

By: Representative Evans (91st)

To: Judiciary B

HOUSE BILL NO. 1415

1 AN ACT TO CREATE NEW SECTION 99-18-21, MISSISSIPPI CODE OF
2 1972, TO ESTABLISH THE PUBLIC DEFENDER OVERSIGHT COUNCIL, PROVIDE
3 FOR THE APPOINTMENT OF MEMBERS AND REIMBURSEMENT OF EXPENSES, AND
4 TO ESTABLISH THE DUTIES AND AUTHORITY OF THE COUNCIL; TO CREATE
5 NEW SECTION 99-18-23, MISSISSIPPI CODE OF 1972, TO ESTABLISH THE
6 INDIGENT APPEALS DIVISION WITHIN THE OFFICE OF THE STATE PUBLIC
7 DEFENDER; TO CREATE NEW SECTION 99-18-25, MISSISSIPPI CODE OF
8 1972, TO ESTABLISH THE DIVISION OF DISTRICT PUBLIC DEFENDER AND
9 PROVIDE FOR PERSONNEL AND FUNDING SOURCES; TO AMEND SECTION
10 99-18-1, MISSISSIPPI CODE OF 1972, TO REVISE THE FUNDING FOR AND
11 DUTIES OF THE OFFICE OF STATE PUBLIC DEFENDER; TO AMEND SECTION
12 99-18-9, MISSISSIPPI CODE OF 1972, TO REVISE THE COMPENSATION OF
13 THE CAPITAL DEFENSE DIRECTOR; TO AMEND SECTION 99-18-13,
14 MISSISSIPPI CODE OF 1972, TO REVISE THE POWERS AND DUTIES OF THE
15 STATE DEFENDER; TO AMEND SECTION 99-18-15, MISSISSIPPI CODE OF
16 1972, TO REVISE THE DUTY OF THE CAPITAL DEFENSE DIRECTOR TO SUBMIT
17 CERTAIN RECORDS; TO AMEND SECTION 99-18-17, MISSISSIPPI CODE OF
18 1972, TO CLARIFY THE CIRCUMSTANCES UNDER WHICH PRIVATE COUNSEL
19 WILL UNDERTAKE INDIGENT REPRESENTATION AND TO DELETE REFERENCES TO
20 THE CAPITAL DEFENSE COUNSEL FUND; TO AMEND SECTION 25-32-1,
21 MISSISSIPPI CODE OF 1972, TO PROVIDE FOR THE ESTABLISHMENT OF
22 ASSISTANT DISTRICT DEFENDER POSITIONS BY BOARDS OF SUPERVISORS; TO
23 AMEND SECTION 25-32-3, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT
24 ALL ASSISTANT PUBLIC DEFENDERS ARE TO BE APPOINTED BY THE DISTRICT
25 PUBLIC DEFENDER; TO AMEND SECTION 25-32-5, MISSISSIPPI CODE OF
26 1972, TO CLARIFY THE PROHIBITION AGAINST THE PRIVATE PRACTICE OF
27 LAW BY PUBLIC DEFENDERS; TO AMEND SECTION 25-32-7, MISSISSIPPI
28 CODE OF 1972, TO PROVIDE FOR THE PAYMENT OF COMPENSATION AND
29 EXPENSES OF ASSISTANT DISTRICT PUBLIC DEFENDERS; TO AMEND SECTION
30 25-32-9, MISSISSIPPI CODE OF 1972, TO REVISE THE MANNER OF
31 DETERMINATION OF INDIGENCE; TO AMEND SECTION 25-32-15, MISSISSIPPI
32 CODE OF 1972, TO REVISE THE TERMINATION OF COUNTY SUPPORT FOR
33 ASSISTANT PUBLIC DEFENDERS; TO AMEND SECTION 25-32-17, MISSISSIPPI
34 CODE OF 1972, TO CLARIFY THE COMPENSATION AND PAYMENT OF EXPENSES



35 OF THE OFFICE OF DISTRICT PUBLIC DEFENDER; TO AMEND SECTION
36 25-32-19, MISSISSIPPI CODE OF 1972, TO CLARIFY THE AUTHORITY OF
37 THE DISTRICT PUBLIC DEFENDER TO OBTAIN FINANCIAL AND OTHER
38 ASSISTANCE IN OPERATION OF THE OFFICE; TO AMEND SECTION 99-39-107,
39 MISSISSIPPI CODE OF 1972, TO ELIMINATE THE NEED FOR THE CHIEF
40 JUSTICE TO APPROVE THE TERMINATION OF ATTORNEYS EMPLOYED IN THE
41 OFFICE OF CAPITAL POST-CONVICTION COUNSEL; TO AMEND SECTION
42 99-39-109, MISSISSIPPI CODE OF 1972, TO REVISE THE COMPENSATION OF
43 ATTORNEYS IN THE OFFICE OF POST-CONVICTION COUNSEL; TO AMEND
44 SECTION 99-39-115, MISSISSIPPI CODE OF 1972, TO REVISE THE DUTY OF
45 THE DIRECTOR OF THE OFFICE OF POST-CONVICTION COUNSEL TO MAKE
46 CERTAIN REPORTS; TO AMEND SECTION 99-39-117, MISSISSIPPI CODE OF
47 1972, TO CLARIFY THE APPOINTMENT OF PRIVATE COUNSEL AND TO DELETE
48 REFERENCES TO THE CAPITAL POST-CONVICTION COUNSEL FUND; TO AMEND
49 SECTION 99-15-15, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR
50 APPOINTMENT OF COUNSEL TO THOSE CHARGED WITH AN ACT OF
51 DELINQUENCY; TO AMEND SECTION 99-15-17, MISSISSIPPI CODE OF 1972,
52 TO REVISE THE COMPENSATION OF COUNSEL FOR INDIGENT DEFENDANTS; TO
53 AMEND SECTION 99-15-19, MISSISSIPPI CODE OF 1972, TO REVISE THE
54 REIMBURSEMENT FOR SOME EXPENSES TO COUNTIES IN WHICH A STATE
55 CORRECTIONAL FACILITY IS LOCATED IN CERTAIN CASES; TO AMEND
56 SECTION 99-15-21, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR
57 RESOLUTION OF DISPUTES OVER COMPENSATION OF COUNSEL FOR INDIGENT
58 DEFENDANTS; TO AMEND SECTION 43-21-201, MISSISSIPPI CODE OF 1972,
59 TO LIMIT A YOUTH'S ABILITY TO WAIVE ASSISTANCE OF COUNSEL; TO
60 AMEND SECTION 43-21-357, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR
61 THE APPOINTMENT OF COUNSEL IN DELINQUENCY AND
62 CHILD-IN-NEED-OF-SUPERVISION CASES; TO REPEAL SECTION 99-40-1,
63 MISSISSIPPI CODE OF 1972, WHICH CREATES THE INDIGENT APPEALS AND
64 PUBLIC DEFENDER TRAINING DIVISIONS AND ESTABLISHES THE PUBLIC
65 DEFENDERS EDUCATION FUND; AND FOR RELATED PURPOSES.

