

3/11/11 11:16 am

Chapter No. 343  
11/SS02/R754CS  
JN 100/TB

***SENATE BILL NO. 2563***

Originated in Senate *Henry Jones* Secretary

SENATE BILL NO. 2563

AN ACT TO CONSOLIDATE THE OFFICE OF CAPITAL DEFENSE COUNSEL, THE OFFICE OF INDIGENT APPEALS, AND THE DIVISION OF PUBLIC DEFENDER TRAINING INTO THE OFFICE OF STATE PUBLIC DEFENDER; TO PROVIDE ADMINISTRATIVE, BUDGETING AND FINANCIAL SERVICES SUPPORT TO THE OFFICE OF CAPITAL DEFENSE COUNSEL, THE OFFICE OF INDIGENT APPEALS, AND THE DIVISION OF PUBLIC DEFENDER TRAINING; TO AMEND SECTION 99-18-1, MISSISSIPPI CODE OF 1972, TO ACCOMPLISH THE CONSOLIDATION, TO COORDINATE THE COLLECTION AND DISSEMINATION OF STATISTICAL DATA RELATED TO THE INDIGENT DEFENSE SYSTEM, AND TO DEVELOP PLANS AND PROPOSALS FOR A STATEWIDE PUBLIC DEFENDER SYSTEM IN COORDINATION WITH THE MISSISSIPPI PUBLIC DEFENDER TASK FORCE; TO AMEND SECTIONS 99-18-3, 99-18-5, 99-18-7, 99-18-9, 99-18-11, 99-18-13, 99-18-15, 99-18-17 AND 99-40-1, MISSISSIPPI CODE OF 1972, IN CONFORMITY; TO AMEND SECTION 99-39-103, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR THE ORGANIZATION OF THE MISSISSIPPI OFFICE OF CAPITAL POST-CONVICTION COUNSEL; TO REPEAL SECTION 99-18-19, MISSISSIPPI CODE OF 1972, WHICH PROVIDES THAT, UPON DETERMINATION OF INDIGENCE, THE CIRCUIT COURT MAY APPOINT LOCAL COUNSEL FOR THE PURPOSE OF DEFENDING DEATH-ELIGIBLE INDIGENT DEFENDANTS AT THE EXPENSE OF THE CAPITAL DEFENSE COUNSEL SPECIAL FUND, AND THAT UPON DETERMINATION OF LACK OF COMPETENT LOCAL COUNSEL, A STATE DEFENDER MAY BE APPOINTED; AND FOR RELATED PURPOSES.

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

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

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

(2) Funding for the Office of State Public Defender shall come from funds available in the Capital Defense Counsel Fund, the Indigent Appeals Fund and the Public Defenders Education Fund as determined by the State Defender. The State Defender shall have

the authority to transfer funds between the various funds to efficiently and effectively accomplish the mission of the Office of State Public Defender and its divisions.

(3) The State Defender must be a duly licensed attorney admitted to the practice of law in this state, have practiced in the area of criminal law for at least five (5) years and shall meet all qualifications to serve as lead trial and appellate counsel in death penalty cases as may be set by the Supreme Court of Mississippi. The salary of the State Defender shall be no greater than ninety percent (90%) of the salary of the Attorney General and no less than the salary of a district attorney.

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

(5) The Office of State Public Defender shall be responsible for the administration, budget and finances of the Divisions of Capital Defense Counsel, Indigent Appeals and Public Defender Training, which shall be divisions of the Office of State Public Defender.

(6) The State Defender may simultaneously serve as State Defender and as director of one or more divisions but shall receive no additional compensation for doing so. Nothing in this act shall prohibit the State Defender from directly representing clients of the office. Nothing in this act shall be construed to prevent an employee of one (1) division of the Office of the State Public Defender from working in part or in whole for another division.

