

**LEGISLATIVE FISCAL OFFICE**  
**Fiscal Note**



Fiscal Note On: **HB 61** HLS 18RS 425  
 Bill Text Version: **ORIGINAL**  
 Opp. Chamb. Action:  
 Proposed Amd.:  
 Sub. Bill For.:

|   |                                   |
|---|-----------------------------------|
| <b>Date:</b> April 11, 2018 5:02 PM                                       | <b>Author:</b> DWIGHT             |
| <b>Dept./Agy.:</b> Corrections/Public Defenders/District Attorneys/Courts | <b>Analyst:</b> Monique Appeaning |
| <b>Subject:</b> Post-conviction relief                                    |                                   |

CRIMINAL/APPEALS OR INCREASE GF EX See Note Page 1 of 2  
 Provides relative to applications for post-conviction relief filed by persons who are sentenced to death

Proposed law amends and reenacts Louisiana Code of Criminal Procedure Article 930.8(A)(4), relative to post-conviction relief in capital cases, the time limit within which post-conviction relief applications may be filed, exceptions to time limitations for persons who have been sentenced to death, and requires certain information be included in applications filed under this exception.

| <b>EXPENDITURES</b> | <b>2018-19</b> | <b>2019-20</b> | <b>2020-21</b> | <b>2021-22</b> | <b>2022-23</b> | <b>5 -YEAR TOTAL</b> |
|---------------------|----------------|----------------|----------------|----------------|----------------|----------------------|
| State Gen. Fd.      | INCREASE       | INCREASE       | INCREASE       | INCREASE       | INCREASE       |                      |
| Agy. Self-Gen.      | \$0            | \$0            | \$0            | \$0            | \$0            | <b>\$0</b>           |
| Ded./Other          | \$0            | \$0            | \$0            | \$0            | \$0            | <b>\$0</b>           |
| Federal Funds       | \$0            | \$0            | \$0            | \$0            | \$0            | <b>\$0</b>           |
| Local Funds         | DECREASE       | SEE BELOW      | SEE BELOW      | SEE BELOW      | SEE BELOW      |                      |
| <b>Annual Total</b> |                |                |                |                |                |                      |
| <b>REVENUES</b>     | <b>2018-19</b> | <b>2019-20</b> | <b>2020-21</b> | <b>2021-22</b> | <b>2022-23</b> | <b>5 -YEAR TOTAL</b> |
| State Gen. Fd.      | \$0            | \$0            | \$0            | \$0            | \$0            | <b>\$0</b>           |
| Agy. Self-Gen.      | \$0            | \$0            | \$0            | \$0            | \$0            | <b>\$0</b>           |
| Ded./Other          | \$0            | \$0            | \$0            | \$0            | \$0            | <b>\$0</b>           |
| Federal Funds       | \$0            | \$0            | \$0            | \$0            | \$0            | <b>\$0</b>           |
| Local Funds         | <u>\$0</u>     | <u>\$0</u>     | <u>\$0</u>     | <u>\$0</u>     | <u>\$0</u>     | <b>\$0</b>           |
| <b>Annual Total</b> | <b>\$0</b>     | <b>\$0</b>     | <b>\$0</b>     | <b>\$0</b>     | <b>\$0</b>     | <b>\$0</b>           |

**EXPENDITURE EXPLANATION**

**Louisiana Public Defender Board (LPDB)**

Proposed law will result in an increase in SGF expenditures for the LPDB as a result of present law (LA R.S. 15:169) requiring that counsel be provided to represent capital defendants on direct appeals to the Supreme Court of Louisiana and to seek post-conviction relief if appropriate in state court. LPDB contracts with a nonprofit organization to handle capital post-conviction cases. Proposed law provides that no application for post-conviction relief may be filed more than three years after the judgment of conviction and the sentence has become final, and that for applications filed prior to August 1, 2018, the petitioner shall amend the application to include all substantive claims within 180 days of August 1, 2018.

LPDB reports the following: on average, 3,300 attorney hours are required to carry one post-conviction case to completion. Of this amount, 2,000 hours are required to file a substantive post-conviction petition and 1,300 hours are required to conduct an evidentiary hearing and further complete post-conviction litigation in state court. This fiscal note utilizes LPDB assumptions for cost projections as reported below. The Legislative Fiscal Office (LFO) is unable to corroborate the attorney hour requirements to carry a post-conviction case to conviction. To the extent the realized workload may differ from the provided estimates, the proposed costs reported below would adjust downward or upward accordingly.

