

LEGISLATIVE FISCAL OFFICE
Fiscal Note



Fiscal Note On: **HB 605** HLS 15RS 646

Bill Text Version: **ORIGINAL**

Opp. Chamb. Action:

Proposed Amd.:

Sub. Bill For.:

Date: May 14, 2015	10:58 AM	Author: SEABAUGH
Dept./Agy.: LA Public Defender Board/LA Supreme Court		Analyst: Zachary Rau
Subject: LA Capital Defense Services Act		

INDIGENT DEFENSE

OR SEE FISC NOTE GF EX

Page 1 of 2

Provides relative to indigent defender services in capital cases

Proposed law creates the five member Committee for Indigent Defender Services in Capital Cases and gives the committee authority to conduct a study and develop a master plan for indigent capital defense statewide that is subject to approval of the LA Supreme Court. Proposed law transfers all duties related to indigent capital defense from the LA Public Defender Board to the LA Supreme Court. Proposed law creates the LA Capital Defense Services Fund. Proposed law provides that 25% of the state general fund deposited in the LA Public Defender Fund be transferred to the LA Capital Defense Services Fund. Proposed law provides that a hearing may be conducted should an indigent defender eventually hire private counsel to determine the cost of representing the defendant, which may be reimbursable to the LA Capital Defense Services Fund.

EXPENDITURES	2015-16	2016-17	2017-18	2018-19	2019-20	5 -YEAR TOTAL
State Gen. Fd.	SEE BELOW	SEE BELOW	SEE BELOW	SEE BELOW	SEE BELOW	
Agy. Self-Gen.	\$0	\$0	\$0	\$0	\$0	\$0
Ded./Other	SEE BELOW	SEE BELOW	SEE BELOW	SEE BELOW	SEE BELOW	
Federal Funds	\$0	\$0	\$0	\$0	\$0	\$0
Local Funds	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
Annual Total						
REVENUES	2015-16	2016-17	2017-18	2018-19	2019-20	5 -YEAR TOTAL
State Gen. Fd.	\$0	\$0	\$0	\$0	\$0	\$0
Agy. Self-Gen.		\$0	\$0	\$0	\$0	\$0
Ded./Other	SEE BELOW	SEE BELOW	SEE BELOW	SEE BELOW	SEE BELOW	
Federal Funds	\$0	\$0	\$0	\$0	\$0	\$0
Local Funds	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
Annual Total						

EXPENDITURE EXPLANATION

This bill reduces the amount of services the LA Public Defender Board (LPDB) must provide relative to indigent capital defense cases, but reduces monies in the LA Public Defender Fund in a manner that is not comparable to the service reduction. This may necessitate an additional SGF appropriation to LPDB of an indeterminable amount or for LPDB to absorb the services within their existing funding level.

This bill reduces LA Public Defender Board (LPDB) resources for services related to non-capital cases which could potentially become capital cases. The proposed legislation provides that 25%, or \$8.0 M of the projected \$32.2 M appropriation for FY 16, of the LA Public Defender Fund be transferred to the newly created LA Capital Defense Services Fund. Pursuant to the definition provided in this bill, a non-capital case becomes a capital case once the prosecuting attorney issues notice that the state will seek the death penalty. However, according to LPDB staff, the process for defending a capital case begins shortly after a defendant is arrested for a crime where the state is entitled to seek the death penalty. As a result, LPDB will still be providing many of the same pretrial services it currently provides, including employing the services of lawyers, fact investigators, and mitigation specialists until such a time that a prosecutor gives notice that the state will seek the death penalty, at which point the case will come under the LA Supreme Court's (LSC) jurisdiction. **(Expenditure Explanation cont. on Pg. 2)**

REVENUE EXPLANATION

The proposed legislation creates the statutorily dedicated LA Capital Defense Services Fund and decreases revenues for the statutorily dedicated LA Public Defender Fund. This bill provides that an amount equal to 25% of the LA Public Defender Fund be transferred in the LA Capital Defense Services Fund. For illustrative purposes, the LA Public Defender Fund has a current FY 16 appropriation of approximately of \$32.2 M. The corresponding 25% transfer to the LA Capital Defense Services Fund would total approximately \$8.0 M in FY 16, leaving \$24.2 M in the LA Public Defender Fund.