(7) The State Defender shall coordinate the collection and dissemination of statistical data and make such reports as are required of the divisions, develop plans and proposals for further development of a statewide public defender system in coordination with the Mississippi Public Defenders Task Force and to act as

spokesperson for all matters relating to indigent defense representation.

**SECTION 2.** Section 99-18-3, Mississippi Code of 1972, is amended as follows:

99-18-3. There is hereby created the \* \* \* Capital Defense Counsel Division within the Office of the State Public Defender. This office shall consist of a director, sometimes referred to as Capital Defender, who shall be an attorney qualified to serve as lead counsel in death penalty eligible cases and staffed by any necessary personnel as determined and hired by the State Defender. The Capital Defender shall be appointed by the State Defender \* \* \*. The remaining attorneys and other staff shall be appointed by the State Defender and shall serve at the will and pleasure of the State Defender. The Capital Defender and all other attorneys in the office shall be active members of The Mississippi Bar, or, if a member in good standing of the bar of another jurisdiction, must apply to and secure admission to The Mississippi Bar within twelve (12) months of the commencement of the person's employment by the office. The Capital Defender may be removed by the State Defender upon finding that the Capital Defender is not qualified under law, has failed to perform the duties of the office, or has acted beyond the scope of the authority granted by law for the office.

**SECTION 3.** Section 99-18-5, Mississippi Code of 1972, is amended as follows:

99-18-5. The \* \* \* Capital Defense Counsel Division is created within the Office of the State Public Defender for the purpose of providing representation to indigent parties under indictment for death penalty eligible offenses and to perform such other duties as set forth by law.

**SECTION 4.** Section 99-18-7, Mississippi Code of 1972, is amended as follows:

99-18-7. The \* \* \* Capital Defense Counsel Division shall limit its activities to representation of defendants accused of death-eligible offenses and ancillary matters related directly to death-eligible offenses and other activities expressly authorized by statute. Representation by the division or by other court-appointed counsel under this chapter shall terminate upon completion of trial \* \* \* or direct appeal. The attorneys appointed to serve in the \* \* \* Capital Defense Counsel Division shall devote their entire time to the duties of the division, shall not represent any persons in other litigation, civil or criminal, nor in any other way engage in the practice of law, and shall in no manner, directly or indirectly, engage in lobbying activities for or against the death penalty. Any violation of this provision shall be grounds for termination from employment \* \* \* by the State Defender \* \* \*.

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

99-18-9. The Capital Defense Director appointed under this chapter shall be compensated at no more than the maximum amount allowed by statute for a district attorney, and other attorneys in the office shall be compensated at no more than the maximum amount allowed by statute for an assistant district attorney.

**SECTION 6.** Section 99-18-11, Mississippi Code of 1972, is amended as follows:

99-18-11. The \* \* \* Capital Defense Counsel Division shall \* \* \* be open Monday through Friday for not less than eight (8) hours each day and observe such holidays and closings as prescribed by statute.

**SECTION 7.** Section 99-18-13, Mississippi Code of 1972, is amended as follows:

99-18-13. \* \* \* The State Defender is hereby empowered to pay and disburse salaries, employment benefits and charges relating to employment of division staff and to establish their

salaries and expenses of the office; to incur and pay travel expenses of staff necessary for the performance of the duties of the office; to rent or lease on such terms as he may think proper such office space as is necessary in the City of Jackson to accommodate the staff; to enter into and perform contracts and to purchase such necessary office supplies and equipment as may be needed for the proper administration of said offices within the funds appropriated for such purpose; and to incur and pay such other expenses as are appropriate and customary to the operation of the office.

**SECTION 8.** Section 99-18-15, Mississippi Code of 1972, is amended as follows:

99-18-15. The Capital Defense Director shall keep a docket of all indicted death-eligible cases originating in the courts of Mississippi which must, at all reasonable times, be open to inspection by the public and must show the county, district and court in which the cause is pending. The director shall prepare and maintain a roster of all death penalty cases in the courts of Mississippi indicating the current status of each case and submit this report to the Governor, Chief Justice of the Supreme Court and the Administrative Office of \* \* \* Courts monthly. The director shall also report monthly to the Administrative Office of Courts the activities, receipts and expenditures of the office.

