

MISSISSIPPI PUBLIC DEFENDER TASK FORCE



FINAL REPORT TO THE MISSISSIPPI LEGISLATURE



SUPREME COURT OF MISSISSIPPI

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June 15, 2018

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JUSTICES

HUBBARD T. SAUNDERS, IV  
COURT ADMINISTRATOR  
AND COUNSEL

The Honorable Tate Reeves and Distinguished Members of the Senate  
The Honorable Phillip Gunn and Distinguished Members of the House  
The Capitol  
Jackson, Mississippi

Dear Friends:

The Mississippi Public Defender Task Force was created by HB 602 during the 2015 Legislative Session, and it is codified as §25-32-71. The Act took effect upon passage and it will stand repealed on July 1, 2018. This time frame afforded the Task Force just over three years for completion of its mission.

We have complied with the Act's requirement that the Task Force report to the Legislature annually. As we have reported, the Task Force determined that, in the absence of a data-based assessment of indigent defense case loads and a more detailed evaluation of defense services across the state, the duties of the Task Force could not be addressed intelligently.

At our suggestion the Legislature amended Mississippi's data-collection and data-reporting laws. This greatly facilitated our work; but implementation of the statutory changes has been disappointingly slow. In early 2018 the Task Force received an evaluation of our state's felony indigent defense system conducted by the Sixth Amendment Center, funded by the U. S. Department of Justice. That 117-page report was studied intensely by the Task Force, then adopted and released in March 2018.

The Task Force, guided by the report and with technical assistance from the Sixth Amendment Center and the Defender Initiative of Seattle University School of Law, thoroughly vetted, refined, and ultimately adopted a proposed reorganization plan initially drafted by the State Public Defender. We submit herewith that plan as the final report of the Public Defender Task Force.

Respectfully submitted,

A handwritten signature in cursive script that reads "James W. Kitchens".

James W. Kitchens, Chair  
Mississippi Public Defender Task Force

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### Enabling Legislation

§ 25-32-71. Creation of task force; members; officer; adoption of rules; reimbursement of expenses; duties [Repealed effective July 1, 2018]

(1) There is created the Mississippi Public Defender Task Force which shall be composed of thirteen (13) members as follows:

- (a) The President of the Mississippi Public Defender Association, or his designee;
- (b) The President of the Mississippi Prosecutors Association, or his designee;
- (c) A representative of the Administrative Office of Courts;
- (d) A representative of the Mississippi Supreme Court;
- (e) A representative of the Conference of Circuit Judges;
- (f) A representative of the Mississippi Attorney General's Office;
- (g) A representative of the Mississippi Association of Supervisors;
- (h) A representative of The Mississippi Bar;
- (i) A representative of the Magnolia Bar Association;
- (j) The Chairman of the Senate Judiciary Committee, Division B, or his designee;
- (k) The Chairman of the Senate Appropriations Committee, or his designee;
- (l) The Chairman of the House Judiciary En Banc Committee, or his designee;
- (m) The Chairman of the House Appropriations Committee, or his designee.

(2) At its first meeting, the task force shall elect a chairman and vice chairman from its membership and shall adopt rules for transacting its business and keeping records. Members of the task force shall receive a per diem in the amount provided in Section 25-3-69 for each day engaged in the business of the task force. Members of the task force other than the legislative members shall receive reimbursement for travel expenses incurred while engaged in official business of the task force in accordance with Section 25-3-41 and the legislative members of the task force shall receive the expense allowance provided for in Section 5-1-47.

(3) The duties of the task force shall be to:

(a) Make a comprehensive study of the needs by circuit court districts for state-supported indigent defense counsel to examine existing public defender programs, including indigent defense provided in the youth courts. Reports shall be provided to the Legislature each year at least one (1) month before the convening of the regular session.

(b) Examine and study approaches taken by other states in the implementation and costs of state-supported indigent criminal and delinquency cases.

(c) To study the relationship between presiding circuit and youth court judges and the appointment of criminal and delinquency indigent defense counsel.

(4) This section shall stand repealed on July 1, 2018.

**HISTORY:** SOURCES: Laws, 2015, ch. 424, § 2, eff from and after passage (approved March 29, 2015).

§ 99-18-1 (7):

“The State Defender shall ... develop plans and proposals for further development of a statewide public defender system in coordination with the Mississippi Public Defender Task Force ....”

### Task Force Membership

Presiding Justice James W. Kitchens (Mississippi Supreme Court) (Chair)

Demetrice Williams (Mississippi Defenders Association) (Vice Chair)

District Attorney Hal Kittrell (Mississippi Prosecutors Association)

Lisa Counts (Administrative Office of Courts Director)

Judge Prentiss Harrell (Conference of Circuit Judges)

Jerrolyn Owens (Office of the Attorney General)

Russell Brooks (Mississippi Association of Supervisors)

Jennie Eichelberger (Mississippi Bar)

Tanisha Gates (Magnolia Bar Association)

Chairman Hob Bryan (Senate Judiciary Committee, Division B)

Chairman Eugene S. Clarke (Senate Appropriations Committee)

Chairman Mark Baker (House Judiciary En Banc Committee)

Chairman John Reed (House Appropriations Committee)

## PUBLIC DEFENDER TASK FORCE MEETING

June 6, 2018

### MINUTES

#### WELCOME

Justice Kitchens (Task Force Chairman, representing the Supreme Court) welcomed the group. Present were: Judge Prentiss Harrell (Circuit Judges Association); Hal Kittrell (Prosecutors Association); Jerrolyn Owens (Office of Attorney General); Lisa Couch (AOC); Demetrice Williams (Task Force Vice Chair, Public Defender Association); Tanisha Gates (Magnolia Bar); Russell Brooks (Prosecutors Association); Also present were André de Gruy (State Public Defender); Beau Rudder (Training Director OSPD).

#### APPROVAL OF MINUTES OF LAST MEETING

Hal Kittrell moved that Task Force dispense with the reading of the minutes and they be approved. Lisa Counts seconded and all present voted in favor of the motion.

#### APPROVAL OF SUB-GROUP LEGISLATIVE PROPOSAL AND FINAL REPORT

The Chair informed the group of the May 23, 2018, meeting of the drafting working group and formally presented the draft report including the proposed legislation. A further discussion of the earlier agreed upon cap of 90% of prosecutor pay was had. Despite strong feelings by several members of the unfairness of this it was agreed by all that while parity in pay is the ideal it was not practical especially since under the compromise plan the majority of funding is still the responsibility of the counties.

Judge Harrell moved that the final report draft be adopted by the Task Force. Motion was seconded by Tanisha Gates and approved by all present. The Chair advised that he would provide the State Defender with a transmission letter and directed OSPD to make the final edits, distribute the report to the Legislature and public and work towards finding sponsors of legislation consistent with the report.

#### NEXT MEETING DATE

The Task Force has concluded its business. The Chair thanked all who participated and encouraged the group to work together in the future with an aim at seeing proposals adopted by the Legislature and on other efforts to improve the criminal justice system.

## PUBLIC DEFENDER TASK FORCE MEETING

APRIL 11, 2018

### MINUTES

#### WELCOME

Justice Kitchens (Task Force Chairman, representing the Supreme Court) welcomed the group. He then asked them to introduce themselves and tell who they represented. Present were: Hal Kittrell (Prosecutors Association); Lisa Couch (AOC); Demetrice Williams (Public Defender Association); Tanisha Gates (Magnolia Bar); Also present were Bill Waller, Jr. (Chief Justice of the Supreme Court of Mississippi); André de Gruy (State Public Defender); David Carroll (Executive Director of the Sixth Amendment Center); Silas Hoarst (board member with the Sixth Amendment Center); Beau Rudder (Training Director OSPD); Prof. Bob Boruchowitz (Seattle University, by telephone).

#### APPROVE MINUTES OF LAST MEETING

Hal Kittrell moved that Task Force dispense with the reading of the minutes and they be approved. All present voted in favor of the motion.

#### REPORT ON PEARL RIVER COUNTY NEW FULLTIME PUBLIC DEFENDER OFFICE

DA Kittrell: The system is working very well. We have three that are working 8 to 5 across the street. We've always had the benefit of having a good relationship with our public defenders, even part-time. You can't function without that in any system. But having three there – they're there when we arrive and there're there when we leave. The part-time people have contributed their time, but we had to run them down. This way, we walk across the street and just go over to their office and talk to them, we don't even have to call. So they're representing the people, their numbers are satisfactory as far as caseload. I haven't heard any complaints from anyone. The judges seem to be satisfied, so at this point it seems to be on a real good track. They are getting appointed at Initial Appearance and getting involved earlier is working very well.