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

67 **SECTION 1.** The following shall be codified as Section
68 99-18-21, Mississippi Code of 1972:

69 99-18-21. **Public Defender Oversight Council, created;**
70 **members; authority; reimbursement of expenses; duties.** (1) There
71 is created the Mississippi Public Defender Oversight Council to be
72 composed of nine (9) members. Other than county supervisor
73 members, members of the council must be individuals with
74 significant experience working in the criminal justice system or
75 who have demonstrated a strong commitment to providing adequate



76 and effective representation of indigent defendants. Except as
77 otherwise provided in this section for the initial terms of
78 members or for filling a vacancy, members shall serve for a term
79 of four (4) years.

80 (a) Three (3) members shall be appointed by the
81 Mississippi Association of Supervisors, each from a different
82 supreme court district of this state. The initial appointments
83 shall be for one-, two- and four-year terms, respectively, as
84 designated by the Mississippi Association of Supervisors for each
85 appointment. A county supervisor council member is eligible to
86 serve so long as he or she retains the office by virtue of which
87 he or she is serving on the council.

88 (b) Two (2) members shall be appointed by the
89 Lieutenant Governor. The initial appointments shall be for one
90 (1) and four (4) years, respectively, as designated by the
91 Lieutenant Governor for each appointment.

92 (c) Two (2) members shall be appointed by the Speaker
93 of the House of Representatives. The initial appointments shall
94 be for one (1) and four (4) years, respectively, as designated by
95 the Speaker of the House of Representatives for each appointment.

96 (d) Two (2) members shall be appointed by the Chief
97 Justice. The initial appointments shall be for two (2) and three
98 (3) years, respectively, as designated by the Chief Justice for
99 each appointment. At least one (1) of the appointments must be of
100 an experienced criminal defense attorney with felony indigent



101 defense experience who is not at the time of appointment nor
102 during the appointee's term providing public defense services.

103 (e) All initial terms begin on July 1, 2019. A vacancy
104 in a term is to be filled by the appointing authority, and a
105 successor appointee shall serve the balance of the vacating
106 member's unexpired term. A member of the council may be appointed
107 to successive terms.

108 (f) In making the appointments of members of the
109 council who are not county supervisors, the appointing authorities
110 shall seek to identify and appoint persons who represent a
111 diversity of backgrounds and experience and shall solicit
112 suggestions from The Mississippi Bar, the Magnolia Bar, the
113 Mississippi Public Defenders Association, the Mississippi
114 Association for Justice, the associations representing the various
115 categories of state court judges in Mississippi, and the
116 Mississippi Prosecutors Association, as well as from the public
117 and other interested organizations and individuals within this
118 state. The appointing authorities shall not appoint a prosecuting
119 attorney, any employee of a prosecuting attorney's office, an
120 employee or member of the Prosecutors Association, a sitting judge
121 or an attorney or employee of a public defender office or indigent
122 defense contractor to serve on the council.

123 (2) The council shall elect a chairman and vice chairman
124 from its membership and shall adopt rules for transacting its
125 business and keeping records. Members of the council shall



126 receive a per diem in the amount provided in Section 25-3-69 for
127 each day engaged in the business of the council. Members of the
128 council shall receive reimbursement for travel expenses incurred
129 while engaged in official business of the council in accordance
130 with Section 25-3-41.

131 (3) The council shall:

132 (a) Establish standards for an effective indigent
133 defense system throughout the state, including, but not limited
134 to, standards for:

135 (i) Determining who qualifies as an indigent
136 person;

137 (ii) Maximum caseloads for full-time and part-time
138 indigent defenders to include a uniform definition of what
139 constitutes a case;

140 (iii) Compensation of counsel and support services
141 for assigned counsel, including contract counsel; however,
142 compensation standards for salaries of full-time assistant public
143 defenders shall not exceed ninety percent (90%) of the statutory
144 maximum for an assistant district attorney of comparable years of
145 experience, and salaries of part-time defenders shall not exceed a
146 pro rata share of the full-time defender;

147 (iv) Minimum education, training and experience of
148 attorneys appointed or employed as indigent defenders; and

149 (v) Performance of defense counsel in criminal,
150 mental health and youth court cases.



