TO REMOVE
3 THE REQUIREMENT THAT FUNDS FOR THE OFFICE OF THE STATE PUBLIC
4 DEFENDER SHALL BE SUPPLIED FROM SPECIFIC FUNDS; TO REMOVE THE
5 AUTHORITY OF THE STATE PUBLIC DEFENDER TO TRANSFER MONEY BETWEEN
6 THE VARIOUS FUNDING SOURCES; TO REMOVE THE REQUIREMENT FOR THE
7 STATE PUBLIC DEFENDER TO COORDINATE THE COLLECTION AND
8 DISSEMINATION OF STATISTICAL DATA IN COORDINATION WITH THE
9 MISSISSIPPI PUBLIC DEFENDERS' TASK FORCE; TO AMEND SECTION
10 99-18-13, MISSISSIPPI CODE OF 1972, TO REVISE THE POWERS AND
11 DUTIES OF THE STATE PUBLIC DEFENDER, TO AUTHORIZE HIS OR HER
12 ABILITY TO SOLICIT AND ACCEPT MONIES, GIFTS AND SERVICES FROM ANY
13 PUBLIC OR PRIVATE SOURCE, AND TO REPRESENT AN INDIGENT PERSON IN
14 CRIMINAL OR YOUTH COURT MATTERS WHEN SUCH PERSON HAS A
15 CONSTITUTIONAL RIGHT TO APPOINTED REPRESENTATION; TO AMEND SECTION
16 99-18-17, MISSISSIPPI CODE OF 1972, TO TERMINATE THE CAPITAL
17 DEFENSE FUND AS A SPECIAL FUND IN THE STATE TREASURY; TO CREATE
18 NEW SECTION 99-18-19, MISSISSIPPI CODE OF 1972, TO ESTABLISH THE
19 INDIGENT APPEALS DIVISION WITHIN THE OFFICE OF THE STATE PUBLIC
20 DEFENDER; TO CREATE NEW SECTION 99-18-21, MISSISSIPPI CODE OF
21 1972, TO ESTABLISH THE PUBLIC DEFENDER TRAINING DIVISION WITHIN
22 THE OFFICE OF THE STATE PUBLIC DEFENDER; TO REPEAL SECTION
23 99-40-1, MISSISSIPPI CODE OF 1972, TO REPEAL THE PROVISIONS WHICH
24 ESTABLISHED THE DIVISIONS OF INDIGENT APPEALS AND PUBLIC DEFENDER
25 TRAINING WITHIN THE OFFICE OF THE STATE PUBLIC DEFENDER, AND WHICH
26 CREATED SPECIAL FUNDS IN THE STATE TREASURY FOR EACH DIVISION; TO
27 AMEND SECTION 43-21-203, MISSISSIPPI CODE OF 1972, IN CONFORMITY
28 TO THE PRECEDING PROVISIONS; TO AMEND SECTION 43-21-261,
29 MISSISSIPPI CODE OF 1972, TO REQUIRE THE ADMINISTRATIVE OFFICE OF
30 COURTS TO PROVIDE THE OFFICE OF THE STATE PUBLIC DEFENDER WITH
31 READ-ONLY ACCESS TO THE MISSISSIPPI YOUTH COURT INFORMATION
32 DELIVERY SYSTEM ("MYCIDS"); AND FOR RELATED PURPOSES.

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



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

36 99-18-1. (1) There is hereby created the Office of State
37 Public Defender. The Office of State Public Defender shall
38 consist of a State Defender who shall be appointed by the Governor
39 with the advice and consent of the Senate for a term of four (4)
40 years and staffed by any necessary personnel as determined and
41 hired by the State Defender.

42 * * *

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

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

55 (* * *4) The Office of State Public Defender shall be
56 responsible for the administration, budget and finances of the
57 Divisions of Capital Defense Counsel, Indigent Appeals and Public



58 Defender Training, which shall be divisions of the Office of State
59 Public Defender.

60 (* * *5) The State Defender may simultaneously serve as
61 State Defender and as director of one or more divisions but shall
62 receive no additional compensation for doing so. Nothing in this
63 chapter shall prohibit the State Defender from directly
64 representing clients of the office. Nothing in this chapter shall
65 be construed to prevent an employee of one (1) division of the
66 Office of the State Public Defender from working, in whole or in
67 part, for another division.

68 (* * *6) The State Defender shall coordinate the collection
69 and dissemination of statistical data and make such reports as are
70 required of the divisions, develop plans and proposals for further
71 development of a statewide public defender system * * * and to act
72 as spokesperson for all matters relating to indigent defense
73 representation.