#### REPORTS ON RELEASE OF 6AC REPORT

The Report was released by Beverly Kraft, Public Information Officer of the Supreme Court on March 19, 2018. The press release included a link to the report on the Supreme Court website. The Task Force was provided a compilation of news stories from around the state. The different perspectives covered in the various media outlets were noted. Ms. Kraft was thanked for her exceptional work in handling the release. Mr. Carroll advised that his group usually handled the release and he was a little apprehensive about leaving that to the Task Force but believes it was the best way to do it as evidenced by the variety of local stories. The Task Force decision to release the report early to local stakeholders was critical to the success. One senior circuit judge contacted the AOC before final publication and we were able to correct an inaccuracy in the description of her system structure. There was no negative feed-back received.

#### UPDATE ON CONTINUING WORK WITH 6AC

David Carroll informed the Task Force that the grant was extended and they would be available to continue consulting with the Task Force. He stressed that the Sixth Amendment Center would



not provide a model bill but would advise on whether the proposals met national standards and share what other states had done. Professor Boruchowitz had already provided an 8 page, single spaced memo critiquing the working draft under review by the Task Force.

#### SUNSET OF TASK FORCE

The Task Force was informed that the Legislature did not extend the sunset date for the Task Force thus it would dissolve on June 30, 2018. The Chair suggested that the Task Force offer proposed legislation with the Final Report.

#### RENEWED LOOK AT OSPD PROPOSAL

The Task Force discussed the proposal presented in November by OSPD in light of the Sixth Amendment Center Report and the Memo from Professor Boruchowitz. The Sixth Amendment Center offered two models: Montana – a unified state system, the commission appointing the state defender and offices/divisions, including conflicts, operating under that structure; Michigan – a commission that sets standards, hires a state defender who distributes state-funded grants to counties to help meet the standards and provides oversight through regional managers.

It was agreed that a state-level entity needed to be established to set standards, handle training and appeals. It was agreed that the existing death penalty post-conviction office should remain free standing but operate under standards set by the commission and report to the commission. The membership of the commission was not set however the proposal first offered by OSPD was scrapped. The Georgia statute was substituted. A slight modification was made on judicial branch also making appointments. (Both Boruchowitz and Jerrolyn Owens of the Office of Attorney General (by email previously) had suggested this change.

A lengthy discussion was made on proposed salary of defenders. It was agreed that the legislature and not the commission should make the decision. The Sixth Amendment Center and Public Defender Association, based on national standards, strongly support parity with prosecutors. OSPD proposed a compromise of 90% of prosecutor pay. The Task Force as a compromise accepted the idea of the 90% of prosecutor pay.

Concerns were raised about handling conflict cases. The idea of one defender office handling conflicts of another office was discussed. The experience in Missouri where this was tried and failed was shared. Using the existing appointment statute and/or what some counties with fulltime do today by contract with a small number of private lawyers was determined to be the best option subject to commission oversight.

DA Kittrell raised the idea of recommending a primarily state-funded option that would more closely mirror the DA system. His primary reason was relief for counties. David Carroll pointed to Montana as an example of this type. State Defender raised agreed with this model as perhaps best but raised concerns about the shift to the state of \$20-25 million dollars (based on Arkansas cost) as not being feasible. David Carroll suggested looking at a grant based model like Idaho or Michigan that would build up over time.

David Carroll offered a word caution on cost: “to fix the problems we’ve identified it is going to cost more money in the public defense line. You will get savings elsewhere in the system, most notably in corrections. If you’re not having people sitting in jail for 6, 8, 10 months at a time before they get an attorney, that’s where the saving is going to come in. And that’s a message I think can work and a lot of people can understand but you’re not going to be able to fix the problems we identified by somehow having it cost less than what it’s currently costing.”

The Chair established a subcommittee to meet before the next meeting to attempt to finalize a legislative proposal. The members are: Mr. Kittrell, Mr. Grey, Mr. de Gruy, Judge Harrell, and Justice Kitchens.

NEXT MEETING DATE May 23, 2018, 10:00-12:00 at Supreme Court conference room.

## PUBLIC DEFENDER TASK FORCE MEETING

February 12, 2018

## MINUTES

## WELCOME

Justice Kitchens (Task Force Chairman, representing the Supreme Court) welcomed the group. He then asked them to introduce themselves and tell who they represented. Present were: Hal Kittrell (Prosecutors Association); Jennie Eichelberger (Mississippi Bar); Lisa Couch (AOC); Jerrilyn Owens (Attorney General's Office); Beau Rudder (Public Defender Association); Tanisha Gates (Magnolia Bar); Also present were André de Gruy (State Public Defender); David Carroll (Executive Director of the Sixth Amendment Center); Mike Tartaglia (6AC staff attorney); Prof. Bob Boruchowitz (Seattle University, by telephone).

## MINUTES OF LAST MEETING APPROVED

Hal Kittrell moved that Task Force dispense with the reading of the minutes and they be approved; Jennie Eichelberger seconded; Chairman called for vote. All present voted in favor of the motion.

## REVIEW AND DISCUSSION OF SIXTH AMENDMENT CENTER REPORT

David Carroll was invited to provide an overview of the report.

David Carroll: Basic thrust of the report is that there is a 14<sup>th</sup> Amendment obligation by the state to ensure that Sixth Amendment services are provided effectively. And even as the state passes on that obligation to local governments, the state still has the obligation to ensure that the local governments are not only able to do it but are, in fact, doing so.

Justice Kitchens: I agree with you, but where does that obligation come from? Is that mandated?

David Carroll: In the *Gideon v. Wainwright* decision it says it's a 14<sup>th</sup> amendment right.

David Carroll: (continuing) The main thing of course is that there just isn't any institutional structure to allow the state to evaluate and make sure that the counties and local governments are doing what they're supposed to. As you will read, it really is a patchwork sort of quilt of varying degrees of services all across the state. It shouldn't ever be the case that the level of justice someone receives is based on which side of the county line they're crime was alleged to have been committed.

One of the things that we did in the report is talking about the extensive amount of litigation that's going on across this country. And if not now, then it's going to come eventually on litigation. We had the Scott County case and some other things, but there hasn't yet been a statewide class action lawsuit like there are in many of the other states. It is always better to solve these problems yourself, rather than have a federal court impose on you what we're going to do.

The three states that have most recently been able to take one of our reports and move forward have been Michigan, Idaho, and Utah. And each of those looked very similar to

Mississippi in that in Idaho and Michigan there was a state appellate defender, and so you have some state services at that level here, and Utah actually had nothing at all and you're actually further ahead than Utah in that it was entirely county funded and city funded.

Mr. Carroll discussed at length the different approaches each of these states took to address the deficiencies found in the report.

Tanisha Gates:(addressing specific deficiencies reported) What I find is if you don't have a set public defender's office, the notification process is where everything goes bad. Because once we are appointed you do not find out the same day. If you are appointed upstairs at the circuit clerk's office, then they have to send an order over to the judge, and the judge has to sign it and get it back and it could be two days, it could be three days, and somebody is going to be sitting in jail – you know sometimes we don't get our notices until two or three days later. So what our client's do that know us, they'll be calling our office. But I think notification process if you don't have a set public defender's office that's where things start to go bad.

Justice Kitchens: Are y'all getting appointed at the initial appearance?

Tanisha Gates: We are appointed at the initial appearance.

Justice Kitchens: Good.

Tanisha Gates: But we may not find out until two days later, because once it gets to the circuit clerk's office, then they go to see who is next up on the list, they put our name in the order, and next it goes to the judge. We could have been appointed on a Monday, the order gets back to the clerk on a Wednesday, you know, and then we'll check our box to see if it's in there. But a lot of our clients call us, so that notification process is very, very important. And we do not have a central location; we are running this out of our own offices.

David Carroll: The problem we've found across Mississippi is that often they'll have a body there in the justice or municipal courts, but then when it gets bound over, it goes into this "black hole" for months at a time, if not longer.

If people aren't getting representation they're sitting in jail pretrial and that's not good for the sheriffs. And so without someone going around and making sure that these rules are being implemented or local court rules there's just always going to be a gap there. And so again, this is why you need some sort of apparatus at the state level to go around and make sure people are meeting a certain level of standards to ensure that you're doing what you're supposed to do.