Per LPDB, 21 clients currently on death row have filed post-conviction petitions that have not yet been brought to a substantive level ready for litigation. With a reported 2,000 attorney hours needed to investigate and file a substantive post-conviction petition, an estimated 42,000 additional attorney hours would be needed to complete these filings within the 180-day window required by proposed law. LPDB typically pays \$125 per hour for attorney fees in these cases. Therefore, the FY 19 maximum projected cost exposure in FY 19 is \$5,250,000 (21 individuals on death row X 2,000 attorney hours x \$125 per hour rate for attorney fees) to file substantive post-conviction petitions.

LPDB reports that there are 43 clients on death row who have not had evidentiary hearings (including the 21 clients who have not yet filed a substantive post-conviction petition). Once the petition is complete, LPDB reports that the evidentiary

**EXPENDITURE EXPLANATION 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}

*John D. Carpenter*  
**John D. Carpenter**  
**Legislative Fiscal Officer**

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**CONTINUED EXPLANATION from page one:**

**CONTINUED EXPENDITURE EXPLANATION FROM PAGE 1**

hearings portion of these cases would be triggered, resulting in a workload increase above the baseline experienced by public defenders statewide. These are expenditures that would occur regardless, but proposed law will expedite initiation of the hearings on a timeline earlier than current practice. LPDB reports that an estimated maximum 55,900 attorney hours (43 individuals on death row X 1,300 attorney hours) will be needed to handle these hearings. At an average rate of \$125 per hour, the evidentiary hearing portion associated with these cases would create a maximum cost exposure of \$6,987,500 (55,900 attorney hours X \$125) over approximately five years, bringing the total five-year estimated expense to \$12,237,500 for attorney fees alone. This estimate does not take into account six capital cases now pending on direct appeal. If the cases end up in a post-conviction posture, an additional maximum expenditure exposure of up to \$2,274,000 (3,300 hours x 6 cases x \$125 per hour) would be created to bring the total to \$14,712,500 over the next five years. Each additional post-conviction case that arises during the 5-year period may be added to the projected estimate. NOTE: LPDB reports that this estimate does not include non-attorney expenditures such as investigators, mitigation investigators, forensic experts, medical experts, and support staff. LPDB estimates it would require the following funding increases for these supporting personnel in FY 19 - \$6,550,000, FY 20 - \$1,462,500, FY 21 - \$1,462,500, FY 22 - \$1,462,500 and FY 23 - \$1,300,000.

LPDB reports there are not currently enough capital-certified attorneys available in the state to address the required workload in the prescribed timeframe. To the extent that the LPDB is unable to accomplish the provisions of proposed law within FY 19, the LFO assumes expenditure exposures reported above would shift to future fiscal years by an indeterminable amount or that an individual's current statutory access to post-conviction relief may be curtailed if not completed within the prescribed timeframe.

In FY 18, LPDB has a contract for \$1,110,009 with a nonprofit organization to handle capital post-conviction cases. They report that the existing contract is not adequate to bring all pending post-conviction cases to the level of a substantive petition and ready for litigation within the prescribed timeframe.

**Louisiana District Attorneys Association (LDAA)**

The LDAA reports that proposed law will result in an indeterminable decrease in local fund expenditures in District Attorney offices statewide. LDAA reports that significant time and resources are spent on post-conviction relief claims. Per LDAA, while not quantifiable and impacts would vary from district to district, the District Attorney offices statewide would realize significant savings in both time and resources if these claims were curtailed.

**Louisiana Supreme Court (LSC)**

Proposed law will result in an indeterminable increase in SGF expenditures in the Judiciary by establishing a deadline of three years for applications for post-conviction relief filed by a person sentenced to death. LSC reports that the magnitude of the increase is indeterminable, but that additional post-conviction hearings may result in significant expenditure increases.

**Department of Public Safety and Corrections - Corrections Services (DPSC)**

Proposed law may result in an indeterminable decrease in SGF expenditures in the DPSC, as it may expedite the execution timeline prospectively for new convictions and current death row inmates. Currently, there are 71 offenders sentenced to death.

SGF expenditures total \$54.21 per offender per day if an offender is housed in a state facility or \$24.39 for a state offender housed in a local facility. An offender sentenced to the custody of the DPSC for one year creates SGF expenditures of \$19,786.65 (\$54.21 per day x 365 days) if housed in a state facility and \$8,902.35 (\$24.39 per day x 365 days) if housed in a local facility. Approximately 50% of state offenders are housed in state facilities and approximately 50% of state offenders are housed in local facilities.

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  
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 6.8(G) >= \$500,000 Tax or Fee Increase or a Net Fee Decrease {S}

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