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

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



83 **SECTION 2.** Section 99-18-13, Mississippi Code of 1972, is
84 amended as follows:

85 99-18-13. (1) The State Defender is hereby empowered to pay
86 and disburse salaries, employment benefits and charges relating to
87 employment of division staff and to establish their salaries and
88 expenses of the office; to incur and pay travel expenses of staff
89 necessary for the performance of the duties of the office; to rent
90 or lease on such terms as he may think proper such office space as
91 is necessary in the City of Jackson to accommodate the staff; to
92 enter into and perform contracts and to purchase such necessary
93 office supplies and equipment as may be needed for the proper
94 administration of said offices within the funds appropriated for
95 such purpose; and to incur and pay such other expenses as are
96 appropriate and customary to the operation of the office. The
97 State Defender is further authorized to solicit and accept monies,
98 gifts, grants or services from any public or private source, for
99 the purpose of funding, operating and executing the duties of the
100 office.

101 (2) The State Defender may represent an indigent person in
102 criminal or youth court matters where the person has a
103 constitutional right to appointed counsel and provide
104 representation to parents or guardians who have been
105 determined * * * to be indigent and in need of representation in
106 an abuse, neglect or termination of parental rights proceeding or
107 appeal therefrom. In determining whether a person is indigent,



108 the agency shall substantially follow the procedure set forth in
109 Section 99-19-20.1(1).

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

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

115 99-18-17. * * * If at any time during the representation of
116 two (2) or more defendants, the State Defender determines that the
117 interests of those persons are so adverse or hostile they cannot
118 all be represented by the staff of the Capital Counsel Division
119 without conflict of interest, or if the State Defender determines
120 that the volume or number of representations shall so require, the
121 State Defender, in his sole discretion, notwithstanding any
122 statute or regulation to the contrary, shall be authorized to
123 employ qualified private counsel. Fees and expenses approved by
124 order of the court of original jurisdiction, including
125 investigative and expert witness expenses of such private counsel,
126 shall be paid by funds appropriated * * * for this purpose.

127 * * *

128 **SECTION 4.** The following shall be codified as Section
129 99-18-19, Mississippi Code of 1972:

130 99-18-19. (1) There is created within the Office of the
131 State Public Defender, the Indigent Appeals Division. This
132 division shall consist of the Indigent Appeals Director, who must



133 be an attorney in good standing with the Mississippi Bar
134 Association, and shall be staffed by any necessary personnel as
135 determined necessary and hired by the State Defender. The
136 Indigent Appeals Director shall be appointed by the State
137 Defender. The remaining attorneys and other staff shall be
138 appointed by the State Defender and shall serve at the will and
139 pleasure of the State Defender. Attorneys in the division shall
140 be active members of the Mississippi Bar Association, and shall
141 practice law exclusively for the division, and shall not engage in
142 any other practice of law. The division shall not engage in any
143 litigation other than that related to the duties of the division.
144 The Indigent Appeals Director shall be compensated at no more than
145 the maximum amount allowed by statute for a comparable assistant
146 district attorney.

147 (2) The division may provide representation on appeal for
148 indigent persons convicted of felonies and indigent juveniles
149 adjudicated delinquent in youth court. The division may provide
150 advice and assistance to attorneys representing persons under
151 felony charges in the trial courts and juveniles in youth court
152 delinquency proceedings.

153 **SECTION 5.** The following shall be codified as Section
154 99-18-21, Mississippi Code of 1972:

155 99-18-21. There is created in the Office of the State Public
156 Defender, the Public Defender Training Division. This division
157 shall be staffed by any necessary personnel as determined and



158 hired by the State Defender. The mission of the division shall be
159 to work closely with the Mississippi Public Defenders' Association
160 to provide training and services to public defenders practicing in
161 all state, county, municipal and youth courts. These services
162 shall include, but not be limited to, continuing legal education,
163 cases updates and legal research. The division shall provide:

164 (a) Education training for public defenders practicing
165 in all state, county, municipal and youth courts;

166 (b) Technical assistance for public defenders
167 practicing in all state, county, municipal and youth courts; and

168 (c) Current and accurate information to the Legislature
169 pertaining to the needs of public defenders practicing in all
170 state, county, municipal and youth courts.

171 **SECTION 6.** Section 99-40-1, Mississippi Code of 1972, which
172 established the divisions of Indigent Appeals and Public Defender
173 Training within the Office of the State Public Defender, and
174 created special funds in the State Treasury for each division, is
175 hereby repealed.