Hal Kittrell: Raised concerns about multi-defendant conflict cases. It was discussed and agreed that based on caseload estimates for a jurisdiction there will have to be a mix of fulltime public defenders in an office and private counsel outside the office. Examples of how this is done in each of the counties with long established fulltime offices (Washington, Jackson, Hinds, Harrison) and successfully in one of the three new offices (Lamar).

André de Gruy: One of the keys to making anything work properly is the collection of data so that you can plan based on evidence and not just on "the county next to you has this," but even where counties are about the same size, the kind of cases that they're handling are so different. The difference in the caseload in Harrison County and the caseload in Desoto County is so big, but those two counties are only 20,000 people different.

The Task Force then discussed specific points in the report needing correction or clarification.

Justice Kitchens: Called for a vote on approval of the report, a motion was made and seconded and the approved unanimously.

The Task Force decided to distribute copies of the report to supervisors, senior circuit judge and public defender in the studied counties as well as the Governor, Lt. Governor, Speaker and Attorney General before a public release. The Public Information Officer of the Supreme Court would be asked to handle the release.

#### CONTINUING WORK WITH 6AC

The Task Force on motion made and seconded and by unanimous vote authorized the State Defender to make a formal request to DOJ to fund the Sixth Amendment Center to continue helping as we move forward developing recommendations for Legislature.

#### NEXT MEETING

Discussion of the next meeting was had. Date was left open subject to availability of Chair and 6AC. Consensus was early April with suggestion from DA that Wednesday or Thursday would best accommodate local court schedules. DA Kittrell suggested next step should be to start working through the OSPD proposal in light of Report.

Meeting was adjourned at 1:04 p.m.

## PUBLIC DEFENDER TASK FORCE MEETING

November 28, 2017

## MINUTES

WELCOME – Justice Kitchens (Task Force Chairman, representing the Supreme Court) welcomed the group. He then asked everyone to introduce themselves and tell who they were representing. Present were Jennie Eichelberger, Mississippi Bar; Lisa Counts for Kevin Lackey, AOC; Hal Kittrell, Prosecutor Association; Jerrolyn Owens, AG; Tanisha Gates, Magnolia Bar; Demetrice Williams, Public Defender Association; Senator Hob Bryan; Steve Gray, Supervisor Association. Absent were circuit Judge Harrell, Rep. Mark Baker and Rep. John Read and Senator Clarke. André de Gruy and Beau Rudder were present representing the Office of State Defender. David Carroll of the Sixth Amendment Center was present in person and Professor Bob Boruchowitz, a consultant with the center, was present via Skype.

MINUTES OF AUGUST MEETING – reading of the minutes was waived, on motion and second minutes were approved.

SIXTH AMENDMENT CENTER UPDATE – Mr. Carroll began his remarks with an apology for the considerable delay in finalizing the report. He then recapped the methodology they have employed: they spent most of 2016 in association with the Seattle University School of Law conducting site visits in 10 counties around the state, doing court observations, interviews with criminal justice stakeholders, reviewing data, and just trying to get a sense of where your system of indigent defense is. The report is not yet complete from drafting and formatting perspective but he anticipates that will be completed soon. Substantively their findings are complete. Carroll was asked to present overview of their findings.

- They documented defenders wearing multiple hats in different counties so workload cannot be assessed;
- Most defenders are not keeping caseload data;
- The State of Mississippi has no permanent institutionalized oversight mechanism to ensure that its constitutional obligation to provide effective counsel to the indigent accused is met in noncapital cases in many of its trial courts;
- What's needed is some form of organization that can promulgate standards, oversee the implementation of those standards and enforce those standards. That is the basic parameters of your Fourteenth Amendment obligation that we need to address.

Carroll suggested use of the ABA 10 Principles of an Indigent defense Delivery System. He stated there are basically four things that make an effective system: (1) it must be independent so the defense functions; (2) the attorney skills must match the complexity of the case; (3) the lawyer must be appointed early enough to be effective; and (4) the lawyer must have sufficient time to be effective. He elaborated on the first principle: independence. It is never possible for a judge presiding over a case to fully assess the quality of the defense lawyer's representation. This is because the judge never, for example, reads the case file, question the defendant to his stated interests, follow the attorney to the crime scene, or sit in on witness interviews. This is not to say the judge cannot provide sound feedback to the quality of our representation, it's just that the judge's opinion of the courtroom experience cannot not be the *sole* determination of whether there is effective representation. Yet, in some extreme circumstances the judge can determine that representation is ineffective if counsel shows up drunk, or is sleeping through trial or

something. It's just that the judge's in court observations of the defense attorney cannot comprise the totality of that supervision.

In Mississippi the judge are picking the public defenders in their jurisdictions. What happens is not that the judge says "don't file any motions in my courtroom, I want to keep the docket moving" but the public defenders that are beholden to judges for their livelihood internalize what they need to do to get their next contract or to get their next assignment. The result is interference with constitutional right to conflict free counsel.

The biggest problem is felony defendants across Mississippi have no meaningful representation until after indictment which can happen many months, and, indeed, even up to two years, after the arrest. This is the main thrust of the whole report – documenting exactly how this happens. Now when you are arrested and you are brought before a magistrate, you may or may not get a public defender, even in a felony case. There are lots of ways this happens, but the problem is in every county we went to with one exception in Hinds County, there's this black hole that occurs after being bound over to a circuit court. The public defenders just, if they were assigned, they just don't see it as their responsibility to do anything. In most instances, it's a different public defender that's going to get that case in circuit court. And so nothing happens. The defendant may be sitting in jail at that point, on the public's dime because no one is working that case, no one is trying to make bail arguments, no one is doing things that could save the local government's money in trying to get that person out if they are, indeed, not a risk to commit more violent crimes.

Carroll was then asked to offer examples of what other states are doing. He offered: state funded felony representation; a Michigan system that caps county contribution; an Idaho model that empowers a state agency to withhold sales tax money if indigent defense is not properly funded based on state standards. The center compiled a 50-state guide for the Tennessee Indigent Defense Task Force and he made this available to Mississippi.

The Task Force began discussing potential costs of a system that would remedy deficiencies. The State Defender was asked how he calculated the \$14,000,000 currently being spent by the counties. The State Defender used the 2013 report of expenditures by each county and adjusted for inflation based on the rate observed from the first indigent defense cost study in 1993 across the two reports done between 1993 and 2013 by this Task Force. The 20 year average rate of inflation was just over 4%. He noted that the increased expenses in the past four years is likely higher than historical rate based on the significant increases in fulltime attorneys (added in Forrest, Lamar and Pearl River counties) and the reforms instituted in the four county 8<sup>th</sup> judicial district following the law suit.

Mr. Carroll suggested a pause on the money aspect and focus on the system design aspect. The Task Force agreed with this approach. The decision was made that no recommendation to the 2018 Legislature would be made. The Task Force agreed to convene another meeting after the Sixth Amendment Center report was in hand and formalize a system plan.

A motion was made, seconded and passed by unanimous acclamation to ask the legislature to extend the Task Force through June of 2020 to allow for development of the plan.

The Chair asked for an update of the 2016 statutory change to require circuit clerks to report data on indigent status. The AOC reported ongoing implementation problems with capturing the data. AOC anticipates once all criminal courts are on electronic courts this will be easily accomplished but only 8 are currently on-line.

Further discussion of the lack of oversight centered on the gap in representation pre-indictment: based on comments by the District Attorney about defenders being appointed at initial appearance but once preliminary hearing is concluded they do not touch the case the Chair asked if part-time defenders who also handled retained cases came to him pre-indictment on retained cases. The District Attorney assured him that they did. Mr. Carroll injected that's an argument for oversight.

NEXT MEETING DATE – Justice Kitchens indicated he would look for dates the conference room was available after receiving the finalized report draft for Sixth Amendment Center.



## FINDINGS

### RESPONSE TO LEGISLATIVE TASKS ASSIGNED

**25-32-71 (3) The duties of the task force shall be to:**

**(a) Make a comprehensive study of the needs by circuit court districts for state-supported indigent defense counsel to examine existing public defender programs, including indigent defense provided in the youth courts. Reports shall be provided to the Legislature each year at least one (1) month before the convening of the regular session.**

The Office of State Public Defender has prepared two reports<sup>1</sup> for the Task Force on felony level indigent defense. In 2014, OSPD in conjunction with the Sixth Amendment Center reported on county spending. The most significant takeaway from the report was the vast disparity in spending per capita by county. The 2016 report on caseloads demonstrated a similar disparity across counties. Because the counties with the most significant caseload concerns have higher revenue potential based on property values it does not appear that the “needs” for state-support are necessarily funding.