151 (b) Review records of the operation of the indigent
152 defender system, including, but not limited to, the following:

153 (i) Detailed descriptions of each city, county and
154 district indigent defender system;

155 (ii) Caseloads of each indigent defender and
156 number of cases assigned to private attorneys;

157 (iii) Expenditures on indigent defense in each
158 city, county and district; and

159 (iv) Coordinate the collection, analysis and
160 dissemination of data and research pertaining to indigent defense.

161 (c) Report to the Legislature, the Governor and the
162 Chief Justice no later than December 1 of each year: all
163 standards approved; an assessment of compliance with the standards
164 by the Office of the State Public Defender, Office of Capital
165 Post-Conviction Counsel and any district, city or county indigent
166 defense provider; an accounting of all indigent defense
167 expenditures by state or local government; and any recommendations
168 for the improvement of indigent defense services.

169 (4) The council may pay and disburse salaries, employment
170 benefits and charges relating to employment of an executive
171 director and any necessary staff as determined by the council and
172 approved by the Legislature and to establish their salaries and
173 expenses of the office; to incur and pay travel expenses of staff
174 necessary for the performance of the duties of the office; to rent
175 or lease on such terms as the director may think proper such



176 office space as is necessary in the City of Jackson to accommodate
177 the staff; to enter into and perform contracts and to purchase
178 office supplies and equipment as may be needed for the proper
179 administration of the offices within the funds appropriated for
180 such purpose; and to incur and pay such other expenses as are
181 appropriate and customary to the operation of the office,
182 including, but not limited to, expenses associated with capital
183 conflict cases under Sections 99-18-17 and 99-39-117, Mississippi
184 Code of 1972. The director is further authorized to solicit and
185 accept monies, gifts, grants or services from any public or
186 private source for the purpose of funding, operating and executing
187 the duties of the office.

188 (5) The council shall operate a Public Defender Training
189 Division. The division shall be staffed by any necessary
190 personnel as determined and hired by the council. The mission of
191 the division is to work closely with the Mississippi Public
192 Defenders Association to provide training and services to public
193 defenders practicing in all state, county and municipal courts.
194 These services shall include, but not be limited to, continuing
195 legal education, case updates and legal research. The division
196 shall provide:

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

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



201 (c) Current and accurate information for the
202 Legislature pertaining to the needs of public defenders practicing
203 in all state, county, municipal and youth courts.

204 (6) The council, in consultation with the defender selection
205 panel, shall develop a plan for representation in cases that
206 cannot be handled by the District Public Defender due to a
207 conflict of interest or excessive caseload. Those plans may
208 include utilization of contract defenders as an alternative to
209 counsel appointed under Section 99-15-15, but all contracts must
210 comply with indigent defense standards under Section 99-15-17 and
211 standards adopted by the Public Defender Oversight Council.

212 (7) The council shall act as an ombudsman to settle disputes
213 between defenders, judges, supervisors or clients concerning
214 standards compliance, contracts, fees or services.

215 **SECTION 2.** The following shall be codified as Section
216 99-18-23, Mississippi Code of 1972:

217 99-18-23. **Indigent Appeals Division created; director and**
218 **staff; compensation; duties.** (1) There is created the Indigent
219 Appeals Division within the Office of the State Public Defender.
220 This office shall consist of the Indigent Appeals Director, who
221 must be an attorney in good standing with The Mississippi Bar, and
222 staffed by any necessary personnel as determined and hired by the
223 State Defender. The Indigent Appeals Director shall be appointed
224 by the State Defender. The remaining attorneys and other staff
225 shall be appointed by the State Defender and shall serve at the



226 will and pleasure of the State Defender. Attorneys in the office
227 shall be active members of The Mississippi Bar. The attorneys in
228 the office shall practice law exclusively for the office and shall
229 not engage in any other practice. The office shall not engage in
230 any litigation other than that related to the office. The
231 Indigent Appeals Director shall be compensated at no more than the
232 State Defender, and other attorneys in the office shall be
233 compensated at no more than the maximum amount allowed by statute
234 for an assistant district attorney with comparable years of
235 practice experience.

236 (2) The office shall provide representation on appeal for
237 indigent persons convicted of felonies and indigent juveniles
238 adjudicated delinquent in youth court. The office may provide
239 advice and assistance to attorneys representing persons under
240 felony charges in the trial courts and juveniles in youth court
241 delinquency proceedings.

242 **SECTION 3.** The following shall be codified as Section
243 99-18-25, Mississippi Code of 1972:

244 99-18-25. **Division of District Public Defender created;**
245 **personnel; funding sources; qualifications, duties and removal of**
246 **district defender; funding of agency expenses.** (1) There is
247 hereby created in each circuit court district the Division of
248 District Public Defender. The Division of District Public
249 Defender shall consist of a District Public Defender who shall be
250 appointed by the State Defender on recommendation of the District



251 Public Defender Selection Panel established under this section and
252 staffed by any necessary personnel as determined and hired by the
253 District Public Defender in compliance with standards established
254 by the Public Defender Oversight Council.

255 (2) The District Public Defender must be a duly licensed
256 attorney admitted to the practice of law in this state, have
257 practiced in the area of criminal law for at least five (5) years
258 and shall meet all qualifications to serve as trial counsel in
259 death penalty cases as may be set by the Supreme Court of
260 Mississippi. The District Public Defender shall be familiar with
261 and integrate into his other practice standards promulgated by the
262 Public Defender Oversight Council. The salary of the District
263 Public Defender shall be no more than ninety percent (90%) of the
264 salary of the State Defender.

