

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

200 W. Washington, Suite 301
Indianapolis, IN 46204
(317) 233-0696
<http://www.in.gov/legislative>

FISCAL IMPACT STATEMENT

LS 6191
BILL NUMBER: SB 24

NOTE PREPARED: Nov 21, 2006
BILL AMENDED:

SUBJECT: Death Penalty and Mental Illness.

FIRST AUTHOR: Sen. Bowser
FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: **GENERAL**
 DEDICATED
 FEDERAL

IMPACT: State & Local

Summary of Legislation: This bill establishes a procedure to determine whether a defendant charged with murder is a mentally ill individual, and prohibits the imposition of life imprisonment without parole or the death penalty on a defendant found to be a mentally ill individual.

Effective Date: July 1, 2007.

Explanation of State Expenditures: *Summary:* Depending on the outcome of a murder case, the state could save expenditures in two areas:

- reimbursement of trial costs for death penalty trials held at the county level; and
- the added costs for post-conviction review.

Reimbursement of County Expenses – The state reimburses 50% of qualified expenses incurred in counties holding death penalty cases. In murder cases where the most serious penalty is either life without parole or a term of years in prison, the state Public Defense Fund reimburses 40% of the qualified expenses of the trial.

Murder cases in which the death penalty is being requested are four times more expensive than murder cases where life without parole is being requested. A term of years in prison would be even less expensive.

The following shows the average costs incurred by the Public Defense Fund for death penalty and life without parole cases. The costs of a trial where the most serious sentence is a term of years was not available. The cost of these trials would likely be less expensive because the jury would meet for a single trial to determine guilt and not for an additional trial to determine the sentence.

Cost Components for Murder Trials		
	Death Penalty	Life Without Parole
Attorneys and Related Costs	\$107,804	\$27,370

Public Defense Fund expenditures for partially reimbursing counties for the costs of capital cases are reported in the following table for each fiscal year between 1998 and 2006.

Reimbursements for Capital Cases by Fiscal Year								
1998	1999	2000	2001	2002	2003	2004	2005	2006
\$799,450	\$526,512	\$378,209	\$712,055	\$473,317	\$342,464	\$585,961	\$499,488	\$633,54

The Public Defense Fund also partially reimburses counties for the costs of noncapital cases as reported in the following table for the fiscal years between 1998 and 2006.

Reimbursements (in Millions) for Noncapital Cases By Fiscal Year								
1998	1999	2000	2001	2002	2003	2004	2005	2006
\$1.03	\$2.18	\$3.30	\$3.66	\$4.86	\$5.37	\$6.03	\$9.34	\$8.96

The Public Defense Fund receives an annual statutory allotment of \$3.4 M derived from a transfer from the state General Fund under IC 33-19-7-5 beginning in FY 2005 and a \$4.4 M transfer beginning in FY 2006.

Added Costs of Appeals - There are three general stages of review of criminal cases at the state and federal level: direct appeal and post-conviction relief at the state level, and habeas corpus at the federal level. The Office of the Attorney General represents the state in all three stages of review in death penalty cases, and in direct appeal and habeas corpus if a determinate sentence is imposed. The State Public Defender's office represents convicted offenders requesting indigent counsel in post-conviction relief and in some direct appeals in which the county reimburses the office. The following costs were used to compare the costs between these sentencing options.

State Agency	Function	Death Penalty Trial	Life Without Parole
State Public Defender	Represents convicted offenders requesting indigent counsel in post-conviction relief	\$191,182	\$3,724
Office of the Attorney General	Represents the state in all three stages of review in death penalty cases	\$72,503	\$12,004
Department of Correction	Execution costs and annual per diem and medical costs	\$20,588 for execution	Annual per diem and medical costs
State Police	Security and appeals at execution	\$4,012	

Explanation of State Revenues:

Explanation of Local Expenditures: *Summary:* This bill could reduce the costs of death penalty cases for

the state and counties when a criminal defendant is found by a trial court judge to be mentally ill prior to actual trial. Cost savings would depend on the number of cases in which the death penalty is dismissed and a murder trial is held where the most serious outcome is a term of years in prison.

Background: This proposal is similar to IC 35-36-9, which exempts defendants in murder cases from the death penalty if they prove to the court in a pretrial hearing that they are mentally retarded. If the court determines that the defendant is mentally retarded, the court is required to dismiss the death penalty petition. If the defendant either agrees to a plea bargain or is convicted of murder, the court is required to sentence the defendant to a fixed term of years. This bill would create a similar procedure for defendants to prove that they are mentally ill. Like the provision for mentally retarded defendants, defendants bear the burden of proving that they are mentally ill to a trial court judge in a pretrial hearing. As proposed, if the court declares a defendant to be mentally ill, the petition for either a death sentence or life without parole is dismissed and the defendant is required to be sentenced to a term of years if found guilty or if the defendant agrees to a plea bargain.

