

**LEGISLATIVE SERVICES AGENCY
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FISCAL IMPACT STATEMENT

LS 6130
BILL NUMBER: SB 146

NOTE PREPARED: Nov 22, 2016
BILL AMENDED:

SUBJECT: Death Sentence Elimination.

FIRST AUTHOR: Sen. Randolph Lonnie M
FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: **GENERAL**
 DEDICATED
 FEDERAL

IMPACT: State & Local

Summary of Legislation: This bill has the following provisions:

- A. It abolishes the death penalty. It repeals the law concerning the imposition and execution of death sentences, and makes conforming amendments.
- B. It specifies that if a person was sentenced to death and is awaiting execution of the death sentence, the person's death sentence is commuted to a sentence of life imprisonment without parole.
- C. It provides that when a defendant is charged with a murder for which the state seeks a sentence of life imprisonment without parole, the defendant may file a petition alleging that the defendant is an individual with an intellectual disability. It provides that if a defendant who is determined to be an individual with an intellectual disability is convicted of murder, the court may sentence the defendant only to a fixed term of imprisonment.
- D. It makes technical corrections.

Effective Date: July 1, 2017.

Explanation of State Expenditures: *Summary-* This bill would affect two distinct populations: the ten offenders who are currently on death row in Indiana and the eight persons who are defendants in death penalty cases.

For the ten offenders on death row, this bill will increase state General Fund expenditures to house them until they die in prison by natural death. Added costs to the state General Fund are an estimated \$1.03 M (expressed as a net present value).

For the eight death penalty defendants and future defendants, this bill would reduce the cost of representation for these defendants in future years if life without parole is the most serious sentence that can be requested. The potential savings to the Public Defense Fund is an estimated \$1.3 M for the eight defendants for whom prosecuting attorneys requested the death penalty.

Additional Information-

Offenders on Death Row – To estimate the added costs associated with commuting the ten death row offenders to life without parole, OFMA considered the stage in the appeals process of each offender and when the offender could be executed. The total time on death row prior to execution is roughly 17 years based on executions of prior offenders after all appeals had been exhausted. As an example, if a death row offender was sentenced to death 5 years ago, OFMA assumed that the offender will be on death row for 12 more years.

To estimate the added time in the Department of Correction’s (DOC) offender population, OFMA assumed that these offenders will die in prison at 80 years of age and adjusted their time in prison based on their current age. As an example, a 45-year-old offender is assumed to remain in prison for an additional 35 years.

To estimate the added costs of incarceration, OFMA considered the marginal cost of each offender, taking into consideration the costs of meals, hygiene, uniforms, and medical costs. Medical costs were increased for each offender based on age (they are all male offenders). These costs were adjusted for inflation in future years and then expressed as a net present value.

Defendants Awaiting Trial – The average cost savings of indigent representation for each murder case (\$166,473) is the difference between the average cost of death penalty cases (\$187,871) and the cost of life without parole (\$21,398).

The Public Defense Fund reimburses counties for the following costs of providing indigent defense services: attorney fees, investigations, expert witnesses, paralegals, transcript costs, and costs of direct appeals.

For death penalty cases, counties are reimbursed for 50% of these costs. For cases that are not death penalty murder cases, counties are reimbursed for 40% of their costs when the county complies with the noncapital standards adopted by the Public Defender Commission.

OFMA used 124 murder cases to estimate the average costs of indigent-related representation and jury trials. Besides the murder cases in which either the death penalty or life without parole were originally requested, OFMA looked at the costs of 64 murder cases in which the convicted persons received a final sentence that was a term of years. The defendants in these 64 murder cases will generally be incarcerated for the rest of their lives because of the additional crimes that they were convicted of committing.

Average Indigent-Related Costs in 124 Murder Cases in Which Defendants Were Eligible for the Death Penalty Between 2000 and 2014							
Original Request	Number of Cases	Average Cost Per Case		State Share		Avg. Costs to State Public Defense Fund	Avg. Cost Incurred by County
Death	36	\$375,741	x	50%	=	\$187,871	\$187,871
Life Without Parole	24	\$35,664	x	40%	=	\$14,266	\$21,398
Term of Years	64	\$40,871	x	40%	=	\$16,348	\$24,523

Explanation of State Revenues:

Explanation of Local Expenditures: Depending on how far the death penalty case against a defendant awaiting trial has progressed, counties would avoid the costs of more expensive jury trials, added attorneys fees, and the costs of appeals. For the counties in which death penalty cases have been requested for the eight defendants, the potential savings could be an estimated \$1.4 M if the death penalty was not requested and the most serious punishment is life without parole (\$197,588 - \$25,149 x 8 = \$1.4 M). This estimate is based on 124 murder cases that would have likely been eligible for the death penalty that OFMA examined.

Counties pay all of the costs related to jury trials (when defendants request jury trials) besides paying a portion of indigent defense expenses.

Average Cost Components for Murder Trials That Were Eligible for the Death Penalty Based on 124 Murder Cases Between 2000 and 2013			
	Death ²	Life Without Parole ³	Term of Years
# of Murder Trials	36	24	64
Indigent Defense ¹	\$187,871	\$21,398	\$24,523
Trial Costs	<u>\$9,717</u>	<u>\$3,750</u>	<u>\$7,138</u>
	\$197,588	\$25,149	\$31,661

¹ Eligible for Reimbursement from State Public Defender Fund. Includes expenditures for attorneys fees, expert witnesses, investigations, paralegal costs, and costs of appeals.
² State reimbursement is 50% in death penalty cases.
³ State reimbursement is 40% in nondeath penalty cases if county complies with the noncapital standards adopted by the Public Defender Commission.

Explanation of Local Revenues:

State Agencies Affected: DOC; State Public Defender; Office of the Attorney General; Public Defender Commission; Division of State Court Administration, Indiana Supreme Court.

Local Agencies Affected: Trial courts; Prosecuting attorneys; County sheriffs; Local law enforcement agencies.

Information Sources: Department of Correction; Public Defense Fund; OFMA survey of counties.

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