265 (3) The District Public Defender may be removed by the State
266 Defender upon finding that the District Public Defender is not
267 qualified under law, has failed to perform the duties of the
268 office, has failed to substantially comply with standards
269 promulgated by the Public Defender Oversight Council or has acted
270 beyond the scope of the authority granted by law for the office.

271 (4) The District Public Defender shall be responsible for
272 oversight of the indigent defense delivery system in the district,
273 including collection of data as requested by the State Defender
274 and the Public Defender Oversight Council, evaluation of the
275 performance of attorneys providing indigent defense and other



276 standards-compliance matters. The District Public Defender shall
277 handle a caseload that accounts for the administrative
278 responsibilities of the position as approved by the State
279 Defender. The counties must provide the District Public Defender
280 with office space, administrative assistance, and all reasonable
281 expenses of operating the office on a per capita basis at least
282 equal to a pro rata share of the district attorney based on the
283 number of authorized staff.

284 (5) The District Public Defender, subject to approval of the
285 State Defender, may employ assistant public defenders on a
286 full-time or part-time basis as well as investigators, paralegals
287 and social service providers to the extent funds are provided by a
288 county or otherwise available as provided for in Sections 25-32-1
289 through 25-32-19, Section 99-18-13, or by appropriation of the
290 Legislature.

291 (6) There shall be a District Public Defender Selection
292 Panel in each circuit court district. All members of the
293 selection panel must reside in the district. The panel shall
294 consist of three (3) members, at least two (2) of whom shall be
295 experienced criminal defense attorneys with felony indigent
296 defense experience. The panel members may not at the time of
297 appointment or during their terms of service serve on the panel
298 providing public defense services in the district. One (1) member
299 shall be appointed by the Senior Circuit Judge, one (1) by the
300 President of The Mississippi Bar, and one (1) by the President of



301 the Magnolia Bar. If a vacancy occurs in the position of District
302 Public Defender, the panel shall be convened by the State Defender
303 to evaluate and recommend a new District Public Defender. The
304 panel shall also consult with the Public Defender Oversight
305 Council to develop plans for representation in cases not handled
306 by the district public defender office due to conflict of interest
307 or excessive caseload.

308 **SECTION 4.** Section 99-18-1, Mississippi Code of 1972, is
309 amended as follows:

310 99-18-1. (1) There is hereby created the Office of State
311 Public Defender. The Office of State Public Defender shall
312 consist of a State Defender who shall be appointed by the Governor
313 with the advice and consent of the Senate for a term of four (4)
314 years and staffed by any necessary personnel as determined and
315 hired by the State Defender.

316 * * *

317 (* * *2) The State Defender must be a duly licensed
318 attorney admitted to the practice of law in this state, have
319 practiced in the area of criminal law for at least five (5) years
320 and shall meet all qualifications to serve as * * * trial * * * or
321 appellate counsel in death penalty cases as may be set by the
322 Supreme Court of Mississippi. The salary of the State Defender
323 shall be * * * equivalent to the salary of a district attorney.

324 (* * *3) The State Defender may be removed by the Governor
325 upon finding that the State Defender is not qualified under law,



326 has failed to perform the duties of the office, or has acted
327 beyond the scope of the authority granted by law for the office.

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

333 (* * *5) The State Defender may simultaneously serve as
334 State Defender and as director of one or more divisions but shall
335 receive no additional compensation for doing so. Nothing in this
336 chapter shall prohibit the State Defender from directly
337 representing clients of the office. Nothing in this chapter shall
338 be construed to prevent an employee of one (1) division of the
339 Office of the State Public Defender from working, in whole or in
340 part, for another division.

341 * * *

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

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



351 **SECTION 5.** Section 99-18-9, Mississippi Code of 1972, is
352 amended as follows:

353 99-18-9. The Capital Defense Director appointed under this
354 chapter shall be compensated at no more than the maximum amount
355 allowed by statute for a district attorney, and other attorneys in
356 the office shall be compensated at no more than the maximum amount
357 allowed by statute for an assistant district attorney with
358 comparable years of practice experience.

359 **SECTION 6.** Section 99-18-13, Mississippi Code of 1972, is
360 amended as follows:

361 99-18-13. (1) The State Defender is hereby empowered to pay
362 and disburse salaries, employment benefits and charges relating to
363 employment of division staff and to establish their salaries and
364 expenses of the office; to incur and pay travel expenses of staff
365 necessary for the performance of the duties of the office; to rent
366 or lease on such terms as he may think proper such office space as
367 is necessary in the City of Jackson to accommodate the staff; to
368 enter into and perform contracts and to purchase such necessary
369 office supplies and equipment as may be needed for the proper
370 administration of said offices within the funds appropriated for
371 such purpose; and to incur and pay such other expenses as are
372 appropriate and customary to the operation of the office. The
373 State Defender is further authorized to solicit and accept monies,
374 gifts, grants or services from any public or private source for



375 the purpose of funding, operating and executing the duties of the
376 office.

377 (2) The State Defender may provide representation to parents
378 or guardians who have been determined by the youth court judge to
379 be indigent and in need of representation in an abuse, neglect or
380 termination of parental rights proceeding or appeal therefrom.
381 Representation may be provided by staff or contract counsel
382 including, but not limited to, by contract with legal services
383 organizations or by a district public defender office.

