

LEGISLATIVE FISCAL ESTIMATE
SENATE COMMITTEE SUBSTITUTE FOR
SENATE, Nos. 171 and 2471
STATE OF NEW JERSEY
212th LEGISLATURE

DATED: NOVEMBER 21, 2007

SUMMARY

- Synopsis:** Eliminates the death penalty and replaces it with life imprisonment without eligibility for parole in certain circumstances.
- Type of Impact:** Indeterminate - See comments below.
- Agencies Affected:** Judiciary, Office of the Public Defender, Department of Corrections, Department of Law and Public Safety, County Prosecutors, County Jails.

Office of Legislative Services Estimate

| Fiscal Impact | <u>Short Term</u> | <u>Long Term</u> |
|------------------------|---|----------------------------------|
| Incarceration | | |
| Costs | Savings of \$32,481 per inmate per year | Indeterminate-See comments below |
| Proportionality | | |
| Review Costs | Savings of \$93,018 per review | Savings of \$93,018 per review |
| Trial Costs | Indeterminate - See comments below | |
| County Costs | Indeterminate - See comments below | |

- The committee substitute eliminates the death penalty in New Jersey and replaces it with life imprisonment without eligibility for parole in certain circumstances.
- The Office of Legislative Services (OLS) concludes that due to the number of variables inherent in the consideration of this bill's impact it cannot quantify with accuracy the costs or savings to be generated by this bill. Variables include the number of death penalty eligible cases to be considered in the future; the respective strategies adopted by the prosecuting and defense attorneys should the death penalty be continued or eliminated; whether the State would resume carrying out death sentences or continue to house prisoners in the Capital Sentence Unit should the death penalty remain in effect; and how the courts will react to current law or the proposed bill.



- The cost of incarceration would be affected by the enactment of this bill. In the short run, savings would result from the ability to move inmates in the Capital Sentence Unit to the general population at an annual savings of \$32,481 per inmate. However, the bill's incarceration cost impact in the long term is uncertain. If the death penalty remains in effect and if the State were to begin to execute convicted offenders, the cost of housing an inmate in the Capital Sentence Unit for a limited time could ultimately be less than housing the inmate in the general population for the rest of his natural life. However, if the death penalty remains in effect and the State does not execute these offenders, the cost of housing them in the Capital Sentence Unit is substantially higher than the cost of housing them in the general population.
- The elimination of the death penalty would eliminate the necessity of conducting proportionality reviews, thus saving the State about \$93,018 per review.
- The OLS concludes that impact of this bill on trial costs cannot be accurately estimated because it is not clear whether the bill would prompt more plea bargains, thus eliminating the need for trial, or what strategies would be adopted by both the prosecuting and defense attorneys that would directly affect the cost of each trial.

BILL DESCRIPTION

Senate Committee Substitute for Senate Bill Nos. 171 and 2471 of 2007 eliminates the death penalty in New Jersey and replaces it with life imprisonment without eligibility for parole in certain circumstances.

Under the substitute, murder generally would continue to be punishable by a term of 30 years, during which the person shall not be eligible for parole, or a specific term of years between 30 years and life imprisonment of which the person shall serve 30 years before being eligible for parole. This provision is unchanged from current law.

Current law also provides that the defendant must be sentenced to a term of life imprisonment without eligibility for parole if (1) the victim was a law enforcement officer and was murdered while performing his official duties or was murdered because of his status as a law enforcement officer, or (2) the victim was less than 14 years old and the murder was committed in the course of the commission of a violation of N.J.S.2C:14-2 (sexual assault) or N.J.S.2C:14-3 (criminal sexual contact). These provisions would also not be changed by the substitute.