**SECTION 9.** Section 99-18-17, Mississippi Code of 1972, is amended as follows:

99-18-17. (1) If at any time during the representation of two (2) or more defendants, the State Defender determines that the interests of those persons are so adverse or hostile they cannot all be represented by the \* \* \* staff of the Capital Counsel Division without conflict of interest, or if the State Defender \* \* \* determines that the volume or number of representations shall so require, the State Defender, in his sole discretion, notwithstanding any statute or regulation to the

contrary, shall be authorized to employ qualified private counsel. Fees and expenses approved by order of the court of original jurisdiction, including investigative and expert witness expenses of such private counsel, shall be paid by funds appropriated to the Capital Defense Counsel Fund for this purpose.

(2) There is created in the State Treasury a special fund to be known as the Capital Defense Counsel Fund. The purpose of the fund shall be to provide funding for the \* \* \* Capital Defense Counsel Division. Monies from the funds derived from assessments under Section 99-19-73 shall be distributed by the State Treasurer upon warrants issued by the State Defender. The fund shall be a continuing fund, not subject to fiscal-year limitations, and shall consist of:

- (a) Monies appropriated by the Legislature for the purposes of funding the Capital Defense Counsel Division;
- (b) The interest accruing to the fund;
- (c) Monies received under the provisions of Section 99-19-73;
- (d) Monies received from the federal government;
- (e) Donations; and
- (f) Monies received from such other sources as may be provided by law.

**SECTION 10.** Section 99-40-1, Mississippi Code of 1972, is amended as follows:

99-40-1. (1) There is created the \* \* \* Indigent Appeals Division within the Office of the State Public Defender. This office shall consist of the Indigent Appeals Director who must be an attorney in good standing with The Mississippi Bar, and staffed by any necessary personnel as determined and hired by the State Defender. The Indigent Appeals Director shall be appointed by the State Defender \* \* \*. The remaining attorneys and other staff shall be appointed by the State Defender and shall serve at the will and pleasure of the State Defender. The Indigent Appeals

Director and all other attorneys in the office shall either be active members of The Mississippi Bar, or, if a member in good standing of the bar of another jurisdiction, must apply to and secure admission to The Mississippi Bar within twelve (12) months of the commencement of the person's employment by the office. The attorneys in the office shall practice law exclusively for the office and shall not engage in any other practice. The office shall not engage in any litigation other than that related to the office. The salary for the Indigent Appeals Director shall be equivalent to the salary of district attorneys and the salary of the other attorneys in the office shall be equivalent to the salary of an assistant district attorney.

(2) The office shall provide representation on appeal for indigent persons convicted of felonies but not under sentences of death. Representation shall be provided by staff attorneys, or, in the case of conflict or excessive workload as determined by the State Defender, by attorneys selected, employed and compensated by the office on a contract basis. All fees charged by contract counsel and expenses incurred by attorneys in the office and contract counsel must be approved by the court. At the sole discretion of the State Defender, the office may also represent indigent juveniles adjudicated delinquent on appeals from a county court or chancery court to the Mississippi Supreme Court \* \* \* or the Mississippi Court of Appeals. The office shall provide advice, education and support to attorneys representing persons under felony charges in the trial courts.

(3) There is created in the State Treasury a special fund to be known as the Indigent Appeals Fund. The purpose of the fund shall be to provide funding for the \* \* \* Indigent Appeals Division. Monies from the funds derived from assessments under Section 99-19-73 shall be distributed by the State Treasurer upon warrants issued by the State Defender. The fund shall be a

continuing fund, not subject to fiscal-year limitations, and shall consist of:

- (a) Monies appropriated by the Legislature for the purposes of funding the \* \* \* Indigent Appeals Division;
- (b) The interest accruing to the fund;
- (c) Monies received under the provisions of Section 99-19-73;
- (d) Monies received from the federal government;
- (e) Donations; and
- (f) Monies received from such other sources as may be provided by law.