384 **SECTION 7.** Section 99-18-15, Mississippi Code of 1972, is
385 amended as follows:

386 99-18-15. The Capital Defense Director shall keep a docket
387 of all indicted death-eligible cases originating in the courts of
388 Mississippi which must, at all reasonable times, be open to
389 inspection by the public and must show the county, district and
390 court in which the cause is pending. The director shall prepare
391 and maintain a roster of all death penalty cases in the courts of
392 Mississippi indicating the current status of each case and submit
393 this report to the Governor, Chief Justice of the Supreme Court
394 and the Administrative Office of Courts monthly. The director
395 shall also report * * * to the * * * Public Defender Oversight
396 Council in a form, manner and on a schedule prescribed by the
397 council the activities, receipts and expenditures of the office.

398 **SECTION 8.** Section 99-18-17, Mississippi Code of 1972, is
399 amended as follows:



400 99-18-17. * * * If at any time during the representation of
401 two (2) or more defendants, the State Defender determines that the
402 interests of those persons are so adverse or hostile they cannot
403 all be represented by the staff of the * * * office without
404 conflict of interest, or if the State Defender determines that the
405 volume or number of representations shall so require, the State
406 Defender, in his sole discretion, notwithstanding any statute or
407 regulation to the contrary, shall be authorized to refer the case
408 to the Public Defender Oversight Council which may employ
409 qualified private counsel. Fees and expenses approved by order of
410 the * * * Public Defender Oversight Council, including
411 investigative and expert witness expenses of such private counsel,
412 shall be paid by funds appropriated to the Capital Defense Counsel
413 Fund for this purpose.

414 * * *

415 **SECTION 9.** Section 25-32-1, Mississippi Code of 1972, is
416 amended as follows:

417 25-32-1. Should the board of supervisors of any county or
418 the boards of supervisors of two (2) or more counties in the same
419 circuit court district determine by order spread upon their
420 minutes that the county or counties have a sufficient number of
421 indigent defendant cases * * *, the board of supervisors or boards
422 of supervisors are authorized and empowered, in their discretion,
423 to * * * fund assistant public defender positions, provide office
424 space, personnel and funding for the office, and to perform any



425 and all functions necessary for the efficient operation of such an
426 office to the end that adequate legal defense for indigent persons
427 accused of crime shall be provided at every critical stage of
428 their cases as an alternative to court appointed counsel. Said
429 order shall specify whether the assistant public defender shall be
430 full-time or part-time. Assistant public defenders funded under
431 this section shall be county employees.

432 **SECTION 10.** Section 25-32-3, Mississippi Code of 1972, is
433 amended as follows:

434 25-32-3. * * * The District Public Defender shall appoint
435 all assistant public defenders. An assistant public defender may
436 be removed by the District Public Defender upon finding that the
437 assistant public defender is not qualified under law, has failed
438 to perform the duties of the office, or has acted beyond the scope
439 of the authority granted by law for the office. Such assistant
440 public defenders may be compensated in such an amount as may be
441 authorized by the respective board of supervisors in compliance
442 with standards set by the Public Defender Oversight Council; * * *
443 however, * * * the assistant public defenders may not receive
444 compensation in an amount greater than that received by the public
445 defender.

446 **SECTION 11.** Section 25-32-5, Mississippi Code of 1972, is
447 amended as follows:

448 25-32-5. * * * No full-time public defender or full-time
449 assistant public defenders shall engage nor be associated with any



450 person in the private practice of law. Part-time public defenders
451 or part-time assistant public defenders may engage in the private
452 practice of the law as long as such practice does not relate to
453 the prosecution of criminal matters.

454 **SECTION 12.** Section 25-32-7, Mississippi Code of 1972, is
455 amended as follows:

456 25-32-7. (1) * * * Each assistant district public defender
457 shall be provided with office space, secretarial assistance, and
458 all reasonable expenses of operating the office, at least equal
459 to * * * the amount provided to the district attorney * * * for an
460 assistant district attorney. The compensation and expenses of the
461 district public defender's office not covered by the budget of the
462 State Defender shall be paid by the county or counties if two (2)
463 or more counties are acting jointly. The funds shall be paid upon
464 allowance by the board of supervisors by order spread upon the
465 minutes of the board.

466 (2) The district public defender is authorized to assign the
467 duties of and exercise supervision over all employees of the
468 office without regard to the source of funding for those
469 employees.

470 **SECTION 13.** Section 25-32-9, Mississippi Code of 1972, is
471 amended as follows:

472 25-32-9. (1) When * * * a person * * * is arrested and
473 charged with a felony * * * or a misdemeanor * * *, then the
474 arresting authority shall afford * * * the person an opportunity



475 to sign an affidavit stating that * * * the person is an indigent
476 and unable to employ counsel. Upon the signing of * * * an
477 affidavit by * * * the person, the district public defender shall
478 represent * * * the person unless the person waives the right to
479 counsel * * *. * * * A statement * * * must be executed by the
480 alleged indigent, under oath, listing all assets available to the
481 indigent for the payment of attorney's fees, including the
482 ownership of any property, real or personal, and setting out
483 therein the alleged indigent's employment status, number of
484 dependents, income from any source, * * * and any other
485 information which might prove or disprove a finding of indigency.
486 The affidavit and statement shall be * * * filed under seal in the
487 case and shall be subject to review by the appropriate court.
488 Based on review of the affidavit, statement or other appropriate
489 evidence, if the appropriate court finds that the defendant is not
490 indigent, * * * the court shall terminate the representation of
491 the defendant by the public defender.