Under IC 35-50-2-9(c), a defendant in a death penalty case can claim one of eight mitigating circumstances that would cause a defendant who would otherwise receive a death sentence to receive a lesser sentence. While mental illness is not included as a specific mitigator, defendants can claim "extreme mental or emotional disturbance" or "mental disease or defect" as factors that contributed to the criminal act.

In almost all death penalty cases, expert witnesses and mitigation specialists will examine the background of the defendant to determine whether any factors in the defendant's life have contributed to the defendant's criminal behavior. Since these investigations are likely to be performed for any defendant as part of a death penalty case, this bill could increase the number of pretrial hearings in death penalty cases but not increase the use of expert witnesses used in death penalty cases. Instead of evidence of the defendant's background being presented before a judge and jury, the evidence will be presented to a judge in a pretrial hearing. If the judge rules that the defendant is mentally ill, then the prosecuting attorney is limited to requesting a term of years for the defendant. If the death penalty is no longer a sentencing option, then two attorneys for the defendant and more extensive investigations into the defendant's past history will not be needed. This will ultimately reduce the costs to the county in which the murder trial is located.

The Public Defender Council reports that between 1994, when the law exempting mentally retarded defendants from the death penalty was enacted, and 2005, prosecuting attorneys have requested death penalties in 107 cases. Of these 107 defendants, 7 defendants in death penalty cases have petitioned to prove that they were mentally retarded. Of these seven, five cases have been decided where the defendants were sentenced to a term of years, one defendant was sentenced to death, and one case is still being decided at the trial level.

LSA also identified 8 cases out of 153 cases decided between 1990 and 2000 in which defendants in death penalty cases had the death sentence either dismissed or overturned because of a mitigating factor associated with extreme emotional distress or a mental disease or defect. The specific cost associated with the psychological investigations was not able to be identified.

Comparing the Costs of Sentencing Options – The following table summarizes the difference between the three sentencing options.

<u>Sentencing Option</u>	<u>Number of Defense Attorneys Needed</u>	<u>Type of Trial Conducted</u>
Death Penalty	Two	Bifurcated - one to determine guilt or innocence and one to determine whether death penalty is warranted; a sentencing hearing is separate.
Life Without Parole	One	Bifurcated - one to determine guilt or innocence and one to determine whether death penalty is warranted; a sentencing hearing is separate.
Determinate Sentence Between 45 and 65 Years	One	A single trial to determine guilt or innocence; a sentencing hearing is separate.

Consequently, the costs of legal representation for a case where the most serious sentence is between 45 and 65 years would likely be lower than the costs of a case involving life without parole.

No information is available on the costs of murder cases in which the most serious sentence was between 45 and 65 years of incarceration. However, at the request of the Criminal Law Study Commission, Legislative Services Agency staff compared the costs of death penalty cases and cases in which life without parole was the most serious outcome that could occur. The following table displays the cost components for a "typical" death penalty trial and a trial where life without parole is the most serious sentence.

Cost Components for Murder Trials:		
	<u>Death Penalty</u>	<u>Life Without Parole</u>
Attorneys and Related Costs*	\$107,804	\$27,370
Jury and Related Costs	\$46,375	\$10,150
Cost of Appeals	\$54,355	\$5,466
Prosecuting Attorney	\$2,340	\$2,948
County Sheriff	\$8,472	\$4,380
Total Costs	\$219,346	\$50,314
*Net Costs After Reimbursement From Public Defense Fund		

The cost of legal representation for a criminal defendant in a death penalty case is four times as expensive as the costs of a criminal trial in which the most serious sentence is life without parole. The costs of a trial where a determinate sentence is the most serious sentence is likely to be less than the costs of a trial in which life without parole is the most serious sentence.

Explanation of Local Revenues:

State Agencies Affected: Department of Correction, Office of the Attorney General, Office of the State Public Defender, State Police.

Local Agencies Affected: Trial courts; County sheriff.

Information Sources: Indiana Supreme Court; *The Application of Indiana's Capital Sentencing Law, Findings of the Indiana Criminal Law Study Commission* (January 10, 2002); Website of Clark County (IN)

Prosecuting Attorney, <http://www.clarkprosecutor.org/html/death/>; Agency for Healthcare Research and Quality, 2002 Full-Year Consolidated Data File (HC-070), Released December 2004. Medical Expenditure Panel Survey Household Component Data, Generated using MEPSnet/HC, <<http://www.meps.ahrq.gov/mepsnet/HC/MEPSnetHC.asp>>; Department of Correction.

Fiscal Analyst: Mark Goodpaster, 317-232-9852.