

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

March 25, 2009

TO: Honorable Pete Gallego, Chair, House Committee on Criminal Jurisprudence

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB921 by Dutton (Relating to jury selection in capital cases.), **As Introduced**

No significant fiscal implication to the State is anticipated.

The bill would amend the Code of Criminal Procedure relating to jury selection in capital cases. The bill would change the way trials are conducted in capital cases in which the death penalty is sought. In such cases, the defendant may opt prior to trial, in the case of a finding of guilty, to have the original jury discharged and an entirely new jury impaneled for the purpose of deciding punishment. According to the Office of Court Administration, jury selection in capital cases is time-consuming and requiring the selection of another jury, would take up to another month.

The bill would have an estimated annual cost of \$221,900 from General Revenue for the following:

- 1) Estimated increased costs for visiting judges of \$86,240. Because visiting judges are often appointed to handle the regular court docket while the district judge is occupied with the capital murder case, and because the bill would result in longer capital murder trials, it is anticipated that visiting judges would be needed for more days statewide than the judges are needed under current law. A daily rate of \$539 in visiting judge compensation x 160 extra days statewide = \$86,240 in fiscal year 2010 and each year thereafter based upon assumptions upon requests for juries in death penalty cases.)
- 2) Estimated costs for jurors would increase by \$135,660. A daily rate of \$34 per day per juror after the first date, assuming 19 more days of juror service in each capital case(14 jurors x \$34 x 19 days = \$9,044) multiplied by an estimated 15 trials statewide (15 trials x \$9,044 juror cost per trial = \$135,660).

Based on the LBB's analysis of the estimated additional costs related to implementing the bill, it is anticipated that implementing bill provisions could be accomplished by utilizing existing resources provided for visiting judge services and juror payments through the Judiciary Section, Comptroller's Department. The bill would take effect September 1, 2009.

Local Government Impact

The bill would require a court to permit a defendant being tried for a capital offense in which the state seeks the death penalty to file a motion requesting a separate jury for the punishment stage of the trial. If a defendant is found guilty, and the defendant filed a motion for a separate jury, the court must impanel a separate jury.

Several counties reported the fiscal impact associated with the provisions of the bill would be significant, and would vary depending on several factors, including the number of capital trials held in a year in a county, legal and court costs associated with longer trials, and jury summoning and sequestering.

The Bexar County Budget Office reported the bill would have a significant degree of fiscal impact, depending on several factors which include the number of defendants that choose a separate jury panel

for the punishment phase, the process by which the separate jury panel is selected, the time required to inform a new jury panel of the facts of the case, increased legal costs, and increased jail costs to house prisoners.

The Dallas County Budget Office reported the bill would cost an estimated total of \$875,424 per year for three capital trials that would last approximately eight weeks. Costs included an additional 4 prosecutors, 3 court appointed attorneys, and other administrative costs.

Harris County's Office of Budget Management reported the county tries between two to five capital cases per year. Assuming an average of four cases per year in which a separate jury was required, the second jury would add approximately seven weeks to each case with a daily criminal court cost of a total of \$14,800 (4 cases; length of capital trial about 35 days; criminal court cost of \$14,800; estimated total cost of \$2,072,000), which includes a district attorney, bailiffs, expert fees, and any other costs associated with the trial. Other costs associated with the provisions of the bill include increased time housing a defendant while impaneling a separate jury was being conducted, and officers taking time out of work to testify at a trial.

The Tarrant County Jury Services office reported the costs associated with a capital trial would be significant to impanel and sequester a separate jury if a defendant was found guilty, and had requested a separate jury for the punishment phase.

The Tom Green and Travis County's District Clerk's offices both reported there would be costs associated with empanelling a separate jury for a capital trial, including time to inform a new jury of the details of the case, administrative costs for summoning new jurors, staff time to process the summons, criminal court costs, and other legal fees.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council

LBB Staff: JOB, ESi, ZS, TB, TP