492 When * * * a person * * * is arrested and charged with a
493 misdemeanor, the presiding judge or justice, upon determination
494 that the person is indigent as provided in this section, and that
495 representation of the indigent is required, shall appoint the
496 public defender whose duty it shall be to provide such
497 representation. No person determined to be an indigent as
498 provided in this section shall be imprisoned as a result of a



499 misdemeanor conviction unless he was represented by the public
500 defender or waived the right to counsel.

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

504 (3) The public defender shall also represent persons in need
505 of mental treatment, as provided under * * * Section 41-21-61 et
506 seq. The chancery court may tax costs as provided in Sections
507 41-21-79 and 41-21-85.

508 (4) The District Public Defender is authorized to represent
509 persons charged with commission of an act of delinquency.

510 **SECTION 14.** Section 25-32-15, Mississippi Code of 1972, is
511 amended as follows:

512 25-32-15. The * * * county support for assistant public
513 defenders authorized under Section 25-32-1 may be terminated, in
514 the discretion of the board of supervisors, by entering an order
515 upon the minutes of the board of supervisors at least six (6)
516 months * * * before the expiration of the term of the district
517 public defender * * *, and the termination * * * is effective at
518 the end of the term of the public defender.

519 **SECTION 15.** Section 25-32-17, Mississippi Code of 1972, is
520 amended as follows:

521 25-32-17. The compensation, administrative staff, office
522 space and secretarial assistance shall not be reduced or



523 diminished but may be increased during the term of the district
524 public defender.

525 **SECTION 16.** Section 25-32-19, Mississippi Code of 1972, is
526 amended as follows:

527 25-32-19. The District Public Defender and the board of
528 supervisors may cooperate with any individual or public agency,
529 whether state or federal, or with any institution of higher
530 learning of the State of Mississippi, to obtain by gift, grant or
531 otherwise any financial, professional, investigatory or research
532 or other assistance; provided, however, that any grants or any
533 financial assistance whatever for the purpose herein set out shall
534 be paid over to the board of supervisors and administered by it
535 for the purposes herein set forth. The board shall have the
536 authority to use any financial assistance or grants to extend and
537 expand the facilities of the office.

538 **SECTION 17.** Section 99-39-107, Mississippi Code of 1972, is
539 amended as follows:

540 99-39-107. The Office of Capital Post-Conviction Counsel
541 shall limit its activities to the representation of inmates under
542 sentence of death in post-conviction proceedings and ancillary
543 matters related directly to post-conviction review of their
544 convictions and sentences and other activities explicitly
545 authorized in statute. Representation by the office or by private
546 counsel under appointment by the office will end upon the filing
547 of proceeding for federal habeas corpus review or for appointment



548 of counsel to represent the defendant in federal habeas corpus
549 proceedings. However, the office may continue representation if
550 the office or a staff attorney employed by the office shall be
551 appointed by a federal court to represent the inmate in federal
552 habeas corpus proceedings. In such event, the office or the
553 employee attorney shall apply to the federal court for
554 compensation and expenses and shall upon receipt of payments by
555 the federal court pay all sums received over to the office for
556 deposit in the Special Capital Post-Conviction Counsel Fund as
557 provided in Section 99-39-117, from which all expenses for
558 investigation and litigation shall be disbursed. Representation
559 in post-conviction proceedings shall further include
560 representation of the inmate from the exhaustion of all state and
561 federal post-conviction litigation until execution of the sentence
562 or an adjudication resulting in either a new trial or a vacation
563 of the death sentence. The attorneys appointed to serve in the
564 Office of Capital Post-Conviction Counsel shall devote their
565 entire time to the duties of the office, shall not represent any
566 persons in other litigation, civil or criminal, nor in any other
567 way engage in the practice of law, and shall in no manner,
568 directly or indirectly, participate in the trial of any person
569 charged with capital murder or direct appeal of any person under
570 sentence of death in the state, nor engage in lobbying activities
571 for or against the death penalty. Any violation of this provision
572 shall be grounds for termination from employment, in the case of



573 the director, by the Governor, and in the case of other attorneys,
574 by the director * * *.

575 **SECTION 18.** Section 99-39-109, Mississippi Code of 1972, is
576 amended as follows:

577 99-39-109. The director appointed under this article shall
578 be compensated at no more than the maximum amount allowed by
579 statute for a district attorney, and other attorneys in the office
580 shall be compensated at no more than the maximum amount allowed by
581 statute for an assistant district attorney with comparable years
582 of practice experience.

583 **SECTION 19.** Section 99-39-115, Mississippi Code of 1972, is
584 amended as follows:

585 99-39-115. The director shall keep a docket of all death
586 penalty cases originating in the courts of Mississippi, which must
587 at all reasonable times be open to the inspection of the public
588 and must show the county, district and court in which the causes
589 have been instituted. The director shall prepare and maintain a
590 roster of all death penalty cases originating in the courts of
591 Mississippi and pending in state and federal courts indicating the
592 current status of each such case, and a history of those death
593 penalty cases filed since 1976. Copies of such dockets and
594 rosters shall be submitted to the Governor, Chief Justice of the
595 Supreme Court and the Administrative Office of Courts * * * as
596 requested. The director shall also report * * * to the * * *
597 Public Defender Oversight Council in the form and manner and on a



598 schedule prescribed by the council the activities, receipts and
599 expenditures of the office.