(4) (a) There is created in the Office of the State Public Defender the \* \* \* Public Defender Training Division. The division shall be staffed by any necessary personnel as determined and hired by the State Defender. The mission of the division shall be to work closely with the Mississippi Public Defenders Association to provide training and services to public defenders practicing in all state, county and municipal courts. These services shall include, but not be limited to, continuing legal education, case updates and legal research. The division shall provide (i) education and training for public defenders practicing in all state, county, municipal and youth courts; (ii) technical assistance for public defenders practicing in all state, county, municipal and youth courts; and (iii) current and accurate information for the Legislature pertaining to the needs of public defenders practicing in all state, county, municipal and youth courts.

(b) There is created in the State Treasury a special fund to be known as the Public Defenders Education Fund. The purpose of the fund shall be to provide funding for the training of public defenders. Monies from the funds derived from assessments under Section 99-19-73 shall be distributed by the State Treasurer upon warrants issued by the State Defender. The

fund shall be a continuing fund, not subject to fiscal-year limitations, and shall consist of:

(i) Monies appropriated by the Legislature for the purposes of public defender training;

(ii) The interest accruing to the fund;

(iii) Monies received under the provisions of Section 99-19-73;

(iv) Monies received from the federal government;

(v) Donations; and

(vi) Monies received from such other sources as may be provided by law.

**SECTION 11.** Section 99-39-103, Mississippi Code of 1972, is amended as follows:

99-39-103. There is created the Mississippi Office of Capital Post-Conviction Counsel. This office shall consist of a director who shall be an attorney who shall meet all qualifications necessary to serve as post-conviction counsel for persons under a sentence of death and staffed by any necessary personnel as determined and hired by the director. The director shall be appointed by the Governor with the advice and consent of the Senate for a term of four (4) years, or until a successor takes office. The remaining attorneys and other staff shall be appointed by the director of the office and shall serve at the will and pleasure of the director. The director and all other attorneys in the office shall either be active members of The Mississippi Bar, or, if a member in good standing of the bar of another jurisdiction, must apply to and secure admission to The Mississippi Bar within twelve (12) months of the commencement of the person's employment by the office. \* \* \* The director may be removed from office by the Governor upon finding that the director is not qualified under law to serve as post-conviction counsel for persons under sentences of death, has failed to perform the duties

of the office or has acted beyond the scope of the authority granted by law for the office.

**SECTION 12.** Notwithstanding any other provision of this act, it is the intent of the Legislature that the Directors of the Mississippi Office of Capital Defense Counsel, the Mississippi Office of Indigent Appeals and the Division of Public Defender Training holding those offices as of the effective date of this act shall continue as the directors of their respective offices or division for the term to which appointed unless terminated for cause, but that any vacancies in the office of division director on or after the effective date of this act shall be filled as provided in Sections 99-18-3 and 99-40-1, as amended by this act.

**SECTION 13.** Section 99-18-19, Mississippi Code of 1972, which provides that, upon determination of indigence, the circuit court may appoint local counsel for the purpose of defending death-eligible indigent defendants at the expense of the Capital Defense Counsel Special Fund, and that upon determination of lack of competent local counsel a State Defender may be appointed, is repealed.

**SECTION 14.** This act shall take effect and be in force from and after July 1, 2011.

PASSED BY THE SENATE  
February 9, 2011

  
PRESIDENT OF THE SENATE

PASSED BY THE HOUSE OF REPRESENTATIVES  
March 1, 2011

  
SPEAKER OF THE HOUSE OF REPRESENTATIVES

APPROVED BY THE GOVERNOR

  
GOVERNOR

*Yuda*      *11/16a*