In the event the defendant is initially determined to be indigent, but subsequently hires private counsel, the court will have the authority to conduct a contradictory hearing to determine the actual cost of representing the accused. Once the cost of representation is determined, the defendant may be required to reimburse the LSC for its initial services. The amount of revenue generated by this mechanism is indeterminable, though all funds generated by this provision will be deposited in the LA Capital Defense Services Fund.

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|---|----------------------------|--------------|--|
| <u>Senate</u> | <u>Dual Referral Rules</u> | <u>House</u> | <input type="checkbox"/> 6.8(F)(1) >= \$100,000 SGF Fiscal Cost {H & S} |
| <input type="checkbox"/> 13.5.1 >= \$100,000 Annual Fiscal Cost {S&H} | | | <input type="checkbox"/> 6.8(F)(2) >= \$500,000 Rev. Red. to State {H & S} |
| <input type="checkbox"/> 13.5.2 >= \$500,000 Annual Tax or Fee Change {S&H} | | | <input type="checkbox"/> 6.8(G) >= \$500,000 Tax or Fee Increase or a Net Fee Decrease {S} |

Evan Brasseaux
Evan Brasseaux
Staff Director

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CONTINUED EXPLANATION from page one:

(Expenditure Explanation cont. from Pg. 1) LPDB will be providing these services with a reduced amount of resources. However, LPDB will also realize an indeterminable reduction in expenditures related to non-capital cases which eventually become capital cases, as trying such cases will no longer fall under LPDB's jurisdiction. The amount of savings derived from no longer managing capital cases is indeterminable.

For illustrative purposes, LPDB currently spends approximately \$10.0 M on indigent capital defense and has 76 open indigent capital defense cases at the trial level. The three year average of first degree murder arrests from FY 12-14 is 101 with 31 cases leading to indictment for first degree murder according to LPDB. According to the Death Penalty Information Center, 12 defendants have been sentenced to the death penalty, or approximately two annually. To the extent capital defense cases in subsequent years are similar to historical averages, LPDB will likely require additional SGF resources to manage these cases until the prosecutor issues a notice to seek the death penalty as this bill reduces LA Public Defender Fund resources more than it reduces services that LPDB must provide.

Once responsibility for capital defense is transferred from LPDB to LSC, LSC anticipates additional expenditures of approximately \$10.5 M in FY 16 based upon the current level of expenditures on capital defense LPDB is incurring. However, based upon LPDB incurring expenses for management of non-capital cases that may become capital cases from arrest until the prosecutor issues a notice of intent to seek the death penalty, LSC's expenses will likely be less than this amount. Most of these expenditures are for the professional services of attorneys, investigators, and mitigation specialists in indigent capital defense cases. In addition, LSC anticipates the need for 2.5 T.O. positions for a full-time attorney, full-time paralegal, and part-time administrative assistant to manage the indigent capital defense program. Most of the expenditures will be funded by transferring 25% of the LA Public Defender Fund's revenues to the new statutorily dedicated LA Capital Defense Services Fund. Based upon the LA Public Defender Fund's current appropriation for FY 16 of \$32.2 M, \$8.0 M will be transferred to the LA Capital Defense Services Fund.

This bill also creates the five-member Committee for Indigent Defender Services in Capital Cases and provides that its five members will receive a per diem equal to that of the legislature, which is \$150. Therefore, each meeting of the committee will total \$750 in SGF expenditures, which does not include any other expenses the committee may incur over the course of its study. The actual expense increase related to the Committee for Indigent Defender Services in Capital Cases is indeterminable.

Note: The original source of funds for the LA Public Defender fund is SGF deposited into the fund in the 20-XXX section of HB 1.

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