

By: Blackmon

To: Judiciary B;
Appropriations

HOUSE BILL NO. 1375

1 AN ACT TO AMEND SECTIONS 25-32-1, 25-32-3, 25-32-5, 25-32-7,
2 25-32-9, 25-32-15 AND 25-32-19, MISSISSIPPI CODE OF 1972, TO
3 TRANSFER THE ESTABLISHMENT OF PUBLIC DEFENDER OFFICES TO THE
4 PUBLIC DEFENDER COMMISSION; TO PROVIDE THAT PUBLIC DEFENDER
5 OFFICES SHALL BE FUNDED BY THE STATE; TO REVISE THE APPOINTMENT OF
6 COUNSEL FOR THE INDIGENT; TO CODIFY SECTION 25-32-18, MISSISSIPPI
7 CODE OF 1972, TO REQUIRE CERTAIN COUNTIES TO SUPPLEMENT THE SALARY
8 OF PUBLIC DEFENDERS; TO CODIFY SECTION 25-32-20, MISSISSIPPI CODE
9 OF 1972, TO AUTHORIZE THE APPOINTMENT OF CRIMINAL INVESTIGATORS;
10 TO REPEAL SECTION 25-32-21, MISSISSIPPI CODE OF 1972, WHICH
11 PROVIDES FOR THE REPEAL OF SECTIONS 25-32-1 THROUGH 25-32-19; TO
12 AMEND SECTION 25-32-39, MISSISSIPPI CODE OF 1972, TO REVISE THE
13 POWERS AND DUTIES OF THE PUBLIC DEFENDER COMMISSION; TO AMEND
14 SECTION 25-32-47, MISSISSIPPI CODE OF 1972, TO REVISE CONFLICT
15 PROVISIONS; TO AMEND SECTION 25-32-49, MISSISSIPPI CODE OF 1972,
16 TO REMOVE THE AUTHORITY OF PUBLIC DEFENDERS TO PARTICIPATE IN
17 CERTAIN ACTIVITIES; TO AMEND SECTION 25-32-53, MISSISSIPPI CODE OF
18 1972, TO REVISE DUTIES OF THE APPELLATE DIVISION; TO AMEND SECTION
19 25-32-65, MISSISSIPPI CODE OF 1972, IN CONFORMITY; TO AMEND
20 SECTION 99-15-17, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT THE
21 STATE SHALL PAY FOR COUNSEL FOR INDIGENTS; TO REPEAL SECTION 21,
22 CHAPTER 575, LAWS OF 1998, WHICH PROVIDES FOR A CONDITIONAL
23 EFFECTIVE PROVISION FOR THE MISSISSIPPI STATEWIDE PUBLIC DEFENDER
24 SYSTEM ACT OF 1998; TO REPEAL SECTIONS 25-32-31, 25-32-33,
25 25-32-35, 25-32-41, 25-32-43, 25-32-45, 25-32-57, 25-32-59 AND
26 25-32-61, MISSISSIPPI CODE OF 1972, WHICH PROVIDES PORTIONS OF THE
27 MISSISSIPPI STATEWIDE PUBLIC DEFENDER SYSTEM ACT OF 1998; AND FOR
28 RELATED PURPOSES.

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

30 SECTION 1. Section 25-32-1, Mississippi Code of 1972, is
31 amended as follows:[BD1]

32 25-32-1. Should the Public Defender Commission created by
33 Section 25-32-37 determine by order spread upon its minutes that a
34 county or counties in the same circuit court district or an entire
35 circuit court district have a sufficient number of indigent
36 defendant cases to establish an office of public defender, the
37 Public Defender Commission is authorized and empowered, in its
38 discretion, to establish the office, provide office space,
39 personnel and funding for the office, and to perform any and all

40 functions necessary for the efficient operation of such an office
41 to the end that adequate legal defense for indigent persons
42 accused of crime shall be provided at every critical stage of
43 their cases as an alternative to court appointed counsel. Said
44 order shall specify whether the public defender shall be full-time
45 or part-time.

