

By: Blackmon, McBride, Reynolds

To: Judiciary B;  
Appropriations

## HOUSE BILL NO. 1374

1 AN ACT TO CREATE THE MISSISSIPPI DEATH PENALTY DEFENSE  
2 LITIGATION ACT; TO CREATE THE MISSISSIPPI OFFICE OF DEATH PENALTY  
3 DEFENSE COUNSEL AND SPECIFY ITS PERSONNEL; TO PROVIDE  
4 QUALIFICATIONS FOR ATTORNEYS IN THE OFFICE; TO PROVIDE FOR  
5 COMPENSATION; TO SPECIFY OFFICE HOURS; TO AUTHORIZE THE DIRECTOR  
6 TO ACQUIRE OFFICE SPACE, SUPPLIES AND EQUIPMENT; TO REQUIRE THE  
7 DIRECTOR TO MAINTAIN A DOCKET; TO AUTHORIZE APPOINTMENT OF  
8 ATTORNEYS IN SITUATIONS WHERE CONFLICTS ARISE; TO CREATE THE  
9 SPECIAL DEATH PENALTY DEFENSE LITIGATION FUND; TO PROVIDE THAT  
10 ATTORNEYS APPOINTED TO THE OFFICE SHALL BE FULL TIME; TO REPEAL  
11 SECTIONS 25-32-31 THROUGH 25-32-65, MISSISSIPPI CODE OF 1972,  
12 WHICH COMPRISE THE MISSISSIPPI STATEWIDE PUBLIC DEFENDER SYSTEM  
13 ACT; TO REPEAL SECTION 21, CHAPTER 575, LAWS OF 1998, WHICH  
14 REQUIRES THE CERTIFICATION OF FUNDING OF THE MISSISSIPPI STATEWIDE  
15 PUBLIC DEFENDER SYSTEM ACT; AND FOR RELATED PURPOSES.

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

17 SECTION 1. This act may be cited as the "Mississippi Death  
18 Penalty Defense Litigation Act."

19 SECTION 2. There is hereby created the Mississippi Office of  
20 Death Penalty Defense Counsel. This office shall consist of  
21 twelve (12) attorneys, four (4) investigators, one (1) fiscal  
22 officer and four (4) secretaries/paralegals. One of these  
23 attorneys shall serve as director of the office. The director  
24 shall be appointed by the Governor for a term of four (4) years or  
25 until a successor takes office. The remaining attorneys and other  
26 staff shall be appointed by the director of the office and shall  
27 serve at the will and pleasure of the director. Two (2) of the  
28 attorneys shall work on appeals only. The director and all other  
29 attorneys in the office shall be active members of The Mississippi  
30 Bar. The director may be removed by the Governor upon finding  
31 that the director is not qualified under law, has failed to  
32 perform the duties of the office, or has acted beyond the scope of

33 the authority granted by law for the office.

34 SECTION 3. The Office of Death Penalty Defense Counsel is  
35 created for the purpose of providing representation to indigent  
36 parties under indictment for death penalty eligible offenses and  
37 to perform such other duties as set forth by law.

38 SECTION 4. The Office of Death Penalty Defense Counsel shall  
39 limit its activities to representation of defendants accused of  
40 death eligible offenses and ancillary matters related directly to  
41 death eligible offenses and other activities expressly authorized  
42 by statute. Representation by the office or by other court  
43 appointed counsel under this act shall terminate upon the  
44 exhaustion of all state court remedies. The attorneys appointed  
45 to serve in the Office of Death Penalty Defense Counsel shall  
46 devote their entire time to the duties of the office, shall not  
47 represent any persons in other litigation, civil or criminal, nor  
48 in any other way engage in the practice of law, and shall in no  
49 manner, directly or indirectly, engage in lobbying activities for  
50 or against the death penalty. Any violation of this provision  
51 shall be grounds for termination from employment, in the case of  
52 the director by the Governor and in the case of other attorneys by  
53 the director.