Without objective standards to assess workload and performance of defense counsel it is impossible to say what is needed. There are many counties that appear to be spending more than is necessary to meet the need. Others are clearly underfunding indigent defense. This translates to a significant human cost to the individuals deprived of their Constitutional rights but also adds to the local jail costs and to the prison costs of the state.

Without a state-level body setting objective standards and evaluating systems under those standards the people of the state of Mississippi will never know if or to what extent the indigent defense system suffers from waste, fraud or abuse. In June 2017 our State Auditor released a Performance Audit of the Office of Capital Post Conviction Counsel. OSA reached the same conclusion and recommended creating a formal oversight structure to ensure compliance with state law and monitoring of workload and staffing needs.

On the Youth Court level where appointed counsel are required to have specialized training there is no entity designated to ensure only certified attorneys are receiving appointments and no evidence that youth are being represented by qualified counsel. Because of confidentiality requirements in these courts each Youth Court should have a designated public defender or publicly published panel of qualified attorneys receiving appointments.

March of 2018 the Sixth Amendment Center report on trial level indigent defense in Mississippi was released. The report was commissioned by the task force and funded through a U.S. Department of Justice, Bureau of Justice Assistance grant. The report, *The Right to Counsel in Mississippi: Evaluation of Adult Felony Trial Level Indigent Defense Services* assesses adult felony trial level indigent defense services throughout the state and examines indigent defense in 10 counties: Adams, Clarke, DeSoto, Forrest, George, Harrison, Hinds, Leflore, Lowndes and Pearl River. The Public Defender Task Force selected the 10 counties as a diverse sample of rural, suburban and urban populations across the state. Work began in 2015. Researchers spent

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<sup>1</sup> *Assessment of Caseloads in State and Local Indigent Defense Systems in Mississippi*, OSPD, December 2016; *The State of the Right to Counsel in Mississippi*, OSPD, October 2013.

almost three years doing court observation, interviews and data analysis to produce the 117-page report and recommendations.

The report's findings were:

1. The State of Mississippi has no method to ensure that its local governments are fulfilling the state's constitutional obligation to provide effective assistance of counsel to the indigent accused in felony cases in its trial courts.
2. The State of Mississippi does not ensure the independence of the defense function from undue judicial interference in the selection and compensation of felony indigent defense attorneys.
3. Outside of death eligible cases, there are no standards or oversight in Mississippi to ensure that felony indigent defense attorneys have the necessary qualifications, skill, experience, and training to match the complexity of the cases they are assigned.
4. Throughout the State of Mississippi, indigent defendants charged with felony offenses are denied the right to counsel at the critical pretrial stage between arrest and arraignment following indictment, a period that is commonly at least a few months and occasionally as long as a year or more.
5. The State of Mississippi does not ensure that felony indigent defense attorneys have sufficient time and necessary resources, including investigators and social work services, to provide effective representation.
6. Felony indigent defense attorneys in Mississippi consistently carry excessive caseloads that prevent the rendering of effective representation.

**(b) Examine and study approaches taken by other states in the implementation and costs of state-supported indigent criminal and delinquency cases.**

Mississippi is the only state in the Southeast that relies on primarily local funding and is locally administered with no state-level oversight. Of the 15 states in the region, 10 have primarily state funding of indigent defense. South Carolina has a 50/50 split between state and local funds and Louisiana depends primarily on criminal assessments. Only Georgia, Mississippi and Texas have primarily local funding. Twelve of the states have a state-level commission overseeing the delivery of services. Only Alabama, Florida and Mississippi do not. Florida elects public defenders. Alabama administers funds through a Defender Services division of that state's equivalent of our DFA. It uses local selection committees to select delivery models and defenders.

The state most comparable to Mississippi is our neighboring state of Arkansas. Arkansas and Mississippi have approximately the same population but according to FBI UCR data Arkansas has a higher crime rate. Arkansas however has a lower incarceration rate. Arkansas created a state-level commission in 1993 to oversee indigent defense services in all courts. The most recent budget for Arkansas' Public Defender Commission was approximately \$24.6 million. OSPD estimates Mississippi counties are now spending over \$15 million<sup>2</sup> on felony defense each

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<sup>2</sup> The estimate is based on historical inflation rates for indigent defense. The first cost assessment was conducted in 1993. The Task Force conducted two more studies and a fourth study was completed in 2013 that indicated over \$12.7 million in county funding. Over the 20 year span expenditures increased an average of 3.6% per year.

year and OSPD and CPCC have total annual spending of about \$4.5 million. Local governments spend additional funds on misdemeanor and Youth Court indigent defense.

For comparison Mississippi spends just over \$25 million for felony level prosecution. The counties provide support to the DA's similar to what Arkansas counties provide public defenders. Mississippi Counties and cities also fund misdemeanor and Youth Court prosecution. Appeals and post-conviction attorneys for the prosecution are funded by the state through the Attorney General.

The Task Force believes that indigent defense services, being a constitutional right and obligation of the government, should be primarily provided at the state level rather than local level. However recognizing the practical reality that this belief can only be accomplished by continuing the incremental approach<sup>3</sup> that has been used by our Legislature and recognizing that there is merit to a local/state shared responsibility model the Task Force developed a compromise plan.

The Task Force considered funding schemes discussed in the Sixth Amendment Center report including capping local contributions at current levels and either state funding of new programs (Montana model) or state grants to local systems (Michigan and Idaho models). Because of the apparent unequal funding across Mississippi counties it was concluded that capping local contributions at this time might not be fair to all counties.

**(c) To study the relationship between presiding circuit and youth court judges and the appointment of criminal and delinquency indigent defense counsel.**

Mississippi is the only state that leaves judges to select, supervise and set the budgets for indigent defense service providers. While judges must, in cases of necessity, intervene and order the expenditure of funds to ensure Constitutional rights of individuals are protected; allowing the daily operations of an essential governmental function to be administered and appropriations ordered by the judicial branch raises a "Separation of Powers" question. Aside from these concerns there are questions regarding the courts' ability considering their other duties to perform the function of indigent defense oversight. The problem is compounded by the scope of indigent defense services. Much of the constitutionally mandated counsel services are provided in Justice, County, Municipal, Youth and Chancery courts. The Supreme Court, effective July 1, 2017, mandated that each circuit court develop an indigent defense delivery plan. The rule was adopted December 13, 2016, yet no court has submitted a plan. The problems noted above no doubt contribute to this.

National standards and prevailing practices in public defense systems across the country ensure independence by shielding lawyers from undue judicial interference. Far from ensuring that independence, Mississippi statutorily imposes undue judicial interference with the right to counsel for indigent defendants. It does so in two primary ways: by requiring judges to hand-select the attorneys who are paid to provide representation to indigent defendants, rendering the defense attorneys beholden to the judge for their livelihood; and by allowing judges to enter into payment agreements with indigent defense attorneys that create a conflict of interest between the

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<sup>3</sup> Prior to 2000 the state provided no indigent defense funding. The Office of Capital Post-Conviction Counsel opened in that year. The following year the Office of Capital Defense Counsel opened. In 2007 the Office of Indigent Appeals opened and in 2008 a Defender Training Division was added. In 2011 Capital Defense and Indigent Appeals were merged to form the Office of State Public Defender. The state contribution today is just over \$4.5 million of the approximately \$19.5 million spent on felony indigent defense – 0% to 23%.

defense attorney's financial self-interest and the criminal case interests of the indigent defendants whom they are appointed to represent.

Attorneys in judicially controlled indigent defense systems often, consciously or unconsciously, follow or adjust to the needs of each judge in each court, rather than focus on providing constitutionally effective services for each and every defendant. Fearing the loss of their job if they displease the judge who hires them, defense attorneys bring into their calculations what they think they need to do to stay in the judge's favor. When public defense attorneys take into consideration what must be done to please the judge in order to get their next appointment or hold on to their contract, by definition they are not advocating solely in the interests of the client, as is their ethical duty.

In counties with a public defender office, the judges are supposed to choose the public defender from a list of attorneys recommended by the local bar association, but in the counties studied by the Sixth Amendment Center, there was no indication that judges follow this directive. The designated public defender is statutorily authorized to choose the assistant public defenders, but in only two of the four public defender offices evaluated in this study does the public defender select the assistant public defenders independently of the judges. Thus, even where the legislature has attempted to impose a degree of independence from the judges in selecting attorneys to represent the indigent accused, this is rarely occurring in practice.

