

LEGISLATIVE FISCAL OFFICE
Fiscal Note



Fiscal Note On: **HB 101** HLS 17RS 613
 Bill Text Version: **ORIGINAL**
 Opp. Chamb. Action:
 Proposed Amd.:
 Sub. Bill For.:

Date: May 16, 2017 6:39 PM	Author: LANDRY, T.
Dept./Agy.: Judiciary, District Attorneys, Public Defenders & Corrections	Analyst: Monique Appeaning
Subject: Elimination of the death penalty	

CRIMINAL/SENTENCING OR DECREASE GF EX See Note Page 1 of 2
 Eliminates the death penalty for offenses committed on or after August 1, 2017

Proposed law amends and reenacts parts of law relative to offenses punishable by death; eliminates the death penalty as punishment for the crimes of first degree murder, first degree rape, and treason. It also provides for the penalty of life imprisonment without benefit of parole, probation, or suspension of sentence for the crime of treason, provides for prospective application (offenses committed on or after August 1, 2017) and provides for related matters.

EXPENDITURES	<u>2017-18</u>	<u>2018-19</u>	<u>2019-20</u>	<u>2020-21</u>	<u>2021-22</u>	<u>5 -YEAR TOTAL</u>
State Gen. Fd.	DECREASE	DECREASE	DECREASE	DECREASE	DECREASE	
Agy. Self-Gen.	\$0	\$0	\$0	\$0	\$0	\$0
Ded./Other	\$0	\$0	\$0	\$0	\$0	\$0
Federal Funds	\$0	\$0	\$0	\$0	\$0	\$0
Local Funds	DECREASE	DECREASE	DECREASE	DECREASE	DECREASE	
Annual Total						
REVENUES	<u>2017-18</u>	<u>2018-19</u>	<u>2019-20</u>	<u>2020-21</u>	<u>2021-22</u>	<u>5 -YEAR TOTAL</u>
State Gen. Fd.	\$0	\$0	\$0	\$0	\$0	\$0
Agy. Self-Gen.	\$0	\$0	\$0	\$0	\$0	\$0
Ded./Other	\$0	\$0	\$0	\$0	\$0	\$0
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>	\$0
Annual Total	\$0	\$0	\$0	\$0	\$0	\$0

EXPENDITURE EXPLANATION

The proposed legislation will likely result in an indeterminable net decrease in state and local expenses as discussed below. Proposed law will result in an indeterminable decrease in local expenditures for **District Attorneys** (DAs) for prospective cases per the Louisiana District Attorneys Association (LDAA). LDAA explained that capital cases leading up to and including the trial, are estimated to cost approximately three times more than non-capital murder cases. Capital murder cases, up to and including trial, can cost \$250,000, and often more, to prosecute. The cost is roughly \$83,000 for non-capital murder cases, potentially saving \$167,000 per case. Additional savings may be realized for DAs as a result of eliminating substantial expenditures on the appeals and post-conviction relief portion of capital cases. Finally, the LDAA reports that the proposed law may double the trials in first and second degree murder cases; thus, any potential savings resulting from the repeal is speculative and potentially offset by an increase in trials.

Proposed law will result in an indeterminable decrease in SGF expenditures via the Louisiana Public Defender Fund for **Louisiana Public Defenders Board** (LPDB) as it will end the need for funding associated with capital representation, eventually eliminating the need for such funding when capital cases currently pending, on direct appeal and in post-conviction proceedings are concluded. LPDB reports over the last five (5) years it expended an average of \$9.6 M annually to provide statutorily mandated, constitutionally effective assistance of counsel in capital cases to indigent defendants at trial, on appeal and in post-conviction proceedings. LPDB realizes expenditures related to capitol cases in the three phases of representation as detailed on the next page:

Capital Trial Representation

Over the last five (5) years, LPDB expended on average \$5 M annually providing representation to indigent defendants in capital cases at the trial level. This cost includes counsel, investigations, mitigation specialists and reasonably necessary expert assistance. LPDB reports that there are currently 47 capital cases pending at the trial level. Because these cases would not be impacted by proposed law, the agency will continue to incur costs to provide constitutionally effective assistance of counsel pursuant to prevailing professional norms in these cases, as well as any cases that arise between now and August 1, 2017, until they are concluded. **Continued on page 2**

REVENUE EXPLANATION

There is no anticipated direct material effect on governmental revenues as a result of this measure.