600 **SECTION 20.** Section 99-39-117, Mississippi Code of 1972, is
601 amended as follows:

602 99-39-117. * * * If at any time during the representation of
603 two (2) or more defendants, the director determines that the
604 interest of those persons are so adverse or hostile that they
605 cannot all be represented by the director or his staff without
606 conflict of interest, or if the director * * * determines that the
607 volume or number of representations shall so require, the
608 director, in his sole discretion, notwithstanding any statute or
609 regulation to the contrary, * * * is authorized to refer the case
610 to the Public Defender Oversight Council, which may employ
611 qualified private counsel. Fees and expenses, approved by * * *
612 the Public Defender Oversight Council, including investigative and
613 expert witness expenses of such private counsel shall be paid from
614 funds appropriated * * * for this purpose.

615 * * *

616 **SECTION 21.** Section 99-15-15, Mississippi Code of 1972, is
617 amended as follows:

618 99-15-15. When any person * * * is charged with a
619 felony * * * or misdemeanor punishable by confinement * * *, the
620 court or the judge in vacation, being satisfied that such person
621 is an indigent person and is unable to employ counsel, * * * shall
622 appoint counsel to defend him.



623 Such appointed counsel shall have free access to the accused
624 who shall have process to compel the attendance of witnesses in
625 his favor.

626 The accused shall have such representation available at every
627 critical stage of the proceeding against him where a substantial
628 right may be affected.

629 When a person is charged with commission of an act of
630 delinquency, counsel shall be appointed under Section 43-21-201.

631 **SECTION 22.** Section 99-15-17, Mississippi Code of 1972, is
632 amended as follows:

633 99-15-17. The compensation for counsel for indigents
634 appointed as provided in Section 99-15-15, shall be approved and
635 allowed by the appropriate judge and in any one (1) case may not
636 exceed One Thousand Dollars (\$1,000.00) for representation in
637 circuit court whether on appeal or originating in said
638 court. * * * If * * * the case is not appealed to or does not
639 originate in a court of record, the maximum compensation shall not
640 exceed Two Hundred Dollars (\$200.00) for any one (1) case, the
641 amount of * * * compensation to be approved by a judge of the
642 chancery court, county court or circuit court in the county where
643 the case arises. * * * In a capital case two (2) attorneys may be
644 appointed, and the compensation may not exceed Two Thousand
645 Dollars (\$2,000.00) per case. If the case is appealed to the
646 state supreme court by counsel appointed by the judge, the
647 allowable fee for services on appeal shall not exceed One Thousand



648 Dollars (\$1,000.00) per case. These fee caps may be exceeded, in
649 the discretion of the presiding judge, after finding extraordinary
650 circumstances. The attorney shall be paid a reasonable hourly
651 rate consistent with standards adopted by the Public Defender
652 Oversight Council which shall be inclusive of all regular expenses
653 of operating a law office. In addition, the judge shall allow
654 reimbursement of * * * expenses for expert and investigative
655 services on prior approval of the court. The attorney or
656 attorneys so appointed shall itemize the time spent in defending
657 said indigents together with an itemized statement of expenses of
658 such defense, and shall present same to the appropriate judge.
659 The fees and expenses as allowed by the appropriate judge shall be
660 paid by the county treasurer out of the general fund of the county
661 in which the prosecution was commenced.

662 **SECTION 23.** Section 99-15-19, Mississippi Code of 1972, is
663 amended as follows:

664 99-15-19. Any county paying counsel fees and expenses
665 incurred on appeal to the Supreme Court or by virtue of any
666 prosecution charging the commission of a crime on * * * a premises
667 of * * * a Mississippi state * * * correctional facility or the
668 commission of a crime by any escapee therefrom, may request
669 reimbursement of all such payments from the State Treasurer. The
670 State Auditor shall issue his warrant, based upon a voucher sent
671 by the Treasurer of any county entitled to such reimbursement
672 together with a certification that such sums have been allowed and



673 paid. The State Treasurer shall pay the amount of any such
674 reimbursement out of any funds in the State Treasury appropriated
675 for such purpose.

676 **SECTION 24.** Section 99-15-21, Mississippi Code of 1972, is
677 amended as follows:

678 99-15-21. All compensation and reimbursements allowed by the
679 judge shall be made on the basis of an itemized statement as to
680 time and nature of work and the expense incurred by the appointed
681 counsel. The * * * Public Defender Oversight Council shall
682 prepare and make available the proper form for the itemized
683 statement which is to be submitted to the appropriate judge by the
684 attorney or attorneys. Compensation and reimbursements authorized
685 by Sections 99-15-15 through 99-15-21 shall be allowed only in
686 cases in which the appointment is made * * * after January 1,
687 2020. In all cases in which counsel have been appointed * * *
688 before that date, compensation shall be allowed in the same manner
689 and to the same extent as provided by law at the time * * * the
690 appointment was made. If an attorney or a county board of
691 supervisors disagrees with the judge's decision on compensation,
692 either may petition the Public Defender Oversight Council for an
693 increase or decrease in the amount. The council shall promulgate
694 rules to govern this procedure.

695 **SECTION 25.** Section 43-21-201, Mississippi Code of 1972, is
696 amended as follows:



697 43-21-201. (1) Each party shall have the right to be
698 represented by counsel at all stages of the proceedings including,
699 but not limited to, detention, adjudicatory and disposition
700 hearings and parole or probation revocation proceedings. In
701 delinquency matters the court shall appoint legal defense counsel
702 who is not also a guardian ad litem for the same child. If the
703 party is a child, the child shall be represented by counsel at all
704 critical stages: detention, adjudicatory and disposition
705 hearings; parole or probation revocation proceedings; and
706 post-disposition matters. * * * No child shall be allowed to
707 waive the right to the assistance of counsel except a child who
708 indicates a desire to waive the right to counsel in the presence
709 of counsel after consultation with counsel, and then only if the
710 court determines that the waiver is knowing and voluntary.