## RECOMMENDATIONS OF 6AC

*The Right to Counsel in Mississippi, Evaluation of the Adult Felony Trial Level Indigent Defense Services*, Sixth Amendment Center, March 2018, made the following recommendations:

1. The Mississippi Legislature should enact legislation enabling the state to meet its Fourteenth Amendment obligation of ensuring Sixth Amendment services meet the parameters of effective indigent defense systems, as described in *United States v. Cronin*.

- Create a state-level entity to promulgate standards that define how effective indigent defense services are to be provided, including at minimum: attorney qualification standards; attorney performance guidelines; attorney supervision protocols; time sufficiency standards; continuity of services standards whereby the same attorney provides representation from appointment through disposition; client communication protocols; and data collection standards.
- While the standards must be the same statewide, implementation should allow for variations that accommodate local circumstances.
- There must be capacity to monitor and enforce compliance with the standards throughout the state.

2. The Mississippi Office of the State Public Defender, along with any government body tasked with developing indigent defense standards, should work with parallel law enforcement, prosecution, judicial, and corrections bodies at the state and local level to:

- a. Determine effective, efficient, and fiscally responsible methods to track every individual case from commission of the offense through dismissal or completion of sentence;
- b. Evaluate existing criminal justice processes and make systemic recommendations to ensure that counsel is provided to indigent defendants at every critical stage of a case after the right to counsel has attached;
- c. Recommend statutory changes to decrease the overall need for right to counsel services through increased diversion and reclassification to make certain violations ineligible for incarceration.

3. Through legislation or court rule, the State of Mississippi should ban payment agreements that cause conflicts of interest between the indigent defense attorney's financial self-interest and the legal interests of the indigent defendant.

The Task Force adopted the report and using the report as a roadmap developed a more specific plan for the reorganization of indigent defense delivery systems in Mississippi with the goal of providing oversight and accountability to ensure Constitutional compliance in a fiscally efficient manner. The plan is guided by the *Seven Principles of an Indigent Defense Delivery System in Mississippi* adapted from the ABA Ten Principles referenced in *The Right to Counsel in Mississippi*.

***SEVEN GUIDING PRINCIPLES  
FOR AN INDIGENT DEFENSE  
DELIVERY SYSTEM IN MISSISSIPPI***

1. There should be a state-level entity responsible for promulgating evidence-based standards for qualifications and performance of indigent defense providers; compensation ranges for providers; workload limits for providers and financial qualifications of clients for services.
2. The selection of chief defenders and staff should be based on merit and the recruitment of attorneys and support staff should involve special efforts aimed at achieving diversity among service providers.
3. Every defense delivery system must have the active participation of the private bar. The private bar participation may include defenders working part-time for an established public defender office; a controlled assigned counsel panel or on a contract for services basis. There should be a circuit level public defender office in each district responsible for limited service delivery and overall system oversight including reporting to state-level entity on standards compliance.
4. There must be parity between defense counsel and the prosecution with respect to workload, compensation and resources.
5. Where possible systems should establish comprehensive representation models that incorporate client-centered and interdisciplinary programs.
6. Clients must be screened for eligibility and attorneys assigned and notified of assignment as soon as possible after arrest or request for counsel. Once attorney-client relationship is established counsel should continue representation of the client until completion of the case.
7. Defense counsel's experience and training must match the complexity of the case and the attorneys existing workload must be taken into consideration at the time of assignment of new cases. Counsel must be provided with and required to attend continuing legal education in the area of defense practice. Counsel must be subject to supervision and systematically reviewed for quality and efficiency according to adopted standards.

## **PROPOSAL FOR REORGANIZATION OF INDIGENT DEFENSE DELIVERY SERVICES**

Part 1: Create a Public Defender Oversight Council (PDOC) with authority to promulgate standards; evaluate performance and report findings. PDOC would also manage capital conflict funds and in consultation with local authorities develop conflict representation plans. Training for all indigent defenders would be moved to PDOC. The effective date would be July 1, 2019 for all provisions except training. To allow for start-up and transition Training Division would remain at OSPD until January 1, 2020 at which time responsibilities and funding would move to PDOC. PDOC would be authorized to serve as an ombudsman to resolve disputes between defenders, clients and/or local authorities.

Part 2: Amend State Defender law to move training and data collection and reporting requirements to PDOC. OSPD would report to PDOC but appointment of State Defender would remain with Governor with advice and consent of Senate. Would move capital conflicts (currently not funded) to PDOC. Make other technical amendments. These provisions would take effect January 1, 2020, to allow time for PDOC to become operational. To provide oversight of the local indigent defense services the Division of District Public Defender (DPD) would be created in OSPD and funded through the state general fund. This portion of the bill would be effective January 1, 2020. Half funding would be necessary in FY 2020 and full funding (approximately \$4M new state funds) in FY 2021. This would allow for transition from the existing local public defender offices. The district defender would be selected by a district selection panel comprised of members of the local bench and bar.

Part 3: Amend the local public defender law to conform to the District Defender system effective January 1, 2020. The DPD would serve as a platform to build comprehensive public defender offices with local funding as an alternative to use of assigned counsel in criminal cases, mental health commitments and Youth Court.

Part 4: Amend Capital Post Conviction Counsel (CPCC) law to transfer capital conflicts and funding to PDOC. CPCC would report to PDOC but appointment of director would remain with Governor with advice and consent of Senate. Effective date would be January 1, 2020.

Part 5: Amend appointment and compensation statutes to conform. Provide PDOC oversight and limited review of funding and performance of counsel outside the DPD. Effective January 1, 2020.

Part 6: Amend sections on Youth Court appointment of counsel to ensure all constitutional rights of children are protected. Effective January 1, 2020.

## PART 1

### **§ 99-18- . Public Defender Oversight Council, created; members; authority; reimbursement of expenses; duties**

(1) There is created the Mississippi Public Defender Oversight Council to be composed of nine members. Other than county supervisor members, members of the council shall be individuals with significant experience working in the criminal justice system or who have demonstrated a strong commitment to the provision of adequate and effective representation of indigent defendants.

(a) Three members shall be appointed by the Mississippi Association of Supervisors. Each shall be from a different supreme court district of this state. Each county supervisor council member shall serve a term of four years; provided, however, that the initial appointments shall be for one, two, and four years, respectively, as designated by the Mississippi Association of Supervisors for each appointment, and thereafter, such members shall serve terms of four years. A county supervisor council member shall be eligible to serve so long as he or she retains the office by virtue of which he or she is serving on the council;

(b) Two members shall be appointed by the Lieutenant Governor and each shall serve terms of four years; provided, however, that the initial appointments shall be for one and four years, respectively, as designated by the Lieutenant Governor for each appointment, and thereafter, such members shall serve terms of four years;

(c) Two members shall be appointed by the Speaker of the House of Representatives and each shall serve terms of four years; provided, however, that the initial appointments shall be for one and four years, respectively, as designated by the Speaker of the House of Representatives for each appointment, and thereafter, such members shall serve terms of four years; and

(d) Two members shall be appointed by the Chief Justice and each shall serve terms of four years; provided, however, that the initial appointments shall be for two and three years, respectively, as designated by the Chief Justice for each appointment, and thereafter, such members shall serve terms of four years. At least one of the appointments shall be an experienced criminal defense attorney with felony indigent defense experience who is not currently providing public defense services;

(e) All initial terms shall begin on July 1, 2019, and their successors' terms shall begin on July 1 following their appointment. Any vacancy for a member shall be filled by the appointing authority, and such appointee shall serve the balance of the vacating member's unexpired term. Any member of the council may be appointed to successive terms.

(f) In making the appointments of members of the council who are not county supervisors, the appointing authorities shall seek to identify and appoint persons who represent a diversity of backgrounds and experience and shall solicit suggestions from the Mississippi Bar, the Magnolia Bar, the Mississippi Public Defender Association, the Mississippi Association for Justice; the associations representing the various categories of state court judges in Mississippi, and the Mississippi Prosecutors Association, as well as from the public and other interested organizations and individuals within this state. The appointing authorities shall not appoint a prosecuting attorney, any employee of a prosecuting attorney's office, an employee or member



of the Prosecutors Association, a sitting judge or an attorney or employee of a public defender office or indigent defense contractor to serve on the council.

(2) The Council shall elect a chairman and vice chairman from its membership and shall adopt rules for transacting its business and keeping records. Members of the Council shall receive a per diem in the amount provided in Section 25-3-69 for each day engaged in the business of the Council. Members of the Council shall receive reimbursement for travel expenses incurred while engaged in official business of the Council in accordance with Section 25-3-41.

