MISSISSIPPI LEGISLATURE REGULAR SESSION 2021

By: Representative Evans (91st)

To: Judiciary B;
Appropriations

HOUSE BILL NO. 975

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

OF THE OFFICE OF DISTRICT PUBLIC DEFENDER; TO AMEND SECTION 25-32-19, MISSISSIPPI CODE OF 1972, TO CLARIFY THE AUTHORITY OF THE DISTRICT PUBLIC DEFENDER TO OBTAIN FINANCIAL AND OTHER ASSISTANCE IN OPERATION OF THE OFFICE; TO AMEND SECTION 99-39-107, MISSISSIPPI CODE OF 1972, TO ELIMINATE THE NEED FOR THE CHIEF JUSTICE TO APPROVE THE TERMINATION OF ATTORNEYS EMPLOYED IN THE OFFICE OF CAPITAL POST-CONVICTION COUNSEL; TO AMEND SECTION 99-39-109, MISSISSIPPI CODE OF 1972, TO REVISE THE COMPENSATION OF ATTORNEYS IN THE OFFICE OF POST-CONVICTION COUNSEL; TO AMEND SECTION 99-39-115, MISSISSIPPI CODE OF 1972, TO REVISE THE DUTY OF THE DIRECTOR OF THE OFFICE OF POST-CONVICTION COUNSEL TO MAKE CERTAIN REPORTS; TO AMEND SECTION 99-39-117, MISSISSIPPI CODE OF 1972, TO CLARIFY THE APPOINTMENT OF PRIVATE COUNSEL AND TO DELETE REFERENCES TO THE CAPITAL POST-CONVICTION COUNSEL FUND; TO AMEND SECTION 99-15-15, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR APPOINTMENT OF COUNSEL TO THOSE CHARGED WITH AN ACT OF DELINQUENCY; TO AMEND SECTION 99-15-17, MISSISSIPPI CODE OF 1972, TO REVISE THE COMPENSATION OF COUNSEL FOR INDIGENT DEFENDANTS; TO AMEND SECTION 99-15-19, MISSISSIPPI CODE OF 1972, TO REVISE THE REIMBURSEMENT FOR SOME EXPENSES TO COUNTIES IN WHICH A STATE CORRECTIONAL FACILITY IS LOCATED IN CERTAIN CASES; TO AMEND SECTION 99-15-21, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR RESOLUTION OF DISPUTES OVER COMPENSATION OF COUNSEL FOR INDIGENT DEFENDANTS; TO AMEND SECTION 43-21-201, MISSISSIPPI CODE OF 1972, TO LIMIT A YOUTH'S ABILITY TO WAIVE ASSISTANCE OF COUNSEL; TO AMEND SECTION 43-21-357, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR THE APPOINTMENT OF COUNSEL IN DELINQUENCY AND CHILD-IN-NEED-OF-SUPERVISION CASES; TO REPEAL SECTION 99-40-1, MISSISSIPPI CODE OF 1972, WHICH CREATES THE INDIGENT APPEALS AND PUBLIC DEFENDER TRAINING DIVISIONS AND ESTABLISHES THE PUBLIC DEFENDERS EDUCATION FUND; AND FOR RELATED PURPOSES.

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

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

99-18-21. **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 (9) members. Other than county supervisor members, members of the council must be individuals with significant experience working in the criminal justice system or who have demonstrated a strong commitment to providing adequate

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

(a) Three (3) members shall be appointed by the Mississippi Association of Supervisors, each from a different supreme court district of this state. The initial appointments shall be for one-, two- and four-year terms, respectively, as designated by the Mississippi Association of Supervisors for each appointment. A county supervisor council member is 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 (2) members shall be appointed by the Lieutenant Governor. The initial appointments shall be for one (1) and four (4) years, respectively, as designated by the Lieutenant Governor for each appointment.

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

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

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

(e) All initial terms begin on July 1, 2021. A vacancy in a term is to be filled by the appointing authority, and a successor appointee shall serve the balance of the vacating member's unexpired term. A 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 Defenders 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's 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, including, but not limited to, standards for:

(i) Determining who qualifies as an indigent person;

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

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

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

(v) 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; and

(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 may 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 the director 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 office supplies and equipment as may be needed for the proper administration of the 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 under Sections 99-18-17 and 99-39-117, Mississippi Code of 1972. 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 is 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:

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

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

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

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

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

99-18-23. **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.

