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FISCAL IMPACT STATEMENT

LS 6022 | **NOTE PREPARED:** Nov 10, 2008
BILL NUMBER: SB 22 | **BILL AMENDED:**

SUBJECT: Death Penalty and Mental Illness.

FIRST AUTHOR: Sen. Tallian | **BILL STATUS:** As Introduced
FIRST SPONSOR:

FUNDS AFFECTED: X **GENERAL** | **IMPACT:** State & Local
DEDICATED
FEDERAL

Summary of Legislation: This bill has the following provisions:

A. Pretrial Hearing to Determine Severe Mental Illness – It establishes a procedure to determine whether a defendant charged with murder is an individual with a severe mental illness. It prohibits the imposition of the death penalty on a defendant found to be an individual with a severe mental illness.

B. Jury as Factfinder – It provides that a jury serves as the factfinder in a sentencing hearing in a capital case, even if the defendant pleads guilty or is tried to the court. It permits a defendant to waive the right to impanel a jury during the sentencing hearing.

Effective Date: July 1, 2009.

Explanation of State Expenditures: *Pretrial Hearing for Mental Illness Claim*– The added claims for reimbursement from the Public Defense Fund associated with this bill could be between $3,600 and $57,000. This is because the testimony from one additional psychiatrist or psychologist would be needed in a death penalty case. If the court determines by clear and convincing evidence that a defendant is severely mentally ill, then the county which is paying for the murder trial can avoid the costs of a death penalty case because the only available sentencing options for the court would be life imprisonment without parole or a determinant sentence of a specific number of years.

The added costs will depend on the following factors and are reflected in the table, below:

- How often criminal defendants in death penalty cases petition the court that they are seriously mentally ill. (The number of death penalty requests between 1997 and 2006 ranged from a high of 15 in 1998 to a low of 3 in 2003.)

- The average expense for evaluating a defendant. (LSA estimated an evaluation could range between $2,400 and $7,600.)
- Whether the Public Defense Fund reimburses 50% of the cost of these evaluations in the counties where a court is conducting a death penalty trial.

If the number of requests that are filed for the death penalty are within the range of the past ten years and assuming that all defendants in death penalty cases file petitions that they are seriously mentally ill, the added claims for reimbursement could be between $3,600 and $57,000.

Added Reimbursement Claims For The Public Defense Fund							
Range	Cost of Evaluation		Number of Trials		Public Defense Fund Reimbursement		Added Costs for Public Defense Fund
High	$7,600	x	15	x	50%	=	$57,000
Midrange	$5,000	x	6	x	50%	=	$15,000
Low	$2,400	x	3	x	50%	=	$3,600

If a defendant is found to be seriously mentally ill and the request for the death penalty is dismissed, counties would request less reimbursement from the Public Defense Fund because the prosecuting attorney would be limited to seeking either a term of life without parole or a determinant number of years. Counties would seek less reimbursement because:

- Reimbursements from death penalty cases are almost four times as high as cases in which life without parole is the most serious option and
- Counties are reimbursed for 50% of all approved expenses for death penalty cases, but 40% for all criminal cases where the death penalty is not an option.

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

Explanation of State Revenues:

Explanation of Local Expenditures: *Pretrial Hearing for Mental Illness Claim*– This bill allows defendants in a death penalty case to request within 20 days before the omnibus court date to allege that they have a serious mental illness. If a defendant files this petition, the court is required to order three disinterested psychiatrists or psychologists (one of the three must be a psychiatrist) to evaluate the defendant. The court would then consider the evaluation of the psychiatrists and psychologists and determine whether by clear and convincing evidence the defendant is seriously mentally ill. If the court determines the defendant is seriously mentally ill, the defendant would be exempt from the death penalty, but could still receive either a sentence of life imprisonment without parole or a specific number of years.

In the short term, this bill could increase the number of pretrial hearings that are held in death penalty cases and add new costs if a panel of three psychiatrists or psychologists is required. Generally, in most death penalty cases two psychologists or psychiatrists will evaluate a defendant. This bill requires one additional psychologist or psychiatrist than the two usually involved in a death penalty case to evaluate a defendant's mental health status at the pretrial level.

The specific cost associated with the psychological investigations will vary with each defendant. Forensic psychiatrists and psychologists that LSA contacted indicated that generally the following steps are needed to retrospectively determine a defendant's mental state:

- Face-to-face interviews
- A review of available records
- Possible interviews of other collateral sources
- Report preparation
- Possible testimony

Depending on the number of hours the psychiatrist or psychologist needs to assess the defendant and the expenses charged, the costs to perform an assessment can range between $2,400 and $7,600 based on psychologists and psychiatrists whom LSA contacted. Since counties are reimbursed for 50% of the approved costs and if between 3 and 15 requests for the death penalty are filed each year, the added costs for the counties could range between $3,600 and $57,000 (See table in *Explanation of State Expenditures*).

This bill could reduce the costs of death penalty cases for counties if a trial court judge determines that the criminal defendant is seriously mentally ill prior to the actual trial. This is because two attorneys for the defendant and more extensive investigations into the defendant's past history will not be needed if the death penalty is no longer a sentencing option.

Jury as the Factfinder in Sentencing Hearing in a Capital Case – There is expected to be a minimal effect on counties from this provision since this is the most common practice observed by prosecuting attorneys and sentencing courts.

Background Information: 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. 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. Unlike this provision, defendants who are determined to be seriously mentally ill would still be eligible for life imprisonment without parole.

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 requested death penalties in 107 cases. Of these 107 defendants, 8 defendants in death penalty cases petitioned to prove that they were mentally retarded. In three of these cases, the trial judge found the defendant mentally retarded and dismissed the death penalty. In another four cases, after evidence of mental retardation was developed and presented to the judge, the parties resolved the case by plea agreement before the judge made a ruling. Only one was sentenced to death.

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. LSA identified 8 out of 153 cases decided between 1990 and 2000 in which the death sentence was either dismissed or overturned because of a mitigating factor associated with extreme emotional distress or a mental disease or defect.

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. 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 either a term of years or life without parole 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.

Explanation of Local Revenues:

State Agencies Affected: Public Defender Council; State Public Defender; Attorney General; Department of Correction; Indiana State Police**.**

Local Agencies Affected: Trial courts; Prosecuting attorney's office; County sheriffs.

Information Sources: Testimony of Paula Sites, Assistant Executive Director, Indiana Public Defender Council, Bowser Commission, August 17, 2007; Indiana Supreme Court; Department of Correction.

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