(3) The Council shall:

(a) establish standards for an effective indigent defense system throughout the State of Mississippi. Such standards shall include, but are not limited to:

- (i) standards for determining who qualifies as an indigent person;
- (ii) standards for maximum caseloads for full-time and part-time indigent defenders to include a uniform definition of what constitutes a case;
- (iii) standards for compensation of counsel and support services for assigned counsel, including contract counsel, however compensation standards for salaries of fulltime assistant public defenders shall not exceed 90% of the statutory maximum for an assistant district attorney of comparable years of experience and salaries of part-time defenders shall be a pro rata share of the fulltime defender;
- (iv) standards for minimum education, training and experience of attorneys appointed or employed as indigent defenders;
- (v) standards for performance of defense counsel in criminal, mental health and youth court cases.

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

- (i) detailed descriptions of each city, county and district indigent defender system;
- (ii) caseloads of each indigent defender and number of cases assigned to private attorneys;
- (iii) expenditures on indigent defense in each city, county and district.
- (iv) coordinate the collection, analysis and dissemination of data and research pertaining to indigent defense.

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

(4) The Council is hereby empowered to pay and disburse salaries, employment benefits and charges relating to employment of an executive director and any necessary staff as determined by the Council and approved by the Legislature 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, including but not limited to expenses associated with capital conflict cases pursuant to Miss. Code Sections 99-18-17 and 99-39-117. The director is further authorized to solicit and accept monies, gifts, grants or services from any public or private source, for the purpose of funding, operating and executing the duties of the office.

(5) The Council shall operate a Public Defender Training Division. The division shall be staffed by any necessary personnel as determined and hired by the Council. 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.

(6) The Council shall in consultation with the defender selection panel develop a plan for representation in cases not able to be handled by the District Defender due to a conflict of interest or excessive caseload. Such plans may include utilization of contract defenders as an alternative to appointed counsel pursuant to Section 97-15-15, Miss. Code, provided that all contracts comply with indigent defense standards adopted by the Public Defender Oversight Council and Section 97-15-17, Miss. Code.

(7) The Council shall act as an ombudsman to settle disputes between defenders, judges, supervisors and/or clients concerning standards compliance, contracts, fees and/or services.

## PART 2

### **§ 99-18-1. Office of State Public Defender created; personnel; funding sources; qualifications, duties, removal of state defender; funding of agency expenses; deposit of monies into State General Fund**

(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~~ or appellate counsel in death penalty cases as may be set by the Supreme Court of Mississippi. The salary of the State Defender shall be equivalent to the salary of ~~no more than the maximum amount allowed by statute for~~ 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, and 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 chapter shall prohibit the State Defender from directly representing clients of the office. Nothing in this chapter shall be construed to prevent an employee of one (1) division of the Office of the State Public Defender from working, in whole or in part, 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.~~

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

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

**§ 99-18-3. Capital Defense Counsel Division created; personnel; appointment to office; qualifications; removal**

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.

**§ 99-18-5. Purpose of Capital Defense Counsel Division**

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.

**§ 99-18-7. Duties of division; attorneys appointed to office to be full time**

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.

**§ 99-18-9. Compensation**

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 with comparable years of practice experience.

**§ 99-18-11. Office hours of operation**

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.

**§ 99-18-13. Powers and duties of State Defender**

(1) 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. The State Defender is further authorized to solicit and accept monies, gifts, grants or services from any public or private source, for the purpose of funding, operating and executing the duties of the office.

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

#### **§ 99-18-15. Director to keep a docket of all indicted death eligible cases in Mississippi**

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 as requested monthly. The director shall also report ~~monthly~~ to the Public Defender Oversight Council in a form, manner and schedule prescribed by the Council ~~Administrative Office of Courts~~ the activities, receipts and expenditures of the office.

#### **§ 99-18-17. Conflict of interest; employment of qualified private counsel; payment of fees and expenses; Capital Defense Counsel Fund**

(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 office~~ 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 refer such case to the Public Defender Oversight Council who may employ qualified private counsel. Fees and expenses approved by order of the Public Defender Oversight Council ~~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.~~

**§ 99-18-19. Indigent Appeals Division created; director and staff; compensation; duties;**

(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. Attorneys in the office shall be active members of The Mississippi Bar. 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 Indigent Appeals Director shall be compensated at no more than the State Defender and other attorneys in the office shall be compensated at no more than the maximum amount allowed by statute for an assistant district attorney with comparable years of practice experience.

(2) The office shall provide representation on appeal for indigent persons convicted of felonies and indigent juveniles adjudicated delinquent in Youth Court. The office may provide advice and assistance to attorneys representing persons under felony charges in the trial courts and juveniles in Youth Court delinquency proceedings.

**§ 99-18-21. Division of District Public Defender created; personnel; funding sources; qualifications, duties, removal of district defender; funding of agency expenses;**

(1) There is hereby created in each circuit court district the Division of District Public Defender. The Division of District Public Defender shall consist of a District Defender who shall be appointed by the State Defender on recommendation of the District Defender Selection Panel established pursuant to this section and staffed by any necessary personnel as determined and hired by the District Defender in compliance with standards established by the Public Defender Oversight Council.

(2) The District 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 trial counsel in death penalty cases as may be set by the Supreme Court of Mississippi. The District Defender shall be familiar with and integrate into his/her practice

standards promulgated by the Public Defender Oversight Council. The salary of the District Defender shall be no more than 90% of the salary of the State Defender.

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

(4) The District Public Defender shall be responsible for oversight of the indigent defense delivery system in the district including collection of data as requested by the State Defender and/or the Public Defender Oversight Council, evaluation of the performance of attorneys providing indigent defense and other standards compliance matters. The District Defender shall handle a caseload that accounts for the administrative responsibilities of the position as approved by the State Defender. The District Defender shall be provided, by the counties in the district on a per capita basis, with office space, administrative assistance, and all reasonable expenses of operating the office at least equal to a pro rata share of the district attorney based on number of authorized staff.

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

(7) There shall be a District Defender Selection Panel in each circuit court district. All members of the selection panel shall reside in the district. The panel shall consist of three members, at least two of which shall be experienced criminal defense attorneys with felony indigent defense experience who are not currently providing public defense services in the district. One member shall be appointed by the Senior Circuit Judge, one by the president of the Mississippi Bar and one by the president of the Magnolia Bar. In the event of a vacancy in the position of District Public Defender the panel shall be convened by the State Defender to evaluate and recommend a new district defender. The panel shall also consult with the Public Defender Oversight Council to develop plans for representation in cases not handled by the district defender office due to conflict of interest or excessive caseload.

~~§ 99-40-1. Indigent Appeals Division created; director and staff; compensation; duties; Indigent Appeals Fund; Public Defender Training Division created; Public Defenders Education Fund~~

~~—(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.~~

### PART 3

#### **§ 25-32-1. Establishment of ~~office~~ assistant district defender positions by board of supervisors**

Should the board of supervisors of any county or the boards of supervisors of two (2) or more counties in the same circuit court district determine by order spread upon their minutes that the county or counties have a sufficient number of indigent defendant cases ~~to establish an office of public defender~~, the board of supervisors or boards of supervisors are authorized and empowered, in their discretion, to fund assistant district defender positions and establish the office, provide office space, personnel and funding for the office, and to perform any and all functions necessary for the efficient operation of such an office to the end that adequate legal defense for indigent persons accused of crime shall be provided at every critical stage of their cases as an alternative to court appointed counsel. Said order shall specify whether the assistant public defender shall be full-time or part-time. Assistant public defenders funded under this section shall be county employees.

#### **§ 25-32-3. ~~Circuit judge shall appoint public defender for county;~~ assistant public defender**

~~—(1) When the office of public defender is established, the circuit judge or the senior circuit judge, if there be more than one (1) circuit judge, shall appoint a practicing attorney to serve the county or counties as public defender until the end of the term of office of the district attorney and thereafter for a term of four (4) years and said term shall coincide with the term of the district attorney. Such appointee shall be selected from a list of two (2) or more attorneys recommended by the county or regional bar association. In the event a vacancy shall occur in the office of the public defender, the circuit judge or the senior circuit judge, if there be more than one (1) circuit judge, shall appoint another person to serve as public defender until the end of the regular term of office.~~

(2) ~~Assistant public defenders may be authorized by the board of supervisors, or boards of supervisors if two (2) or more counties are acting jointly.~~ The district public defender shall appoint all assistant public defenders. An assistant public defender may be removed by the district defender upon finding that the assistant public 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. Such assistant public defenders may be compensated in such an amount as may be authorized by the respective board of supervisors pursuant to standards set by the Public Defender Oversight Council; provided, however, that in no case may such assistant public defenders receive compensation in an amount greater than that received by the district public defender.