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

99-18-25. **Division of District Public Defender created; personnel; funding sources; qualifications, duties and 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 Public Defender who shall be appointed by the State Defender on recommendation of the District

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

(2) The District Public 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 Public Defender shall be familiar with and integrate into his other practice standards promulgated by the Public Defender Oversight Council. The salary of the District Public Defender shall be no more than ninety percent (90%) of the salary of the State Defender.

(3) The District Public Defender may be removed by the State Defender upon finding that the District Public 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 the Public Defender Oversight Council, evaluation of the performance of attorneys providing indigent defense and other

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

(5) The District Public 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 Sections 25-32-1 through 25-32-19, Section 99-18-13, or by appropriation of the Legislature.

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

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

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

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

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(*** * ***2) 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 *** * *** trial *** * *** 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 a district attorney.

(*** * ***3) 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.

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

(* * *5) 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.

* * *

(* * *6) 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.

(* * *7) 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.

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

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

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

99-18-13. (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 public defender office.

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

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

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

99-18-17. * * * 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 * * * 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 the case to the Public Defender Oversight Council which may employ qualified private counsel. Fees and expenses approved by order of the * * * Public Defender Oversight Council, 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.

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

25-32-1. 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 * * *, the board of supervisors or boards of supervisors are authorized and empowered, in their discretion, to * * * fund assistant public defender positions, 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.

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

25-32-3. *** * *** The District Public Defender shall appoint all assistant public defenders. An assistant public defender may be removed by the District Public 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 in compliance with standards set by the Public Defender Oversight Council; *** * *** however, *** * *** the assistant public defenders may not receive compensation in an amount greater than that received by the public defender.

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

25-32-5. *** * *** 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.

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

25-32-7. (1) *** * *** 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 *** * *** the amount provided to the district attorney *** * *** for an assistant district attorney. The compensation and expenses of the district public defender's office not covered by the budget of 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.

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

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

to sign an affidavit stating that * * * the person is an indigent and unable to employ counsel. Upon the signing of * * * an affidavit by * * * the person, the district public defender shall represent * * * the person unless the person waives the right to counsel * * *. * * * A statement * * * must 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, * * * and any other information which might prove or disprove a finding of indigency. The affidavit and statement shall be * * * filed under seal 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, * * * the court shall terminate the representation of the defendant by the public defender.

When * * * a person * * * is 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 * * * Section 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 Public Defender is authorized to represent persons charged with commission of an act of delinquency.

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

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

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

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

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

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

25-32-19. 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.

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

99-39-107. 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 *** * ***.

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

99-39-109. 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.

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

99-39-115. 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 *** * *** as requested. The director shall also report *** * *** to the *** * *** Public Defender Oversight Council in the form and manner and on a

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

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

99-39-117. *** * *** 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 *** * *** determines that the volume or number of representations shall so require, the director, in his sole discretion, notwithstanding any statute or regulation to the contrary, *** * *** is authorized to refer the case to the Public Defender Oversight Council, which may employ qualified private counsel. Fees and expenses, approved by *** * *** the Public Defender Oversight Council, including investigative and expert witness expenses of such private counsel shall be paid from funds appropriated *** * *** for this purpose.

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

99-15-15. When any person *** * *** is charged with a felony *** * *** or misdemeanor punishable by confinement *** * ***, the court or the judge in vacation, being satisfied that such person is an indigent person and is unable to employ counsel, *** * *** shall 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 a person is charged with commission of an act of delinquency, counsel shall be appointed under Section 43-21-201.

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

99-15-17. 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 ($1,000.00) for representation in circuit court whether on appeal or originating in said court. * * * If * * * the 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 * * * compensation to be approved by a judge of the chancery court, county court or circuit court in the county where the case arises. * * * 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 ($1,000.00) 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 * * * 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.

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

99-15-19. 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 * * * a premises of * * * a Mississippi state * * * 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 or her 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.

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

99-15-21. 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 *** * *** 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 *** * *** after January 1, 2021. In all cases in which counsel have been appointed *** * *** before that date, compensation shall be allowed in the same manner and to the same extent as provided by law at the time *** * *** the appointment was made. If an attorney or a county board of supervisors 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 to govern this procedure.

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

43-21-201. (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 after consultation with counsel, and then only if the court determines that the waiver is knowing and voluntary.

(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.

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

43-21-357. (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 intervention 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 intervention 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) If the intake unit recommends any action under subsection (1) of this section in delinquency or child-in-need-of-supervision proceedings, the unit must notify the public defender who would 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 must appoint counsel under Section 43-21-201.

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

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

1, 2021, and the remainder of this act shall take effect and be in force from and after January 1, 2022.