The substitute amends paragraph (4) of subsection b. of N.J.S.A.2C:11-3 to provide that certain defendants convicted of murder would be sentenced to life imprisonment without eligibility for parole, to be served in a maximum security prison, if the jury finds beyond a reasonable doubt that any of the following aggravating factors exist:

- (a) The defendant has been convicted, at any time, of another murder;
- (b) In the commission of the murder, the defendant purposely or knowingly created a grave risk of death to another person in addition to the victim;
- (c) The murder was outrageously or wantonly vile, horrible or inhuman in that it involved torture, depravity of mind, or an aggravated assault to the victim;
- (d) The defendant committed the murder as consideration for the receipt, or in expectation of the receipt of anything of pecuniary value;
- (e) The defendant procured the commission of the murder by payment or promise of payment of anything of pecuniary value;

(f) The murder was committed for the purpose of escaping detection, apprehension, trial, punishment or confinement for another offense;

(g) The murder was committed while the defendant was engaged in the commission of, or an attempt to commit, or flight after committing or attempting to commit murder, robbery, sexual assault, arson, burglary, kidnapping, carjacking or the crime of contempt in violation of the Domestic Violence Act;

(h) The defendant murdered a public servant while the victim was engaged in the performance of his official duties, or because of the victim's status as a public servant;

(i) The defendant: (i) as a leader of a narcotics trafficking network and in furtherance of a conspiracy committed, commanded or by threat or promise solicited the commission of the murder or (ii) committed the murder at the direction of a leader of a narcotics trafficking network in furtherance of a conspiracy;

(j) The homicidal act that the defendant committed or procured was in violation of paragraph (1) of subsection a. of N.J.S.2C:17-2 (causing widespread injury or damage);

(k) The victim was less than 14 years old; or

(l) The murder was committed during the commission of, or an attempt to commit, or flight after committing or attempting to commit, terrorism.

These aggravating factors are identical to those set out in current law concerning the death penalty. Currently, if the jury or the court finds that any aggravating factors exist and that all of the aggravating factors outweigh beyond a reasonable doubt all of the mitigating factors, the court shall sentence the defendant to death.

The substitute provides that a juvenile who has been tried as an adult and convicted of murder would not be sentenced to life imprisonment without eligibility for parole under the provisions of the substitute concerning aggravating factors. Such a juvenile would remain subject to sentencing under the general sentencing provisions for murder (a term of 30 years to life with a term of parole ineligibility of 30 years). Current law provides that a juvenile tried as an adult and convicted of murder may not be sentenced to death.

Under the substitute, a juvenile tried as an adult and convicted of murder would remain subject to sentencing to life imprisonment without eligibility for parole if (1) the victim was a law enforcement officer and was murdered while performing official duties or murdered because of his status as a law enforcement officer, or (2) the victim was less than 14 years old and the murder was committed in the course of the commission of a sex crime. Both of these provisions are contained in current law.

An inmate sentenced to death prior to the date of enactment of this substitute, upon motion to the sentencing court and waiver of any further appeals related to sentencing, would be resentenced to a term of life imprisonment during which the defendant would not be eligible for parole. The sentence would be served in a maximum security prison. The substitute provides that any such motion to the sentencing court shall be made within 60 days of enactment of the act. If the motion is not made within 60 days the inmate would remain under the sentence of death previously imposed by the sentencing court.

The substitute provides that in addition to the provisions of any other law requiring restitution, a person convicted of murder would be required to pay restitution to the nearest surviving relative of the victim. The court would determine the amount and duration of the restitution.

FISCAL ANALYSIS

EXECUTIVE BRANCH

Office of the Attorney General

No formal fiscal information has been received from the Office of the Attorney General concerning savings to be realized by the prosecution from the elimination of the death penalty. However, representatives from the office have noted that if the death penalty were abolished, these defendants would most likely be facing a very lengthy sentence, or life without parole. As a result, a trial to determine guilt or innocence would still be necessary, and both the prosecutor and public defender would be required to mount aggressive prosecution or defense efforts. Because of this, there would be little savings during the trial phase of prosecution.

Office of the Public Defender - Trial Costs

According to the Office of the Public Defender, as of August 2006 there was a caseload of 19 active death penalty cases being handled by this office. Of these cases, 4 had been added during the preceding 12 months. The Public Defender notes that the number of active death penalty cases is low because of the current environment against the death penalty. Prior to this decrease in death penalty prosecutions, the Public Defender's office had averaged between 40 and 50 cases per year.

In order to provide the best possible defense in capital cases, the Public Defender has traditionally assigned two attorneys to each death penalty case, one senior and one junior attorney. Elimination of the death penalty would allow the Public Defender to use one, rather than two attorneys in all criminal trials, generating savings.