46 SECTION 2. Section 25-32-3, Mississippi Code of 1972, is
47 amended as follows:[BD2]

48 25-32-3. (1) When the office of public defender is
49 established, the circuit judge or the senior circuit judge, if
50 there be more than one (1) circuit judge, shall appoint a
51 practicing attorney to serve the district as public defender until
52 the end of the term of office of the district attorney and
53 thereafter for a term of four (4) years and said term shall
54 coincide with the term of the district attorney. Such appointee
55 shall be selected from a list of two (2) or more attorneys
56 recommended by the Public Defender Commission. In the event a
57 vacancy shall occur in the office of the public defender, the
58 circuit judge or the senior circuit judge, if there be more than
59 one (1) circuit judge, shall appoint another person to serve as
60 public defender until the end of the regular term of office.

61 (2) Assistant public defenders may be authorized by the
62 Public Defender Commission. The public defender shall appoint all
63 assistant public defenders. Such assistant public defenders may
64 be compensated in such an amount as may be authorized by the
65 Public Defender Commission; provided, however, that in no case may
66 such assistant public defenders receive compensation in an amount
67 greater than that received by the public defender.

68 SECTION 3. Section 25-32-5, Mississippi Code of 1972, is
69 amended as follows:[BD3]

70 25-32-5. Compensation for the public defender shall be fixed
71 by the Public Defender Commission; provided, however, the
72 compensation for a public defender, who shall be full-time,
73 representing an entire circuit court district shall not be less
74 than the compensation of the district attorney, the compensation
75 for a public defender representing one (1) county shall not be
76 less than the compensation of the county prosecuting attorney and

77 the compensation for a public defender representing two (2) or
78 more counties, but less than the entire circuit court district,
79 shall not be less than the aggregate of the compensation for
80 county prosecuting attorneys of the counties served, but in no
81 event to exceed the compensation of the district attorney. No
82 full-time public defender or full-time assistant public defenders
83 shall engage nor be associated with any person in the private
84 practice of law. Part-time public defenders or part-time
85 assistant public defenders may engage in the private practice of
86 the law as long as such practice does not relate to the
87 prosecution of criminal matters.

88 SECTION 4. Section 25-32-7, Mississippi Code of 1972, is
89 amended as follows:[BD4]

90 25-32-7. The public defender shall be provided with office
91 space, secretarial assistance, and all reasonable expenses of
92 operating the office, at least equal to or more than the county
93 prosecuting attorney, or the district attorney if the public
94 defender represents the entire circuit court district. The
95 compensation and expenses of the public defender's office shall be
96 paid from the state general fund or any special fund created for
97 this purpose. The funds shall be paid upon allowance by the
98 Public Defender Commission by order spread upon the minutes of the
99 board.

100 SECTION 5. Section 25-32-9, Mississippi Code of 1972, is
101 amended as follows:[BD5]

102 25-32-9. (1) When any person shall be arrested and charged
103 with a felony, * * * then the arresting authority shall afford
104 such person an opportunity to sign an affidavit stating that such
105 person is an indigent and unable to employ counsel. Upon the
106 signing of such affidavit by such person, the public defender
107 shall represent said person unless the right to counsel be waived
108 by such person. Provided further, a statement shall be executed
109 by the alleged indigent, under oath, listing all assets available

110 to the indigent for the payment of attorney's fees, including the
111 ownership of any property, real or personal, and setting out
112 therein the alleged indigent's employment status, number of
113 dependents, income from any source, the ability of his parents or
114 spouse to provide an attorney's fee, and any other information
115 which might prove or disprove a finding of indigency. The
116 affidavit and statement shall be a part of the record in the case
117 and shall be subject to review by the appropriate court. Based on
118 review of the affidavit, statement or other appropriate evidence,
119 if the appropriate court finds that the defendant is not indigent,
120 said court shall terminate the representation of the defendant by
121 the public defender. If the court finds that the defendant is
122 indigent, said court shall enter an order appointing the public
123 defender. The clerk of the court entering such an order for
124 appointment shall cause copies of same to be delivered forthwith
125 to the commission and the office of the public defender, and shall
126 at once communicate the contents of the order to such other person
127 or attorney in the county where the case is docketed as the public
128 defender may have designated to receive such orders, all to the
129 end that the person or attorney so designated shall learn of the
130 order as soon as possible after it has been entered.

131 * * *

132 (2) The accused shall have such representation available at
133 every critical stage of the proceedings against him where a
134 substantial right may be affected.

135 (3) The court may require an accused, to the extent of his
136 ability, to compensate or reimburse the commission for all or part
137 of the reasonable value of the representation he has received,
138 plus any sums reasonably and necessarily expended in the course
139 and scope of such representation. In making any such order, the
140 court shall consider and give priority to the victim's rights to
141 restitution, compensation or damages.