54 SECTION 5. The director appointed under this act shall be  
55 compensated at no more than the maximum amount allowed by statute  
56 for a district attorney, and other attorneys in the office shall  
57 be compensated at no more than the maximum amount allowed by  
58 statute for an assistant district attorney.

59 SECTION 6. The director of the Death Penalty Defense Counsel  
60 office shall keep the office open Monday through Friday for not  
61 less than eight (8) hours each day and observe such holidays as  
62 prescribed by statute.

63 SECTION 7. In addition to the authority to represent persons  
64 under indictment for death eligible offenses, the director is  
65 hereby empowered to pay and disburse salaries, employment benefits  
66 and charges relating to employment of staff and to establish their  
67 salaries and expenses of the office; to incur and pay travel  
68 expenses of staff necessary for the performance of the duties of  
69 the office; to rent or lease on such terms as he may think proper

70 such office space as is necessary in the City of Jackson to  
71 accommodate the staff; to hire experts upon court approval; to  
72 enter into and perform contracts and to purchase such necessary  
73 office supplies and equipment as may be needed for the proper  
74 administration of said offices within the funds appropriated for  
75 such purpose, and to incur and pay such other expenses as are  
76 appropriate and customary to the operation of the office.

77 SECTION 8. The director shall keep a docket of all indicted  
78 death eligible cases originating in the courts of Mississippi  
79 which must, at all reasonable times, be open to inspection by the  
80 public and must show the county, district and court in which the  
81 cause is pending. The director shall prepare and maintain a  
82 roster of all death penalty cases in the courts of Mississippi  
83 indicating the current status of each case and submit this report  
84 to the Governor as frequently as the Governor may direct. The  
85 director shall also report monthly to the Administrative Office of  
86 Courts the activities, receipts and expenditures of the office.

87 SECTION 9. If, at any time, during the representation of two  
88 (2) or more defendants the director determines that the interests  
89 of those persons are so adverse or hostile they cannot all be  
90 represented by the director or his staff without conflict of  
91 interest, or if the director shall determine that the volume or  
92 number of representations shall so require, the director in his  
93 sole discretion, notwithstanding any statute or regulation to the  
94 contrary, shall be authorized to employ qualified private counsel.  
95 Fees and expenses approved by order of the court of original  
96 jurisdiction, including investigative and expert witness expenses  
97 of such private counsel, shall be paid by funds appropriated to a  
98 Death Penalty Defense Counsel Special Fund for this purpose, which  
99 fund is hereby created. Monies in this fund shall not lapse into  
100 the General Fund at the end of the fiscal year but shall remain in  
101 the fund, and any interest accrued to the fund shall remain in the  
102 fund.

103        SECTION 10. Upon determination of indigence the circuit  
104 court may in its discretion, appoint local counsel for the purpose  
105 of defending death eligible indigent defendants, the fees and  
106 expenses of which shall be paid by the Death Penalty Defense  
107 Counsel Special Fund. In the presiding circuit judge's  
108 discretion, a determination of the absence of competent death  
109 penalty defense counsel having been made, counsel from the Office  
110 of Death Penalty Defense Counsel may be appointed to assist local  
111 counsel to defend said case with all fees and expenses to be paid  
112 by the Death Penalty Defense Counsel Special Fund.

113        SECTION 11. Sections 25-32-31, 25-32-33, 25-32-35, 25-32-37,  
114 25-32-39, 25-32-41, 25-32-43, 25-32-45, 25-32-47, 25-32-49,  
115 25-32-51, 25-32-53, 25-32-55, 25-32-57, 25-32-59, 25-32-61,  
116 25-32-63 and 25-32-65, Mississippi Code of 1972, which comprise  
117 the Mississippi Statewide Public Defender System Act, are  
118 repealed.

119        SECTION 12. Section 21, Chapter 575, Laws 1998, which  
120 provides for the certification of funding for the Statewide Public  
121 Defender System Act, is repealed on July 1, 2000.

122        SECTION 13. Section 12 of this act shall take effect and be  
123 in force from and after July 1, 2000, and Sections 1 through 11 of  
124 this act shall take effect and be in force from and after July 2,  
125 2000.