

**LEGISLATIVE SERVICES AGENCY
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FISCAL IMPACT STATEMENT

LS 6192
BILL NUMBER: SB 301

NOTE PREPARED: Dec 27, 2018
BILL AMENDED:

SUBJECT: Death Sentence Elimination and Life Imprisonment.

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. 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.
- B. 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.
- C. 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: Upon passage.

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

For the nine 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 \$1.2 M (expressed as a net present value).

For the five 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 \$590,000 for the five defendants for whom prosecuting attorneys requested the death penalty.

Additional Information-

Offenders on Death Row – To estimate the added costs associated with commuting the nine 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 an offender on death row 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. 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 over the course of each murder case (\$107,086) is the difference between the average cost of death penalty cases (\$140,717) and the cost of life without parole (\$22,421). These costs are shown in the following table.

Average Cost For Indigent Defense for Murder Trials That Were Eligible for the Death Penalty Based on 73 Murder Cases Between 2000 and 2016				
Original Request	Number of Cases	Average Cost Per Case	State Reimbursement to Counties	Average Costs to State Public Defense Fund
Death	43	\$281,435	50%	\$140,717
Life Without Parole	30	\$56,052	40%	\$22,421

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.

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 five defendants, the potential savings could be an estimated \$535,000 if the death penalty was not requested and

the most serious punishment is life without parole (\$140,717 - \$33,631 x 5 = \$535,000). This estimate is based on 73 murder cases in which either the death penalty or life without parole were requested.

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

Original Request	Number of Cases	Average Cost Per Case	County Share	Average Costs for County General Fund
Death	43	\$281,435	50%	\$140,717
Life Without Parole	30	\$56,052	60%	\$33,631

Explanation of Local Revenues:

State Agencies Affected: Department of Correction; 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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