142 SECTION 6. Section 25-32-15, Mississippi Code of 1972, is

143 amended as follows:[BD6]

144 25-32-15. The office of public defender may be terminated,
145 in the discretion of the Public Defender Commission, by entering
146 an order * * * six (6) months prior to the expiration of the term
147 of the public defender. Such termination shall be effective at
148 the end of the term of the public defender.

149 SECTION 7. The following shall be codified as Section
150 25-32-18, Mississippi Code of 1972:

151 25-32-18. The board of supervisors of any county having a
152 population in excess of two hundred thousand (200,000) according
153 to the federal decennial census of 1970 shall contribute a sum
154 equal to Four Thousand Five Hundred Dollars (\$4,500.00) per year,
155 payable monthly, to supplement the salary of the public defender
156 of that county, provided that he serves full time; and shall
157 contribute a sum equal to Three Thousand Dollars (\$3,000.00) per
158 year, payable monthly, per full-time legal assistant to supplement
159 the salary of each full-time legal assistant to the public
160 defender of that county.

161 The board of supervisors of any Class 1 county bordering on
162 the Gulf of Mexico and having two (2) judicial districts shall
163 contribute a sum equal to Four Thousand Five Hundred Dollars
164 (\$4,500.00) per year, payable monthly, to supplement the salary of
165 the public defender of that county provided that he serves full
166 time; and shall contribute a sum equal to Five Thousand Dollars
167 (\$5,000.00) per year, payable monthly, to supplement the salary of
168 each full-time legal assistant to the public defender of that
169 county.

170 SECTION 8. Section 25-32-19, Mississippi Code of 1972, is
171 amended as follows:[BD7]

172 25-32-19. The public defender and the board of supervisors
173 may cooperate with any individual or public agency, whether state
174 or federal, or with any institution of higher learning of the
175 State of Mississippi, to obtain by gift, grant or otherwise any

176 financial, professional, investigatory or research or other
177 assistance; provided, however, that any grants or any financial
178 assistance whatever for the purpose herein set out shall be paid
179 over to the Public Defender Commission and administered by it for
180 the purposes herein set forth. The commission shall have the
181 authority to use any financial assistance or grants to extend and
182 expand the facilities of the office.

183 SECTION 9. The following shall be codified as Section
184 25-32-20, Mississippi Code of 1972:

185 25-32-20. (1) Any public defender may appoint a full-time
186 criminal investigator.

187 (2) The public defenders of the Third, Fifth, Ninth, Tenth,
188 Eleventh, Twelfth, Fifteenth, Sixteenth, Seventeenth and Twentieth
189 Circuit Court Districts may appoint one (1) additional full-time
190 criminal investigator for a total of two (2) full-time criminal
191 investigators.

192 (3) The public defenders of the First, Second, Fourth,
193 Seventh and Nineteenth Circuit Court Districts may appoint two (2)
194 additional full-time criminal investigators for a total of three
195 (3) full-time criminal investigators.

196 (4) No public defender or assistant public defender shall
197 accept any private employment, civil or criminal, in any matter
198 investigated by such criminal investigators.

199 (5) The full and complete compensation for all public duties
200 rendered by said criminal investigators shall be not less than
201 Seventeen Thousand Dollars (\$17,000.00) per annum, nor more than
202 Thirty-five Thousand Dollars (\$35,000.00) per annum, to be
203 determined at the discretion of the public defender based upon the
204 qualifications, education and experience of the criminal
205 investigator, plus necessary travel and other expenses, to be paid
206 in accordance with Section 25-32-7 provided, however, the maximum
207 salary under this subsection for a criminal investigator who has a
208 law degree may be supplemented by the public defender from other

209 available funds, but not to exceed the maximum salary for a legal
210 assistant to a public defender.

211 (6) Any criminal investigator may be designated by the
212 public defender to attend a Commission approved training program
213 for defense investigators. The total expenses associated with
214 attendance by criminal investigators at a training program shall
215 be paid out of the funds of the appropriate public defender.

216 SECTION 10. Section 25-32-21, Mississippi Code of 1972,
217 which provides for the repeal of Sections 25-32-1 through
218 25-32-19, Mississippi Code of 1972, is repealed.