All death penalty prosecutions consist of two phases, the actual trial to determine guilt or innocence and the sentencing phase to determine whether the death penalty or a term of imprisonment would be imposed. The abolition of the death penalty would generate savings through the elimination of the 2-week sentencing phase of a capital trial. This in turn would reduce the number of expert witnesses required and eliminate pool attorney costs for those cases in which a conflict among defendants exists.

The Office of the Public Defender states that based on an average number of 19 active death penalty cases per year, the abolition of the death penalty would save \$1,360,000 annually, consisting primarily of savings in the pool attorney and expert witnesses categories. An additional \$101,000 for appellate attorney salaries would also be saved for a total annual cost savings of \$1.46 million as follows:

| PUBLIC DEFENDER COSTS | | | |
|---|----------------------|--------------------------|--------------------|
| Professional Services | Death Penalty | Non Death Penalty | Savings |
| Defense Attorney Costs | \$1,109,099 | \$386,328 | \$722,771 |
| Expert witnesses | \$ 731,066 | \$184,184 | \$546,882 |
| Court Reporters | \$ 41,902 | \$ 0 | \$ 41,902 |
| Miscellaneous | \$ 49,030 | \$ 0 | \$ 49,030 |
| Appellate Attorney Costs | \$ 101,000 | \$ 0 | \$101,000 |
| | | | |
| TOTAL SAVINGS | \$2,032,097 | \$ 570,512 | \$1,461,585 |
| Savings per trial based on 19 cases per year | | | \$76,926 |

Administrative Office of the Courts - Trial Costs, Proportionality Review Costs

The Administrative Office of the Courts (AOC) states that the elimination of the death penalty would generate savings for the Judiciary in two areas, trial court costs and the costs of conducting the proportionality review for each death penalty case.

Trial Costs

The following table provides the AOC's estimate of the cost of conducting a typical death penalty trial:

| JUDICIARY TRIAL COSTS | | |
|--------------------------------|-------------------|-------------------------------------|
| Salary Costs Position | Time Spent | Salary & Fringe Benefits |
| Superior Court Judge | 48 days | \$39,440 |
| Judge's Secretary | 50.5 days | \$10,584 |
| Court Clerk | 45 days | \$ 8,660 |
| Superior Court Law Clerk | 50.5 days | \$ 9,431 |
| Court Reporter | 45 days | \$13,998 |
| Criminal Division Manager | 2 days | \$ 891 |
| Probation Officer Report | 2 days | \$ 605 |
| Court Investigator | 0.5 days | \$ 113 |
| Total Salary Costs | | \$83,722 |
| | | |
| Non-Salary Costs | | |
| Overhead | | \$48,240 |
| Juror fees | | \$16,223 |
| Total Non-Salary Costs | | \$64,463 |
| | | |
| TOTAL TRIAL COURT COSTS | | \$148,185 |

According to the AOC, because of the different variables in non death penalty murder trials which range from the possibility of plea bargaining, negating the need for a trial altogether, to aggressive prosecution efforts and lengthy jury selection, information is not available concerning the cost of conducting a "typical" non-death penalty, life sentence without parole trial.

Proportionality Review Costs

Once an offender has been convicted in a death penalty trial, the State is required to conduct a proportionality review to determine whether the sentence is disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant. Should the death penalty be abolished, proportionality review would cease. The following table illustrates the AOC's estimate of the time and associated costs devoted to proportionality review during death penalty cases.

| JUDICIARY PROPORTIONALITY REVIEW COSTS | | |
|---|-------------------|-------------------------------------|
| Salary Costs Position | Time Spent | Salary & Fringe Benefits |
| Court-Appointed Special Master | 16 days | \$ 4,900 |
| Asst Director, Criminal Practice | 5 days | \$ 2,285 |
| Asst Chief Sentencing Unit | 156 days | \$52,361 |
| Legal Assistant | 13 days | \$ 3,120 |
| Statistical Consultant | 14.5 days | \$14,527 |
| Systems Coordinator | 23 days | \$ 8,058 |
| Head Data Entry Mach Operator | 15 days | \$ 3,338 |
| Sr. Data Entry Mach Operator | 15 days | \$ 2,620 |
| Secretarial Assistant | 5 days | \$ 816 |
| Judiciary Secretary | 5 days | \$ 993 |
| Total Salary Costs | | \$93,018 |

Not included in this estimate is the cost of non salary items such as equipment, materials and supplies, fixed assets, maintenance, travel, training and capital improvements.