176 **SECTION 7.** Section 43-21-203, Mississippi Code of 1972, is
177 amended as follows:

178 43-21-203. (1) The youth court shall be in session at all
179 times.

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



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

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

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

191 (6) The general public shall be excluded from the hearing,
192 and only those persons shall be admitted who are found by the
193 youth court to have a direct interest in the cause or work of the
194 youth court. Any person found by the youth court to have a direct
195 interest in the cause shall have the right to appear and be
196 represented by legal counsel. To facilitate the mandates
197 prescribed in Sections 43-21-201(3) and 99-18-3(2), all youth
198 courts shall grant access to the office of the State Public
199 Defender upon the representative's execution of a confidentiality
200 oath, as may be prescribed by the Supreme Court of Mississippi.

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

204 (8) The youth court may exclude the attendance of a child
205 from a hearing in neglect and abuse cases with consent of the
206 child's counsel. The youth court may exclude the attendance of a
207 child from any portion of a disposition hearing that would be



208 injurious to the best interest of the child in delinquency and
209 children in need of supervision cases with consent of the child's
210 counsel.

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

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

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

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

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

226 **SECTION 8.** Section 43-21-261, Mississippi Code of 1972, is
227 amended as follows:

228 43-21-261. (1) Except as otherwise provided in this
229 section, records involving children shall not be disclosed, other
230 than to necessary staff or officials of the youth court, a
231 guardian ad litem appointed to a child by the court, or a
232 Court-Appointed Special Advocate (CASA) volunteer who may be



233 assigned in an abuse and neglect case, except pursuant to an order
234 of the youth court specifying the person or persons to whom the
235 records may be disclosed, the extent of the records which may be
236 disclosed and the purpose of the disclosure. Such court orders
237 for disclosure shall be limited to those instances in which the
238 youth court concludes, in its discretion, that disclosure is
239 required for the best interests of the child, the public safety,
240 the functioning of the youth court, or to identify a person who
241 knowingly made a false allegation of child abuse or neglect, and
242 then only to the following persons:

243 (a) The judge of another youth court or member of
244 another youth court staff;

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

247 (c) A judge of any other court or members of another
248 court staff, including the chancery court that ordered a forensic
249 interview;

250 (d) Representatives of a public or private agency
251 providing supervision or having custody of the child under order
252 of the youth court;

253 (e) Any person engaged in a bona fide research purpose,
254 provided that no information identifying the subject of the
255 records shall be made available to the researcher unless it is
256 absolutely essential to the research purpose and the judge gives



257 prior written approval, and the child, through his or her
258 representative, gives permission to release the information;

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

266 (g) Any person pursuant to a finding by a judge of the
267 youth court of compelling circumstances affecting the health,
268 safety or well-being of a child and that such disclosure is in the
269 best interests of the child or an adult who was formerly the
270 subject of a youth court delinquency proceeding;

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

277 Law enforcement agencies may disclose information to the
278 public concerning the taking of a child into custody for the
279 commission of a delinquent act without the necessity of an order
280 from the youth court. The information released shall not identify



281 the child or his address unless the information involves a child
282 convicted as an adult.

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

290 (3) Upon request, the parent, guardian or custodian of the
291 child who is the subject of a youth court cause or any attorney
292 for such parent, guardian or custodian, shall have the right to
293 inspect any record, report or investigation relevant to a matter
294 to be heard by a youth court, except that the identity of the
295 reporter shall not be released, nor the name of any other person
296 where the person or agency making the information available finds
297 that disclosure of the information would be likely to endanger the
298 life or safety of such person. The attorney for the parent,
299 guardian or custodian of the child, upon request, shall be
300 provided a copy of any record, report or investigation relevant to
301 a matter to be heard by a youth court, but the identity of the
302 reporter must be redacted and the name of any other person must
303 also be redacted if the person or agency making the information
304 available finds that disclosure of the information would be likely
305 to endanger the life, safety or well-being of the person. A



306 record provided to the attorney under this section must remain in
307 the attorney's control and the attorney may not provide copies or
308 access to another person or entity except members of the
309 attorney's multi-disciplinary defense team, including experts
310 engaged by the attorney, without prior consent of a court with
311 appropriate jurisdiction.

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

317 (5) (a) The youth court prosecutor or prosecutors, the
318 county attorney, the district attorney, the youth court defender
319 or defenders, or any attorney representing a child shall have the
320 right to inspect and copy any law enforcement record involving
321 children.