219 SECTION 11. Section 25-32-39, Mississippi Code of 1972, is
220 amended as follows:

221 25-32-39. The commission shall have the following powers and
222 duties:

223 (a) To appoint an executive director who shall be
224 currently licensed to practice law in the State of Mississippi and
225 shall have been * * * licensed to practice law in any state for at
226 least four (4) years prior to the appointment, and who shall be
227 knowledgeable and experienced in the field of criminal law, and to
228 charge the executive director with the performance of all
229 reasonable and appropriate administrative and related duties;

230 (b) In its discretion, to delegate to the executive
231 director such of the powers and duties, in whole or in part, as
232 are provided in this chapter to be performed by the commission;

233 (c) To implement and ensure the enjoyment of the right
234 to counsel and the right to the effective assistance of counsel
235 secured to persons by the Constitution of the United States of
236 America and by the Constitution of the State of Mississippi;

237 (d) To recommend to the Supreme Court and the
238 Legislature policies and standards for a comprehensive and
239 effective public defender system throughout the State of
240 Mississippi, including, but not limited to, standards for
241 determining who qualifies as an indigent person;

242 (e) To recommend to the Supreme Court and the
243 Legislature policies and standards for the appointment,
244 compensation and payment of reasonable litigation expenses of
245 competent counsel in state postconviction proceedings brought by
246 indigent prisoners whose convictions and sentences have become
247 final for state law purposes, to recommend optimal standards of
248 competency for the appointment of such counsel * * *.

249 (f) To establish the standards for determining which
250 counties require full-time district defender offices, which, if
251 any, require and can best be served by part-time contract district
252 defenders, and which, if any, require and can effectively be
253 served by a system of court-appointment of private practicing
254 lawyers, and to review the standards so established and the needs
255 of each county so assessed from time to time as may be
256 appropriate, but not less often than every fifth year beginning
257 with July 1, 1998;

258 (g) To maintain within its office a conflicts division
259 and an appellate division and to appoint a qualified person to
260 direct and perform the functions of each;

261 (h) To establish policies and standards for the
262 organization and operation of its office and of the district
263 defenders' offices throughout the state, including, but not
264 limited to:

265 (i) Distribution to and among the several district
266 defender offices of the financial resources as are made available
267 for its office and providing, as well, for a reasonable allocation
268 of such resources to the commission and its offices and staff;

269 (ii) Establishment of optimal qualifications for
270 all attorneys particularly within or employed by the Statewide
271 Public Defender System, whether as full-time staff attorneys,
272 assistant state defenders, assistant district defenders, part-time
273 contract defenders or specially appointed defenders;

274 (iii) Establishment of optimal standards of

275 experience for paralegals, investigators and other personnel
276 assigned to such offices and to particular cases;

277 (iv) Establishment of optimal standards for
278 staffing, caseloads and support personnel and facilities for each
279 district defender's office; and

280 (v) Establishment of employee personnel policies
281 including compensation, salary and benefit schedules for the
282 office of the state defender and of each district defender;

283 (i) To recommend to the senior circuit judge of each
284 district at least two (2) candidates for appointment as a district
285 defender for each circuit court district in accordance with
286 Section 25-32-3;

287 (j) To evaluate the performance of each district
288 defender, assistant district defender, part-time attorney,
289 contract attorney, private attorney assigned to represent indigent
290 persons, and all other personnel of the public defender system,
291 and to have and provide for quality control, personnel evaluation
292 and review, * * * and to have and exercise such powers as may be
293 reasonably necessary to enhance the quality and quantity of
294 services delivered and to address and correct deficiencies;

295 * * *

296 (k) To maintain for each county and for each circuit
297 court district a current list of private attorneys who are
298 competent in the defense of criminal charges and are willing to
299 accept appointments for individual representations, * * *
300 including the defense of capital cases, and who meet any other
301 qualifications established by his office, and to these ends:

302 (i) To notify once a year all licensed attorneys
303 residing in Mississippi by publication or otherwise that a list is
304 being prepared and maintained of attorneys willing to represent
305 indigent persons;

306 (ii) To afford attorneys notified under this
307 section a reasonable time to submit the information requested by

308 the commission;

309 (iii) To prepare, certify and update annually a
310 list of such attorneys for each county and for each circuit court
311 district;

312 (iv) To prepare, certify and update annually a
313 separate list of attorneys competent and willing to accept
314 appointment in capital cases for each county and for each circuit
315 court district; and

