

**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: HB1152** by Thompson (Relating to the applicability of the death penalty to a capital offense committed by a person with mental retardation.), **As Introduced**

**Estimated Two-year Net Impact to General Revenue Related Funds** for HB1152, As Introduced: a negative impact of (\$1,558,872) through the biennium ending August 31, 2011.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

**General Revenue-Related Funds, Five-Year Impact:**

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2010	(\$779,436)
2011	(\$779,436)
2012	(\$779,436)
2013	(\$779,436)
2014	(\$779,436)

**All Funds, Five-Year Impact:**

Fiscal Year	Probable (Cost) from General Revenue Fund 1
2010	(\$779,436)
2011	(\$779,436)
2012	(\$779,436)
2013	(\$779,436)
2014	(\$779,436)

**Fiscal Analysis**

The bill would amend the Code of Criminal Procedure as it relates to the applicability of the death penalty to a capital offense committed by a person with mental retardation. The bill would permit counsel for the defendant in a capital case, at any time before the commencement of trial, to request that the judge hold a hearing to determine whether the defendant was a person with mental retardation at the time of the alleged offense. The judge would be required to hold a hearing if he or she determines there is evidence to support a finding of mental retardation. The defendant could choose to have the hearing before the judge or before a jury. If the hearing is before a jury, the jury would determine only the issue of mental retardation. A different jury would hear the trial of the case. The bill would require the Court of Criminal Appeals to adopt rules necessary for the administration of the interlocutory appeal process. The bill would prohibit a person who is found to have been mentally retarded at the time of the offense (and who is convicted) from being punished with death. Such a

defendant would be sentenced to life in prison without parole.

The bill would have a negative fiscal impact on the State of \$779,436 per year. This analysis assumes the bill would result in more payments to visiting judges and jurors. However, the bill is not anticipated to have a significant fiscal implication for the prison system. Under current law and policy, the average time served in prison by persons likely to be affected by the provisions of this bill is greater than five years. In addition, the provisions of the bill are not likely to apply to a significant number of persons. Therefore, no significant impact on demands on the adult corrections agencies is anticipated during the first five years following passage.

**Methodology**

The bill would cause many capital cases to take longer because the defendant would be entitled to a separate jury trial (with a separate jury) on the issue of mental retardation. Thus, the jury selection process would take place two separate times in the same trial. The time to try the case would also increase because an interlocutory appeal would be available from the mental retardation determination. Visiting judges are often appointed to handle a district judge's regular docket during the month (or so) that the district judge is presiding over a capital case. The longer the period of time that regular district judges are handling capital cases, the more days visiting judges will be needed. There were 451 capital cases filed in fiscal year 2008. This estimate assumes that given the high stakes in these cases, mental retardation may be claimed in a substantial number of cases.

Visiting Judge Costs: This analysis assumes that 450 capital cases are filed in fiscal year 2010 and each year thereafter, with the death penalty sought in 15 percent of cases, or 68 cases. This analysis assumes defendants would claim mental retardation in 80 percent of these trials, resulting in 54 cases. Assuming a visiting judge would be assigned in 50 percent of such cases, and that each trial would be lengthened on average by 20 days results in 540 days in which the State would pay for visiting judge services (50 percent x 54 cases x 20 days = 540 additional trial days.) The State pays visiting judges approximately \$539 per day (\$125,000 in annual compensation/ 232 days = \$539). Accordingly, visiting judge costs statewide are estimated to be \$291,060 each fiscal year (\$539 x 540 days).

Juror Costs: There are 14 jurors in typical capital case, and the State pays jurors \$34 per day after the first day of service. This analysis assumes 19 more days of jury service per juror (after the first day). Additional juror-service days would cost \$9,044 (14 jurors x \$34 x 19 days). Accordingly, additional juror costs statewide are estimated to be \$488,376 each fiscal year (54 trials x \$9,044 additional juror cost per trial).

**Local Government Impact**

The bill would increase the length of capital cases and would therefore have a negative fiscal impact on counties due to: (1) increased costs associated with indigent defendants (such as court-appointed attorney expenses); (2) increased costs for experts (the bill calls for the appointment of experts on the mental retardation issue); and (3) increased costs of juror reimbursement. In smaller counties, however, some of these costs "may" be reimbursed by the State, either through the Task Force on Indigent Defense's Extraordinary Disbursement fund or through the Governor's Criminal Justice Division's county Essential Services fund.

**Source Agencies:** 212 Office of Court Administration, Texas Judicial Council, 696 Department of Criminal Justice

**LBB Staff:** JOB, ESi, ZS, TB, GG