322 (b) The Department of Child Protection Services shall
323 disclose to a county prosecuting attorney or district attorney any
324 and all records resulting from an investigation into suspected
325 child abuse or neglect when the case has been referred by the
326 Department of Child Protection Services to the county prosecuting
327 attorney or district attorney for criminal prosecution.

328 (c) Agency records made confidential under the
329 provisions of this section may be disclosed to a court of
330 competent jurisdiction.



331 (d) Records involving children shall be disclosed to
332 the Division of Victim Compensation of the Office of the Attorney
333 General upon the division's request without order of the youth
334 court for purposes of determination of eligibility for victim
335 compensation benefits.

336 (6) Information concerning an investigation into a report of
337 child abuse or child neglect may be disclosed by the Department of
338 Child Protection Services without order of the youth court to any
339 attorney, physician, dentist, intern, resident, nurse,
340 psychologist, social worker, family protection worker, family
341 protection specialist, child caregiver, minister, law enforcement
342 officer, or a public or private school employee making that report
343 pursuant to Section 43-21-353(1) if the reporter has a continuing
344 professional relationship with the child and a need for such
345 information in order to protect or treat the child.

346 (7) Information concerning an investigation into a report of
347 child abuse or child neglect may be disclosed without further
348 order of the youth court to any interagency child abuse task force
349 established in any county or municipality by order of the youth
350 court of that county or municipality.

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



355 (9) Names and addresses of juveniles adjudicated as
356 delinquent for murder, manslaughter, burglary, arson, armed
357 robbery, aggravated assault, any sex offense as defined in Section
358 45-33-23, for any violation of Section 41-29-139(a)(1) or for any
359 violation of Section 63-11-30, shall not be held confidential and
360 shall be made available to the public.

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

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

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

378 (13) The youth court shall notify the Department of Public
379 Safety of the name, and any other identifying information such



380 department may require, of any child who is adjudicated delinquent
381 as a result of a violation of the Uniform Controlled Substances
382 Law.

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

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

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



404 (17) The youth courts of the state shall disclose to the
405 Joint Legislative Committee on Performance Evaluation and
406 Expenditure Review (PEER) any youth court records in order that
407 the number of youthful offenders, abused, neglected, truant and
408 dependent children, as well as children in need of special care
409 and children in need of supervision, may be tracked with
410 specificity through the youth court and adult justice system, and
411 to utilize tracking forms for such purpose. The disclosure
412 prescribed in this subsection shall not require a court order and
413 shall be made in sortable, electronic format where possible. The
414 PEER Committee may seek the assistance of the Administrative
415 Office of Courts in seeking this information. The PEER Committee
416 shall not disclose the identities of any youth who have been
417 adjudicated in the youth courts of the state and shall only use
418 the disclosed information for the purpose of monitoring the
419 effectiveness and efficiency of programs established to assist
420 adjudicated youth, and to ascertain the incidence of adjudicated
421 youth who become adult offenders.

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



429 (19) In every case of child abuse or neglect, if a child's
430 physical condition is medically labeled as medically "serious" or
431 "critical" or a child dies, the confidentiality provisions of this
432 section shall not apply. In such cases, the following information
433 may be released by the Mississippi Department of Child Protection
434 Services: the cause of the circumstances regarding the fatality
435 or medically serious or critical physical condition; the age and
436 gender of the child; information describing any previous reports
437 of child abuse or neglect investigations that are pertinent to the
438 child abuse or neglect that led to the fatality or medically
439 serious or critical physical condition; the result of any such
440 investigations; and the services provided by and actions of the
441 state on behalf of the child that are pertinent to the child abuse
442 or neglect that led to the fatality or medically serious or
443 critical physical condition.

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

449 (21) Information concerning an investigation into a report
450 of child abuse or child neglect may be disclosed without further
451 order of the youth court in any administrative or due process
452 hearing held, pursuant to Section 43-21-257, by the Department of



453 Child Protection Services for individuals whose names will be
454 placed on the central registry as substantiated perpetrators.

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

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

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

464 (c) Health and mental health care providers of a child
465 to the extent necessary for the provider to properly treat and
466 care for the child;

467 (d) An educational institution or educational services
468 provider where the child is enrolled or where enrollment is
469 anticipated to the extent necessary for the school to provide
470 appropriate services to the child; and

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

474 (23) The Administrative Office of Courts shall provide, to
475 the Office of the State Public Defender, read-only access to the
476 youth court data management system known as the Mississippi Youth
477 Court Information Delivery Systems or "MYCIDS."



478 **SECTION 9.** This act shall take effect and be in force from
479 and after July 1, 2022.