316 (v) To recommend attorneys from this list for
317 individual representations * * *;

318 * * *

319 (l) To prepare and approve the annual budget for the
320 operation of the Statewide Public Defender System and for each
321 district defender's office throughout the state, and to administer
322 and oversee the implementation of each such budget;

323 (m) To compile and disseminate statutes, court
324 opinions, legal research, articles and other information to
325 district defenders and private attorneys participating in the
326 Statewide Public Defender System;

327 * * *

328 (n) To convene conferences, continuing legal education
329 programs and training seminars or planning or strategy meetings
330 related to the Statewide Public Defender System, and to attend or
331 send any persons to any such conferences, programs, seminars or
332 meetings * * *;

333 * * *

334 (o) To cooperate with any individual or public agency,
335 whether state or federal, or with any law school, public or
336 private, or with any institution of higher learning of the State
337 of Mississippi, to obtain by gift, grant or otherwise any
338 financial, professional, investigatory, training, educational or
339 research or other assistance; provided, however, that any grants
340 or any financial assistance whatever for the purpose herein set

341 out shall be paid over to the commission and administered by the
342 commission consistent with the provisions of this chapter;

343 (p) To receive, allocate and disburse funds
344 appropriated for the operation of the Statewide Public Defender
345 System pursuant to guidelines established by its office, in
346 cooperation with and after consultation with the Administrative
347 Office of Courts, and to reallocate available resources within the
348 Statewide Public Defender System as may be necessary to carry out
349 and implement more effectively the purposes and policies of this
350 chapter;

351 (q) To approve the purchase, lease, rental and use of
352 office space, equipment, or personnel and the sharing of same
353 between and among district defenders and between and among the
354 counties within the several circuit court districts;

355 (r) To provide to the Administrative Office of Courts
356 and the Mississippi Judicial Advisory Study Committee any and all
357 information, reports, statistics and other forms of assistance as
358 may from time to time be requested or otherwise required by law;

359 (s) To present to the Governor and to the Legislature
360 within ninety (90) days after the end of the fiscal year an annual
361 report on the operation of the Statewide Public Defender System,
362 and recommendations for improvement;

363 (t) To appear before and provide assistance to, and
364 make recommendations to the Legislature and other relevant bodies
365 regarding matters related to the public defender system,
366 including, but not limited to, recommendations regarding the
367 phasing in of the statewide public defender system, the transition
368 from the current county based system of indigent defense * * *;

369 (u) To maintain records of the operation of the
370 Statewide Public Defender System, including, but not limited to,
371 the following:

372 (i) Detailed descriptions of the organization of
373 each district defender's office;

374 (ii) Caseload of each district defender's office,
375 broken down by counties and including cases assigned to private
376 attorneys;

377 (iii) Budgets and actual expenditures of the
378 office of the commission and each district defender's office;

379 * * *

380 (iv) Use of part-time contract attorneys; and

381 (v) Assignment of cases to private attorneys;

382 (v) To employ and set the compensation of the executive
383 director, his assistants and other employees as are necessary to
384 enable the commission to exercise its powers and perform its
385 duties;

386 (w) To purchase professional liability insurance to
387 cover and protect all persons within the Statewide Public Defender
388 System;

389 * * *

390 (x) To adopt and promulgate reasonable and necessary
391 rules and regulations, formally or informally, as may be
392 appropriate, to administer the Statewide Public Defender System,
393 to perform its duties and powers hereunder, and to implement the
394 provisions of this chapter; and to propose forms for the use of
395 the courts, the commissions and other persons with powers and
396 duties hereunder;

397 * * *

398 (y) To delegate to the district defenders in whole or
399 in part the exercise and performance of powers and duties set
400 forth in this section where and to the extent that the commission
401 determines such powers and duties are suitable for exercise and
402 performance at the district level;

403 (z) In the exercise and performance of any and all
404 powers and duties provided by this chapter, to cooperate fully
405 with, to seek the advice, assistance and support of, the
406 Administrative Office of Courts and the Mississippi Judicial

407 Advisory Study Committee;

408 (aa) In the exercise and performance of any and all
409 powers and duties provided by this chapter, to establish
410 priorities for the provision of counsel for indigent persons by
411 reference to the stage of proceedings against such persons and the
412 nature and importance of the charges against such persons, and to
413 do so by reference to the availability of financial, professional
414 and other resources, and to adjust such priorities from time to
415 time as may be appropriate; and

416 (bb) In cooperation with and with the assistance of the
417 Administrative Office of Courts, to develop policies and
418 procedures for the transition from the current county-based system
419 of indigent defense to the Statewide Public Defender System
420 authorized and contemplated by this chapter, including a timetable
421 for phasing in and implementing the provisions of this chapter and
422 for staffing and funding the offices created and provided herein,
423 and to implement same.

