

By: Representative Cockerham

To: Judiciary A

HOUSE BILL NO. 1388

1 AN ACT TO AMEND SECTION 99-18-13, MISSISSIPPI CODE OF 1972,
 2 TO AUTHORIZE THE OFFICE OF THE STATE PUBLIC DEFENDER TO REPRESENT
 3 YOUTH IN DELINQUENCY AND/OR CHILD IN NEED OF SUPERVISION
 4 PROCEEDINGS; TO AMEND SECTION 43-21-201, MISSISSIPPI CODE OF 1972,
 5 TO CLARIFY RESPONSIBILITY FOR TRAINING OF ATTORNEYS REPRESENTING
 6 CHILDREN; AND FOR RELATED PURPOSES.

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

8 **SECTION 1.** Section 99-18-13, Mississippi Code of 1972, is
 9 amended as follows:

10 99-18-13. (1) The State Defender is hereby empowered to pay
 11 and disburse salaries, employment benefits and charges relating to
 12 employment of division staff and to establish their salaries and
 13 expenses of the office; to incur and pay travel expenses of staff
 14 necessary for the performance of the duties of the office; to rent
 15 or lease on such terms as he may think proper such office space as
 16 is necessary in the City of Jackson to accommodate the staff; to
 17 enter into and perform contracts and to purchase such necessary
 18 office supplies and equipment as may be needed for the proper
 19 administration of said offices within the funds appropriated for



20 such purpose; and to incur and pay such other expenses as are
21 appropriate and customary to the operation of the office.

22 (2) The State Defender may provide representation to youth
23 in delinquency and child in need of supervision proceedings and
24 parents or guardians who have been determined by the youth court
25 judge to be indigent * * * in an abuse, neglect or termination of
26 parental rights proceeding or appeal therefrom. Representation
27 may be provided by staff or contract counsel including, but not
28 limited to, by contract with legal services organizations.

29 **SECTION 2.** Section 43-21-201, Mississippi Code of 1972, is
30 amended as follows:

31 43-21-201. (1) (a) Each party shall have the right to be
32 represented by counsel at all stages of the proceedings including,
33 but not limited to, detention, shelter, adjudicatory and
34 disposition hearings and parole or probation revocation
35 proceedings.

36 (b) In delinquency matters the court shall appoint
37 legal defense counsel who is not also a guardian ad litem for the
38 same child. If the party is a child, the child shall be
39 represented by counsel at all critical stages: detention,
40 adjudicatory and disposition hearings; parole or probation
41 revocation proceedings; and post-disposition matters. If
42 indigent, the child shall have the right to have counsel appointed
43 for him by the youth court.



44 (c) A child who is alleged to have been abused or
45 neglected shall be deemed to be a party to the proceedings under
46 this chapter. The child shall be represented by an attorney at
47 all stages of any proceedings held pursuant to this chapter. The
48 court shall appoint an attorney to any child who is unrepresented.
49 Attorneys appointed under this paragraph must have received child
50 protection and juvenile justice training provided by or approved
51 by the Mississippi Judicial College consistent with Section
52 43-21-121(4).

53 The guardian ad litem may serve a dual role as long as no
54 conflict of interest is present. If a conflict of interest
55 arises, the guardian ad litem shall inform the youth court of the
56 conflict, and the youth court shall retain the guardian ad litem
57 to represent the best interest of the child and appoint an
58 attorney to represent the child's preferences as required by
59 Uniform Rule of Youth Court Practice 13(f).

60 (2) (a) When a party first appears before the youth court,
61 the judge shall ascertain whether he is represented by counsel
62 and, if not, inform him of his rights including his right to
63 counsel. If the court determines that a custodial parent or
64 guardian who is a party in an abuse, neglect or termination of
65 parental rights proceeding is indigent, the youth court judge
66 shall appoint counsel to represent the indigent parent or guardian
67 in the proceeding. The court may appoint counsel to represent a
68 noncustodial parent if the court determines that the noncustodial



69 parent is indigent and has demonstrated a significant custodial
70 relationship with the child. All parents have the right to be
71 appointed counsel in termination of parental rights hearings, and
72 the court shall appoint counsel if the court makes a finding that
73 the parent is indigent and counsel is requested by the parent.
74 For purposes of this section, indigency shall be determined
75 pursuant to Section 25-32-9 and Rule 7.3 of the Mississippi Rules
76 of Criminal Procedure.