711 (2) When a party first appears before the youth court, the
712 judge shall ascertain whether he is represented by counsel and, if
713 not, inform him of his rights, including his right to counsel. If
714 the court determines that a parent or guardian who is a party in
715 an abuse, neglect or termination of parental rights proceeding is
716 indigent, the youth court judge may appoint counsel to represent
717 the indigent parent or guardian in the proceeding.

718 (3) An attorney appointed to represent a delinquent child
719 shall be required to complete annual juvenile justice training
720 that is approved by the Mississippi Office of State Public
721 Defender and the Mississippi Commission on Continuing Legal



722 Education. An attorney appointed to represent a parent or
723 guardian in an abuse, neglect or termination of parental rights
724 proceeding shall be required to complete annual training that is
725 approved by the Office of State Public Defender and the
726 Mississippi Commission on Continuing Legal Education. The
727 Mississippi Office of State Public Defender and the Mississippi
728 Commission on Continuing Legal Education shall determine the
729 amount of juvenile justice training and continuing education
730 required to fulfill the requirements of this subsection. The
731 State Public Defender shall maintain a roll of attorneys who have
732 complied with the training requirements and shall enforce the
733 provisions of this subsection. Should an attorney fail to
734 complete the annual training requirement or fail to attend the
735 required training within six (6) months of being appointed to a
736 youth court case, the attorney shall be disqualified to serve and
737 the youth court shall immediately terminate the representation and
738 appoint another attorney. Attorneys appointed by a youth court to
739 five (5) or fewer cases a year are exempt from the requirements of
740 this subsection.

741 (4) The child's attorney shall owe the same duties of
742 undivided loyalty, confidentiality and competent representation to
743 the child or minor as is due an adult client pursuant to the
744 Mississippi Rules of Professional Conduct.

745 (5) An attorney shall enter his appearance on behalf of a
746 party in the proceeding by filing a written notice of appearance



747 with the youth court, by filing a pleading, notice or motion
748 signed by counsel or by appearing in open court and advising the
749 youth court that he is representing a party. After counsel has
750 entered his appearance, he shall be served with copies of all
751 subsequent pleadings, motions and notices required to be served on
752 the party he represents. An attorney who has entered his
753 appearance shall not be permitted to withdraw from the case until
754 a timely appeal, if any, has been decided, except by leave of the
755 court then exercising jurisdiction of the cause after notice of
756 his intended withdrawal is served by him on the party he
757 represents.

758 (6) Each designee appointed by a youth court judge shall be
759 subject to the Code of Judicial Conduct and shall govern himself
760 or herself accordingly.

761 **SECTION 26.** Section 43-21-357, Mississippi Code of 1972, is
762 amended as follows:

763 43-21-357. (1) After receiving a report, the youth court
764 intake unit shall promptly make a preliminary inquiry to determine
765 whether the interest of the child, other children in the same
766 environment or the public requires the youth court to take further
767 action. As part of the preliminary inquiry, the youth court
768 intake unit may request or the youth court may order the
769 Department of Human Services, the Department of Youth Services,
770 any successor agency or any other qualified public employee to
771 make an investigation or report concerning the child and any other



772 children in the same environment, and present the findings thereof
773 to the youth court intake unit. If the youth court intake unit
774 receives a neglect or abuse report, the youth court intake unit
775 shall immediately forward the complaint to the Department of Human
776 Services to promptly make an investigation or report concerning
777 the child and any other children in the same environment and
778 promptly present the findings thereof to the youth court intake
779 unit. If it appears from the preliminary inquiry that the child
780 or other children in the same environment are within the
781 jurisdiction of the court, the youth court intake unit shall
782 recommend to the youth court:

783 (a) That the youth court take no action;

784 (b) That an informal adjustment be made;

785 (c) That the Department of Human Services, Division of
786 Family and Children Services, monitor the child, family and other
787 children in the same environment;

788 (d) That the child is warned or counseled informally;

789 (e) That the child be referred to the youth court drug
790 court; or

791 (f) That a petition be filed.

792 (2) The youth court shall then, without a hearing:

793 (a) Order that no action be taken;

794 (b) Order that an informal adjustment be made;



795 (c) Order that the Department of Human Services,
796 Division of Family and Children Services, monitor the child,
797 family and other children in the same environment;

798 (d) Order that the child is warned or counseled
799 informally;

800 (e) That the child be referred to the youth court drug
801 court; or

802 (f) Order that a petition be filed.

803 (3) If the preliminary inquiry discloses that a child needs
804 emergency medical treatment, the judge may order the necessary
805 treatment.

806 (4) If the intake unit recommends any action under
807 subsection (1) of this section in delinquency or
808 child-in-need-of-supervision proceedings, the unit must notify the
809 public defender who would represent the child. If there is no
810 public defender available, the intake unit shall recommend to the
811 youth court that qualified counsel be appointed, and the youth
812 court must appoint counsel under Section 43-21-201.

813 **SECTION 27.** Section 99-40-1, Mississippi Code of 1972, which
814 creates the Indigent Appeals and Public Defender Training
815 Divisions and establishes the Public Defenders Education Fund, is
816 repealed.

817 **SECTION 28.** Section 1, Sections 4 through 8, and Section 26
818 of this act shall take effect and be in force from and after July



819 1, 2019, and the remainder of this act shall take effect and be in
820 force from and after January 1, 2020.