424 SECTION 12. Section 25-32-47, Mississippi Code of 1972, is
425 amended as follows:

426 25-32-47. (1) The duty of vigilance, investigation,
427 assessment and judgment regarding conflicts of interest rests upon
428 each attorney participating in the Statewide Public Defender
429 System, with the ultimate responsibility being shared equally and
430 independently by the court and by the commission. If either the
431 commission or the court determines that a conflict of interest
432 exists between an indigent person and the district defender, the
433 commission shall recommend to the appropriate court the
434 reassignment of representation of any such person to another
435 attorney within or without the Statewide Public Defender System
436 with respect to whom no conflict exists.

437 (2) Unless all affected persons give their informed consent
438 to representation under the limitations and conditions provided in
439 subsection (3) of this section, a district defender may not

440 represent an indigent person if the representation would
441 constitute a conflict of interest. A conflict of interest exists
442 if there is a substantial risk that the district defender's
443 representation of the indigent person would be materially and
444 adversely affected by the district defender's duties to another
445 person.

446 (3) (a) A defender may represent an indigent person
447 notwithstanding a conflict of interest prohibited by subsection
448 (2) of this section if each affected person gives informed consent
449 to the defender's representation. Informed consent requires that
450 the person have reasonably adequate information about the risks
451 and advantages of such representation to that person;

452 (b) Notwithstanding each affected person's consent, a
453 defender may not represent an indigent person if:

454 (i) The defender represents an opposing party in
455 the same proceeding;

456 (ii) One or more of the persons is legally
457 incapable of giving consent; or

458 (iii) Special circumstances render it unlikely
459 that the defender will be able to provide adequate representation
460 to one or more of the persons.

461 (4) (a) If a conflict of interest is determined by the
462 commission or by the court to exist between the district defender
463 and the indigent person or if for any other reason the commission
464 or the court determines that the district defender cannot or
465 should not represent the indigent person, the commission shall
466 recommend to the appropriate court that the indigent person be
467 represented by a district defender from another area or by a
468 private attorney appointed for that purpose;

469 (b) Subject to caseload restrictions and conflict of
470 interest considerations, the court may notify the commission to
471 represent the indigent or provide representation for the indigent.

472 (5) In the event of conflicts, the commission may recommend

473 to the appropriate court that it appoints a private attorney who
474 is competent in the defense of criminal charges and/or is included
475 in a list of volunteers who have agreed to accept such
476 appointments as provided in Section 25-32-39 who shall be
477 compensated and be reimbursed for expenses as provided in Section
478 99-15-17, Mississippi Code of 1972.

479 (6) The commission shall attempt to equalize the
480 appointments for all attorneys on the list, but this chapter does
481 not deprive the commission of the power to recommend particularly
482 qualified and willing attorneys in unusual or complex matters.

483 * * *

484 SECTION 13. Section 25-32-49, Mississippi Code of 1972, is
485 amended as follows:

486 25-32-49. (1) The members of the commission, the executive
487 director, members of the commission staff, each district defender,
488 and each deputy district public defender shall not:

489 (a) Receive any funds, services or other thing of
490 monetary value, directly or indirectly, for the representation of
491 an indigent person pursuant to court appointment, except the
492 compensation authorized by law; or

493 (b) Refer any person, indigent or otherwise, who
494 contacts the district defender to any other attorney, except
495 pursuant to guidelines established by the commission.

496 (2) Nothing in this section shall be construed to bar a
497 prosecution or other disciplinary action against any attorney
498 within the Statewide Public Defender System who commits a
499 violation of law or of the Model Rules of Professional Conduct, or
500 one or more provisions thereof, as they exist and are enforced in
501 the State of Mississippi.

502 (3) Neither the executive director, nor a district defender,
503 nor any other full-time assistant or employee of the commission or
504 any district defender shall engage nor be associated with any
505 person in the private practice of law. Part-time assistant

506 defenders, contract assistant defenders and persons on volunteer
507 appointment lists may engage in the private practice of law as
508 long as such practice does not relate to the prosecution of
509 criminal matters.