77 (b) (i) The court shall order a financially able
78 parent or custodian to pay all or part of reasonable attorney's
79 fees and expenses for court-appointed representation after review
80 by the court of an affidavit of financial means completed and
81 verified by a parent or custodian and a determination by the court
82 of an ability to pay.

83 (ii) All monies collected by the clerk under this
84 paragraph must be retained by the clerk and deposited into a
85 special fund to be known as the "Juvenile Court Representation
86 Fund."

87 (iii) The Administrative Office of Courts may
88 direct that money from the fund be used in providing counsel for
89 indigent parents or custodians at the trial level in
90 dependency-neglect proceedings.

91 (iv) Upon a determination of indigency and a
92 finding by the court that the fund does not have sufficient funds
93 to pay reasonable attorney's fees and expenses incurred at the



94 trial court level and that state funds have been exhausted, the
95 court may order the county to pay the reasonable fees and expenses
96 until the state provides funding for counsel.

97 (v) A special fund, to be designated as the
98 "Juvenile Court Representation Fund", is created within the State
99 Treasury. The fund shall be maintained by the State Treasurer as
100 a separate and special fund, separate and apart from the General
101 Fund of the state. Monies in the fund shall be disbursed by the
102 Administrative Office of Courts as provided in this section.
103 Unexpended amounts remaining in the fund at the end of a fiscal
104 year shall not lapse into the State General Fund, and any interest
105 earned or investment earnings on amounts in the fund shall be
106 deposited into such fund.

107 (3) An attorney appointed to represent a child in
108 delinquency and/or children in need of supervision cases shall be
109 required to complete annual juvenile justice training that is
110 approved by the Mississippi Office of State Public Defender and
111 the Mississippi Commission on Continuing Legal Education. An
112 attorney appointed to represent a parent or guardian in an abuse,
113 neglect or termination of parental rights proceeding shall be
114 required to complete annual training that is approved by the
115 Office of State Public Defender and the Mississippi Commission on
116 Continuing Legal Education. The Mississippi Office of State
117 Public Defender and the Mississippi Commission on Continuing Legal
118 Education shall determine the amount of juvenile justice training



119 and continuing education required to fulfill the requirements of
120 this subsection. The State Public Defender shall maintain a roll
121 of attorneys who have complied with the training requirements and
122 shall enforce the provisions of this subsection. Should an
123 attorney fail to complete the annual training requirement or fail
124 to attend the required training within six (6) months of being
125 appointed to a youth court case, the attorney shall be
126 disqualified to serve, and the youth court shall immediately
127 terminate the representation and appoint another attorney.
128 Attorneys appointed by a youth court to five (5) or fewer cases a
129 year are exempt from the requirements of this subsection.

130 (4) Attorneys for all parties, including the child's
131 attorney, shall owe the duties of undivided loyalty,
132 confidentiality and competent representation to the party client
133 pursuant to the Mississippi Rules of Professional Conduct.

134 (5) An attorney shall enter his appearance on behalf of a
135 party in the proceeding by filing a written notice of appearance
136 with the youth court, by filing a pleading, notice or motion
137 signed by counsel or by appearing in open court and advising the
138 youth court that he is representing a party. After counsel has
139 entered his appearance, he shall be served with copies of all
140 subsequent pleadings, motions and notices required to be served on
141 the party he represents. An attorney who has entered his
142 appearance shall not be permitted to withdraw from the case until
143 a timely appeal, if any, has been decided, except by leave of the



144 court then exercising jurisdiction of the cause after notice of
145 his intended withdrawal is served by him on the party he
146 represents.

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

150 (7) The Department of Child Protection Services shall be a
151 necessary party at all stages of the proceedings involving a child
152 for whom the department has custody, including, but not limited
153 to, detention, shelter, adjudicatory, disposition, permanency,
154 termination of parental rights and adoption hearings.

155 (8) The Department of Child Protection Services shall have
156 the right to hire agency counsel to represent the department and
157 be represented by counsel from the Attorney General's Office at
158 all stages of the proceedings involving a child for whom the
159 department has custody of or may be awarded custody of, including,
160 but not limited to, detention shelter, adjudicatory disposition,
161 permanency, termination of parental rights and adoption hearings.

162 **SECTION 3.** This act shall take effect and be in force from
163 and after July 1, 2025.