#### **§ 25-32-5. ~~Compensation;~~ private practice of law**

~~—Compensation for the public defender shall be fixed by the board of supervisors or boards of supervisors, if two (2) or more counties are acting jointly; provided, however, the compensation for a public defender, who shall be full time, representing an entire circuit court district shall not~~

~~be less than the compensation of the district attorney, the compensation for a public defender representing one (1) county shall not be less than the compensation of the county prosecuting attorney and the compensation for a public defender representing two (2) or more counties, but less than the entire circuit court district, shall not be less than the aggregate of the compensation for county prosecuting attorneys of the counties served, but in no event to exceed the compensation of the district attorney.~~ No full-time public defender or full-time assistant public defenders shall engage nor be associated with any person in the private practice of law. Part-time public defenders or part-time assistant public defenders may engage in the private practice of the law as long as such practice does not relate to the prosecution of criminal matters.

#### **§ 25-32-7. Office and office expenses; payment of compensation and expenses**

(1) ~~The~~ Each assistant district public defender shall be provided with office space, secretarial assistance, and all reasonable expenses of operating the office, at least equal to ~~or more than the county prosecuting attorney, or the amount provided the district attorney for an assistant district attorney if the public defender represents the entire circuit court district.~~ The compensation and expenses of the district public defender's office not covered by the State Defender shall be paid by the county or counties if two (2) or more counties are acting jointly. The funds shall be paid upon allowance by the board of supervisors by order spread upon the minutes of the board.

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

#### **§ 25-32-9. Affidavit of indigency; statement of assets; representation of persons in need of mental treatment**

(1) When any person shall be arrested and charged with a felony, or a misdemeanor ~~or an act of delinquency,~~ then the arresting authority shall afford such person an opportunity to sign an affidavit stating that such person is an indigent and unable to employ counsel. Upon the signing of such affidavit by such person, the district public defender shall represent said person unless the right to counsel be waived by such person and subject to caseload standards established by the Public Defender Oversight Council. Provided further, a statement shall be executed by the alleged indigent, under oath, listing all assets available to the indigent for the payment of attorney's fees, including the ownership of any property, real or personal, and setting out therein the alleged indigent's employment status, number of dependents, income from any source, ~~the ability of his parents or spouse to provide an attorney's fee,~~ and any other information which might prove or disprove a finding of indigency. The affidavit and statement shall be filed under seal a part of the record in the case and shall be subject to review by the appropriate court. Based on review of the affidavit, statement or other appropriate evidence, if the appropriate court finds that the defendant is not indigent, said court shall terminate the representation of the defendant by the public defender.

When any person shall be arrested and charged with a misdemeanor, the presiding judge or justice, upon determination that the person is indigent as provided in this section, and that representation of the indigent is required, shall appoint the public defender whose duty it shall be

to provide such representation. No person determined to be an indigent as provided in this section shall be imprisoned as a result of a misdemeanor conviction unless he was represented by the public defender or waived the right to counsel.

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

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

(4) The district defender shall be authorized to represent persons charged with commission of an act of delinquency.

#### **§ 25-32-11. Duties; free access to accused**

The duties of the public defender shall include the investigation of charges against the defendant and all facts surrounding the same, and shall include courtroom and appellate appearances on behalf of the defendant in all cases originating in state and county courts. The public defender shall have free access to the accused who shall have process to compel the attendance of witnesses in his favor.

#### **§ 25-32-13. Appointment of counsel by court in conflict of interest cases; appointment of additional counsel where necessary**

(1) If the court finds that indigent defendants have such conflicts of interests that they all cannot be properly represented by the public defender, or when other good cause is shown in the trial court or on appeal, the court shall appoint separate counsel as provided in Section 99-15-15, Mississippi Code of 1972. In such cases, the fees allowed appointed counsel in Section 99-15-17, Mississippi Code of 1972, shall apply.

(2) If the court finds that an indigent is a defendant in a case of such a nature that he cannot be properly represented by the public defender alone, the court shall appoint additional counsel to assist the public defender as provided in Section 99-15-15, Mississippi Code of 1972. In such cases, the fees allowed appointed counsel in Section 99-15-17, Mississippi Code of 1972, shall apply.

#### **§ 25-32-15. Termination of office**

The county support for assistant public defenders authorized in §25-32-1 ~~office of public defender~~ may be terminated, in the discretion of the board of supervisors, by entering an order upon the minutes of the board of supervisors six (6) months prior to the expiration of the term of the district public defender. Such termination shall be effective at the end of the term of the public defender.

#### **§ 25-32-17. Compensation, staff, office space, and secretarial assistance not to be reduced; authority to increase**

The compensation, administrative staff, office space and secretarial assistance shall not be reduced or diminished but may be increased during the term of the district public defender.

**§ 25-32-19. Obtaining financial, professional, investigatory, research, or other assistance**

The district public defender and the board of supervisors may cooperate with any individual or public agency, whether state or federal, or with any institution of higher learning of the State of Mississippi, to obtain by gift, grant or otherwise any financial, professional, investigatory or research or other assistance; provided, however, that any grants or any financial assistance whatever for the purpose herein set out shall be paid over to the board of supervisors and administered by it for the purposes herein set forth. The board shall have the authority to use any financial assistance or grants to extend and expand the facilities of the office.

## PART 4

### **§ 99-39-101. Short title**

This article may be cited as the “Mississippi Capital Post-Conviction Counsel Act.”

### **§ 99-39-103. Office of Post-Conviction Counsel created; personnel; appointment to office; qualifications; removal**

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.

### **§ 99-39-105. Purpose of office**

The Office of Capital Post-Conviction Counsel is created for the purpose of providing representation to indigent parties under sentences of death in post-conviction proceedings, and to perform such other duties as set forth by law.

### **§ 99-39-107. Duties of office; attorneys appointed to office to be full time**

The Office of Capital Post-Conviction Counsel shall limit its activities to the representation of inmates under sentence of death in post-conviction proceedings and ancillary matters related directly to post-conviction review of their convictions and sentences and other activities explicitly authorized in statute. Representation by the office or by private counsel under appointment by the office will end upon the filing of proceeding for federal habeas corpus review or for appointment of counsel to represent the defendant in federal habeas corpus proceedings. However, the office may continue representation if the office or a staff attorney employed by the office shall be appointed by a federal court to represent the inmate in federal habeas corpus proceedings. In such event, the office or the employee attorney shall apply to the federal court for compensation and expenses and shall upon receipt of payments by the federal court pay all sums received over to the office for deposit in the Special Capital Post-Conviction Counsel Fund as provided in Section 99-39-117, from which all expenses for investigation and litigation shall be disbursed. Representation in post-conviction proceedings shall further include representation of the inmate from the exhaustion of all state and federal post-conviction litigation until execution of the sentence or an adjudication resulting in either a new trial or a vacation of the death sentence. The attorneys appointed to serve in the Office of Capital Post-Conviction Counsel shall devote their entire time to the duties of the office, 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, participate in the trial of any person charged with capital murder or direct appeal of any person under sentence of death in the state, nor engage in lobbying activities for or against the death penalty. Any violation of this provision shall be grounds for termination from employment, in the case of the director, by the Governor, and in the case of other attorneys, by the director, ~~with approval of the Chief Justice.~~

#### **§ 99-39-109. Compensation**

The director appointed under this article 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 with comparable years of practice experience.

#### **§ 99-39-111. Office hours of operation**

The Director of the Office of Post-Conviction Counsel shall keep the office open Monday through Friday for not less than eight (8) hours each day.

#### **§ 99-39-113. Powers and duties of director; requirement of surety bond**

In addition to the authority to represent persons under sentence of death in state post-conviction proceedings, the director is hereby empowered to pay and disburse salaries, employment benefits and charges relating to employment of 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 solicit and accept monies, gifts, grants or services from any public or private sources for the purpose of funding, operating and executing the statutory duties of the office; to enter into and perform contracts, including but not limited to, contracts and agreements necessary to obtain and receive monies, gifts, grants or services from federal, public and private sources, and to purchase such necessary office supplies and equipment as may be needed for the proper administration of said offices; and to incur and pay such other expenses as are appropriate and customary to the operations of the office. The director shall be required to obtain a surety bond in the amount of not less than One Hundred Thousand Dollars (\$ 100,000.00) payable to the state. The cost of such bond shall be paid out of funds appropriated for the operations of the office. All salaries and other expenditures shall be paid from funds appropriated for such purposes augmented by funds received as gifts and grants from public and private sources.