510 * * *

511 SECTION 14. Section 25-32-53, Mississippi Code of 1972, is
512 amended as follows:

513 25-32-53. (1) There is hereby created within the office of
514 the commission an appellate division which shall function under
515 the direction and supervision of the commission.

516 (2) The appellate division may perfect and prosecute direct
517 appeals, petitions for rehearing, petitions for writs of
518 certiorari, and petitions for post-conviction relief, and perform
519 such other duties as the commission shall direct.

520 (3) The appellate division may provide assistance and
521 counsel to a district defender regarding the handling of matters
522 and issues that may be unusually difficult or complex or that may
523 likely affect or become a part of any appeal to the same extent
524 the attorney general is authorized to provide assistance to the
525 district attorneys in the prosecution of offenders.

526 SECTION 15. Section 25-32-65, Mississippi Code of 1972, is
527 amended as follows:

528 25-32-65. (1) The Statewide Public Defender System created
529 by this chapter in all of its units and features shall be funded
530 by appropriations made by the Legislature to the commission and by
531 funds from any other source not prohibited by law.

532 (2) The board of supervisors of any county may supplement
533 the resources available for financing the defense of indigent
534 persons within that county at such times and in such sums as it
535 determines to be reasonable and necessary * * *. Any such sums
536 shall be delivered to the commission for administration, although
537 disbursement shall be restricted to funding the defense of
538 indigent persons in that county.

539 (3) The commission may accept fees and reimbursement of
540 expenses if an attorney employed by or participating with this
541 system is appointed as counsel for an indigent by a court of a
542 jurisdiction, state or federal, other than the State of
543 Mississippi.

544 (4) All duties imposed upon the commission, the district
545 defenders and all other personnel of the Statewide Public Defender
546 System, and all powers conferred upon such persons, are made
547 subject to the availability of financial and other resources.

548 SECTION 16. Section 99-15-17, Mississippi Code of 1972, is
549 amended as follows:[BD8]

550 99-15-17. The compensation for counsel for indigents
551 appointed as provided in Section 99-15-15, shall be approved and
552 allowed by the appropriate judge and in any one (1) case may not
553 exceed One Thousand Dollars (\$1000.00) for representation in
554 circuit court whether on appeal or originating in said court.
555 Provided, however, if said case is not appealed to or does not
556 originate in a court of record, the maximum compensation shall not
557 exceed Two Hundred Dollars (\$200.00) for any one (1) case, the
558 amount of such compensation to be approved by a judge of the
559 chancery court, county court or circuit court in the county where
560 the case arises. Provided, however, in a capital case two (2)
561 attorneys may be appointed, and the compensation may not exceed
562 Two Thousand Dollars (\$2,000.00) per case. If the case is
563 appealed to the State Supreme Court by counsel appointed by the
564 judge, the allowable fee for services on appeal shall not exceed
565 One Thousand Dollars (\$1,000.00) per case. In addition, the judge
566 shall allow reimbursement of actual expenses. The attorney or
567 attorneys so appointed shall itemize the time spent in defending
568 said indigents together with an itemized statement of expenses of
569 such defense, and shall present same to the appropriate judge.
570 The fees and expenses as allowed by the appropriate judge shall be
571 paid by the State Treasurer out of the General Fund of the State

572 or any special fund created for this purpose.

573 SECTION 17. Section 21, Chapter 575, Laws of 1998, which
574 provides a conditional effective provision for the Mississippi
575 Statewide Public Defender System Act of 1998, is repealed on July
576 1, 2000.

577 SECTION 18. Sections 25-32-31, 25-32-33, 25-32-35, 25-32-41,
578 25-32-43, 25-32-45, 25-32-57, 25-32-59 and 25-32-61, Mississippi
579 Code of 1972, which provide for the declaration of purpose,
580 construction of the Mississippi Statewide Public Defender System
581 Act of 1998, provide powers and duties of the commission, which
582 create district public defenders and provide their powers and
583 duties and provide certain indigent representation provisions, is
584 repealed on July 2, 2000.

585 SECTION 19. Section 17 of this act shall take effect and be
586 in force from and after July 1, 2000, and the remainder of this
587 act shall take effect and be in force from and after July 2, 2000.