

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



Fiscal Note On: **HB 38** HLS 20RS 204  
 Bill Text Version: **ORIGINAL**  
 Opp. Chamb. Action:  
 Proposed Amd.:  
 Sub. Bill For.:

<b>Date:</b> May 29, 2020 12:09 PM	<b>Author:</b> GREEN
<b>Dept./Agy.:</b> Public Safety and Corrections - Corrections Services	<b>Analyst:</b> Monique Appeaning
<b>Subject:</b> Death Penalty and Life Sentences	

CRIMINAL/SENTENCING OR SEE FISC NOTE GF EX Page 1 of 2  
 Eliminates the death penalty

Proposed law eliminates the death penalty for certain offenses (first degree murder, first degree rape and treason). Proposed law provides for the penalty of life imprisonment without benefit of parole, probation or suspension of sentence for the treason.

<b>EXPENDITURES</b>	<b>2020-21</b>	<b>2021-22</b>	<b>2022-23</b>	<b>2023-24</b>	<b>2024-25</b>	<b>5 -YEAR TOTAL</b>
State Gen. Fd.	DECREASE	DECREASE	DECREASE	DECREASE	DECREASE	
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	DECREASE	DECREASE	DECREASE	DECREASE	
<b>Annual Total</b>						
<b>REVENUES</b>	<b>2020-21</b>	<b>2021-22</b>	<b>2022-23</b>	<b>2023-24</b>	<b>2024-25</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**

Proposed law will likely result in an indeterminable net decrease in state and local expenditures as discussed below. Proposed law will result in an indeterminable decrease in SGF expenditures via the Louisiana Public Defender Fund for the 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 in FY 20 it projects to expend \$7,747,468 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 capital cases in the three phases of representation as detailed below.

Capital Trial Representation

During FY 20, LPDB projects to expend \$4,545,000 to provide 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 49 capital cases pending at the trial level. Because this bill is retroactive, these cases could immediately be returned to the district office for handling. Not included in LPDB's expenditure reductions are additional resources needed annually to fund additional capital trial teams to address the capital wait list. There are currently 19 accused individuals on the capital wait list. Each team can handle 3 -5 cases over the course of a year and typically cost \$600,000 per year. Assuming that six teams would be needed to handle the current wait-list, plus new persons being added to the wait-list, elimination of the death penalty could save LPDB an additional \$3,600,000 annually at the trial level.

Capital Appeals

LPDB reports that in FY 20, it projects to expended approximately \$1.5 M to provide constitutionally effective assistance of counsel pursuant to prevailing professional norms to indigent defendants under sentence of death on direct appeal. As the bill is retroactive, LPDB anticipates eliminating all ongoing expenditures with the exception of \$237,468 related to the Angola 5, which is projected to end in FY22.

**EXPENDITURE EXPLANATION CONTINUED ON PAGE TWO**

**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}

*Evan Brasseaux*  
**Evan Brasseaux**  
**Staff Director**

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**CONTINUED EXPLANATION from page one:**

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**EXPENDITURE EXPLANATION CONTINUED FROM PAGE ONE**

Capital Post-Conviction Representation

With respect to capital post-conviction representation, in FY 20 LPDB projects to expend \$1.62 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.

Currently, in Louisiana, there are 65 indigent defendants under the sentence of death in post-conviction proceedings. As this legislation does not call for an automatic commutation of sentences there may be additional litigation required on behalf of the people currently on death row. Therefore, LPDB anticipates a reduction of expenses totaling \$365,000 for FY21, and the total elimination of post conviction expenditures beginning in FY22. The net expenditure impact is indeterminable.

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 easily generate \$75,000 to \$100,000 of additional expenditures per case. The net expenditure impact is indeterminable.

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. The net expenditure impact is indeterminable.

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. Currently, the housing used for inmates sentenced to penalty of death is designed differently than other housing units. Modifications will be needed to adjust the facilities.

Senate  
Dual Referral Rules  
 13.5.1 >= \$100,000 Annual Fiscal Cost {S & H}  
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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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