Senate Dual Referral Rules
 13.5.1 >= \$100,000 Annual Fiscal Cost {S&H}
 13.5.2 >= \$500,000 Annual Tax or Fee Change {S&H}

House
 6.8(F)(1) >= \$100,000 SGF Fiscal Cost {H & S}
 6.8(G) >= \$500,000 Tax or Fee Increase or a Net Fee Decrease {S}

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Staff Director

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CONTINUED EXPLANATION from page one:

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EXPENDITURE EXPLANATION CONTINUED FROM PAGE 1

LPDB estimates that proposed law would result in a net SGF decrease in expenditures for capital representation at the trial level estimated at approximately \$2.7 M in FY 18, \$3.9 M in FY 19 and \$4.3 M in FY 20. However, if the state elected to not seek a death sentence in all of these pending capital cases and did not seek a death sentence in any case arising between now and August 1, 2017, LPDB's expenditures on capital cases at the trial level would decrease by, at a minimum, approximately \$5 M effective immediately.

Capital Appeals

LPDB reports that on average, over the last five years, it has expended approximately \$1.2 M to provide constitutionally effective assistance of counsel pursuant to prevailing professional norms to indigent defendants under sentence of death on direct appeal. The agency provides that if there were no additional defendants sentenced to death between now and August 1, 2017, it will still incur ongoing expenditures to complete the direct appeals in these cases. Therefore, as a result of this legislation, LPDB estimates expenditures on capital appeals would be reduced by approximately \$562,882 in FY 18 and by \$1.2 M per year thereafter.

Capital Post-Conviction Representation

With respect to capital post-conviction representation, over the last five (5) years LPDB has expended, on average, approximately \$2.9 M to provide constitutionally effective representation to indigent defendants under sentence of death in post-conviction proceedings. This includes counsel, investigators, mitigation specialists and reasonably necessary expert assistance.

LPDB further reports, that there are currently 65 indigent defendants under the sentence of death in post-conviction proceedings. These cases would not be impacted by this legislation. Therefore, the agency anticipates expenditures for the foreseeable future until these cases, cases on direct appeal where a death sentence is affirmed that moves into post-conviction proceedings, and cases currently pending trial where a death sentence is imposed and affirmed on direct appeal that moves into post-conviction proceedings are all concluded. As a result of the decrease in and ultimate elimination of capital prosecutions pursuant to this legislation, LPDB anticipates a reduction in expenditures for capital post-conviction representative of approximately \$1.4 M per year beginning in FY 18.

The agency further reports that in instances where the state agrees to convert these death sentences to life without parole, convert all cases on direct appeal to life without parole and agrees not to seek death in cases currently pending, LPDB would be able to reduce expenditures on capital post-conviction representation by, on average, \$2.9 M per year effective immediately.

Proposed law will result in an indeterminable impact on SGF expenditures for the **judiciary** if the penalty of death is eliminated for certain offenses. The judiciary reports the cost to try death penalty cases is often more than triple the cost to try other cases and easily reaches \$250,000 or more. Specifically, capital cases are more expensive and take much more time to resolve than non-capital cases. Capital cases can take up to five (5) years to go to trial and then up to twenty-five years for appeals. Most defendants in capital cases have court-appointed lawyers, require more evidence, lengthy social histories are taken, and 300 or more motions are filed. When the trial finally begins, jury selection takes twice as long, and the trial is roughly four times longer. However, if the death penalty did not exist, then those defendants that decided to accept a plea bargain of life in prison may not have accepted a plea bargain, which the judiciary estimates could have easily generated \$75,000 to \$100,000 of additional expenditures per case.

Proposed law will result in an indeterminable minimal increase in SGF expenditures to the **Department of Public Safety and Corrections - Corrections Services** to adjust the design of tiers for housing of inmates in order to provide oversight of inmates. Currently, the population for inmates sentenced to death is designed differently and modifications would be needed to adjust accordingly.

Senate
Dual Referral Rules
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 13.5.2 >= \$500,000 Annual Tax or Fee Change {S&H}

House
 6.8(F)(1) >= \$100,000 SGF Fiscal Cost {H & S}
 6.8(G) >= \$500,000 Tax or Fee Increase or a Net Fee Decrease {S}

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