#### **§ 99-39-115. Director to keep a docket of all death penalty cases in Mississippi**

The director shall keep a docket of all death penalty cases originating in the courts of Mississippi, which must at all reasonable times be open to the inspection of the public and must show the county, district and court in which the causes have been instituted. The director shall prepare and maintain a roster of all death penalty cases originating in the courts of Mississippi and pending in state and federal courts indicating the current status of each such case, and a history of those death penalty cases filed since 1976. Copies of such dockets and rosters shall be submitted to the Governor, Chief Justice of the Supreme Court and the Administrative Office of Courts ~~monthly~~ as requested. The director shall also report ~~monthly~~ to the Public Defender

~~Oversight Council in a form, manner and schedule prescribed by the Council-Administrative Office of Courts~~ the activities, receipts and expenditures of the office.

**§ 99-39-117. Conflict of interest; employment of qualified private counsel; payment of fees and expenses; ~~Capital Post-Conviction Counsel Fund~~**

(1) If at any time during the representation of two (2) or more defendants, the director determines that the interest of those persons are so adverse or hostile that they cannot all be represented by the director or his staff without conflict of interest, or if the director shall determine that the volume or number of representations shall so require, the director, in his sole discretion, notwithstanding any statute or regulation to the contrary, shall be authorized to refer such case to the Public Defender Oversight Council who may employ qualified private counsel. Fees and expenses, approved by the Public Defender Oversight Council ~~order of the appropriate court~~, including investigative and expert witness expenses of such private counsel shall be paid from funds appropriated to ~~the Capital Post-Conviction Counsel Fund~~ for this purpose.

~~(2) There is created in the State Treasury a special fund to be known as the Capital Post-Conviction Counsel Fund. The purpose of the fund shall be to provide funding for the Office of Capital Post-Conviction Counsel. Monies from the funds derived from assessments under Section 99-19-73 shall be distributed by the State Treasurer upon warrants issued by the Mississippi Office of Capital Post-Conviction Counsel. 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 Office of Capital Post-Conviction Counsel;~~

~~—(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.~~

**§ 99-39-119. Director authorized to solicit funds for purpose of funding and operating office**

The director is further authorized to solicit and accept monies, gifts, grants or services from any public or private source, for the purpose of funding, operating and executing the duties of the office.



## PART 5

### § 99-15-15. Appointment of counsel for indigents

When any person shall be charged with a felony, or misdemeanor punishable by confinement for ~~ninety (90) days or more, or commission of an act of delinquency~~, the court or the judge in vacation, being satisfied that such person is an indigent person and is unable to employ counsel, shall ~~may, in the discretion of the court,~~ appoint counsel to defend him.

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

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

When any person is charged with commission of an act of delinquency counsel shall be appointed pursuant to Section 43-21-201.

### § 99-15-17. Compensation of counsel; amount

The compensation for counsel for indigents appointed as provided in Section 99-15-15, shall be approved and allowed by the appropriate judge and in any one (1) case may not exceed one thousand dollars (\$ 1000.00) for representation in circuit court whether on appeal or originating in said court. Provided, however, if said case is not appealed to or does not originate in a court of record, the maximum compensation shall not exceed two hundred dollars (\$ 200.00) for any one (1) case, the amount of such compensation to be approved by a judge of the chancery court, county court or circuit court in the county where the case arises. Provided, however, in a capital case two (2) attorneys may be appointed, and the compensation may not exceed two thousand dollars (\$ 2,000.00) per case. If the case is appealed to the state supreme court by counsel appointed by the judge, the allowable fee for services on appeal shall not exceed one thousand dollars (\$ 1000.00) per case. These fee caps may be exceeded, in the discretion of the presiding judge after finding extraordinary circumstances. The attorney shall be paid a reasonable hourly rate consistent with standards adopted by the Public Defender Oversight Council which shall be inclusive of all regular expenses of operating a law office. In addition, the judge shall allow reimbursement of ~~actual~~ expenses for expert and investigative services on prior approval of the court. The attorney or attorneys so appointed shall itemize the time spent in defending said indigents together with an itemized statement of expenses of such defense, and shall present same to the appropriate judge. The fees and expenses as allowed by the appropriate judge shall be paid by the county treasurer out of the general fund of the county in which the prosecution was commenced.

### § 99-15-19. Compensation of counsel; reimbursement of county in certain cases

Any county paying counsel fees and expenses incurred on appeal to the supreme court or by virtue of any prosecution charging the commission of a crime on the premises of ~~the a~~ Mississippi State Penitentiary correctional facility or the commission of a crime by any escapee

therefrom, may request reimbursement of all such payments from the state treasurer. The state auditor shall issue his warrant, based upon a voucher sent by the treasurer of any county entitled to such reimbursement together with a certification that such sums have been allowed and paid. The state treasurer shall pay the amount of any such reimbursement out of any funds in the state treasury appropriated for such purpose.

**§ 99-15-21. Compensation of counsel; method of payment**

All compensation and reimbursements allowed by the judge shall be made on the basis of an itemized statement as to time and nature of work and the expense incurred by the appointed counsel. The ~~attorney general~~ Public Defender Oversight Council shall prepare and make available the proper form for the itemized statement which is to be submitted to the appropriate judge by the attorney or attorneys. Compensation and reimbursements authorized by Sections 99-15-15 through 99-15-21 shall be allowed only in cases in which the appointment is made subsequent to ~~April 5, 1971~~ January 1, 2020. In all cases in which counsel have been appointed prior to said date, compensation shall be allowed in the same manner and to the same extent as provided by law at the time such appointment was made. If an attorney or a county disagrees with the judge's decision on compensation either may petition the Public Defender Oversight Council for an increase or decrease in the amount. The Council shall promulgate rules governing this procedure.

## PART 6

### **§ 43-21-201. Representation by counsel; youth court-appointed attorneys required to receive juvenile justice training; exemption; duties of youth court counsel**

(1) Each party shall have the right to be represented by counsel at all stages of the proceedings including, but not limited to, detention, adjudicatory and disposition hearings and parole or probation revocation proceedings. In delinquency matters the court shall appoint legal defense counsel who is not also a guardian ad litem for the same child. If the party is a child, the child shall be represented by counsel at all critical stages: detention, adjudicatory and disposition hearings; parole or probation revocation proceedings; and post-disposition matters. No child shall be allowed to waive the right to the assistance of counsel except a child who indicates a desire to waive the right to counsel in the presence of counsel and after consultation with counsel and the court determines that the waiver is knowing and voluntary. If indigent, the child shall have the right to have counsel appointed for him by the youth court.

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

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

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

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

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

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

### **§ 43-21-357. Intake procedure**

(1) After receiving a report, the youth court intake unit shall promptly make a preliminary inquiry to determine whether the interest of the child, other children in the same environment or the public requires the youth court to take further action. As part of the preliminary inquiry, the youth court intake unit may request or the youth court may order the Department of Human Services, the Department of Youth Services, any successor agency or any other qualified public employee to make an investigation or report concerning the child and any other children in the same environment, and present the findings thereof to the youth court intake unit. If the youth court intake unit receives a neglect or abuse report, the youth court intake unit shall immediately forward the complaint to the Department of Human Services to promptly make an investigation or report concerning the child and any other children in the same environment and promptly present the findings thereof to the youth court intake unit. If it appears from the preliminary inquiry that the child or other children in the same environment are within the jurisdiction of the court, the youth court intake unit shall recommend to the youth court:

- (a) That the youth court take no action;
- (b) That an informal adjustment be made;
- (c) The Department of Human Services, Division of Family and Children Services, monitor the child, family and other children in the same environment;
- (d) That the child is warned or counseled informally;
- (e) That the child be referred to the youth court drug court; or
- (f) That a petition be filed.

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

- (a) Order that no action be taken;

(b) Order that an informal adjustment be made;

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

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

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

(f) Order that a petition be filed.

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

(4) In delinquency and child in need of supervision proceedings if the intake unit recommends any action under (1) (b)-(f) the unit shall notify the public defender who shall represent the child. If there is no public defender available the intake unit shall recommend to the youth court that qualified counsel be appointed and the youth court shall appoint counsel pursuant to Section 43-21-201.