Department of Corrections - Incarceration Costs

According to the Department of Corrections, the cost of housing an inmate in the Capital Sentence Unit (death row) at the New Jersey State Prison totals about \$72,602 per year, \$32,481 more than the \$40,121 cost of housing an inmate within New Jersey State Prison's general population. Because New Jersey State Prison is a maximum security prison, requiring higher security levels, its average daily housing cost is higher than the department's average annual housing cost of \$32,000.

As of May, 2007, there were 9 inmates housed in the Capital Sentence Unit, for a total annual cost of \$653,418. It would cost the State \$361,089 to house these inmates in the general population of New Jersey State Prison, one of the State's two maximum security prisons, a savings of \$292,329 per year.

According to the department, the average age that an inmate enters the Capital Sentence Unit is 32. Elimination of the death penalty would result in a savings of \$32,481 for every year that each inmate is incarcerated. In light of the fact that no inmate has been put to death under the current death penalty statute, and assuming that upon conviction these inmates would serve 30 to 40 years within the Capital Sentence Unit, the elimination of the death penalty would save the State \$974,430 to \$1,299,240 per inmate over each inmate's lifetime.

However, elimination of the death penalty may increase the number individuals sentenced to life without parole.

County Jails - Incarceration Costs

Indicted offenders either receive bail and are allowed to go free until a trial or are incarcerated in a county jail facility until trial. Death penalty eligible offenders would most likely be denied bail and therefore would remain in the county jail until conviction or acquittal. Not included in the Department of Corrections housing cost is cost to the counties for housing these offenders until and during the trial. Often because of the time required for the defense and prosecuting attorneys to prepare for a death penalty trial, these offenders remain in the county jail facilities much longer than those tried in non-death penalty cases. Therefore, the elimination of the death penalty may reduce inmate housing costs at the county level.

SUMMARY

In sum, the potential and actual imposition of the death penalty affects many governmental agencies. While some of the costs can be identified, others such as the impact on the trial court schedule and backlog are not so easy to distinguish.

Some of the costs that have been identified by the various agencies involved with the prosecution, defense and housing of death penalty eligible offenders are summarized as follows:

| SUMMARY GOVERNMENT AGENCY DEATH PENALTY COSTS | |
|--|-------------------------------|
| AGENCY | COST |
| Attorney General's Office (Prosecutors) | Not available |
| Office of the Public Defender | \$ 76,926 per trial |
| Judiciary: | |
| Trial | \$ 148,185 per trial |
| Proportionality Review | \$ 93,018 per review |
| Department of Corrections | \$ 32,481 per inmate per year |
| County Jail Costs | Not available |

OFFICE OF LEGISLATIVE SERVICES

The OLS concludes that due to the number of variables inherent in the consideration of this bill's impact, it cannot quantify with accuracy the exact cost or savings to be generated by this bill. Variables include the number of death penalty eligible cases to be considered in the future; the respective strategies adopted by the prosecuting and defense attorneys should the death penalty be continued or eliminated; whether the State would commence with putting inmates to death or continue to house them in the Capital Sentence Unit should the death penalty remain in effect; and how the court will react to current law or the proposed bill.

The OLS notes that while the cost of incarcerating an inmate in the Capital Sentence Unit is significantly higher than the cost of housing an inmate in a maximum security prison, the total cost of incarcerating an inmate in the Capital Sentence Unit would be reduced if the State were to begin executing those sentenced to death. Conversely, with the elimination of the death penalty, more inmates could be sentenced to life without parole, generating a cost to be borne for 30 years or more.

Trial costs vary greatly among criminal cases. Capital trial costs are traditionally higher than non-capital trial costs due to the extremely high stakes involved as well as the necessity to conduct the penalty phase to a capital trial. The OLS cannot estimate with any accuracy the potential short term or long term trial costs as a result of this bill's enactment.

Savings would also be generated from the elimination of the need to conduct proportionality reviews on all cases in which an offender is convicted and sentenced to capital punishment.

Section: Judiciary

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This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C. 52:13B-1 et seq.).