

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

April 8, 2009

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

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

IN RE: HB4466 by Gallego (Relating to the applicability of the death penalty to a capital offense committed by a person with mental retardation.), **As Introduced**

No significant fiscal implication to the State is anticipated.

The bill would amend the Code of Criminal Procedure relating to the applicability of the death penalty to a capital offense committed by a person with mental retardation. The bill would allow a defendant in a capital case to request that the jury consider whether the defendant is a person with mental retardation. The bill would provide a hearing process for a defendant who is convicted of a capital offense by a jury that also answers that the defendant is not a mentally retarded person. The bill provides that such a hearing be before the court, which would consider the determination of two disinterested experts appointed to examine the defendant. The defendant would also be allowed a subsequent appeal of an adverse finding. The bill provides that the Court of Criminal Appeals must adopt rules as necessary to implement the appeals process.

This analysis assumes the bill may have a minimal but not a significant fiscal implication to the State, because the bill likely would result in more payments to visiting judges needed to cover a trial court hearing on mental retardation. The Office of Court Administration indicates there were 12 death penalty sentences imposed in fiscal year 2008. Assuming that a visiting judge would be needed to cover the hearing on mental retardation or to cover a district judge's regular docket, and assuming each hearing on mental retardation would be two days in length, the minimal fiscal implication would be less than \$13,000 per year (visiting judge daily rate of \$539 x 12 cases x 2 days = \$12,936). Based on the LBB's analysis of the funding levels in the visiting judge program, it is assumed any costs related to the bill could be reasonably absorbed within existing resources. Similarly, the Court of Criminal Appeals indicates it can absorb rulemaking authority with current resources and can hear up to eight appeals without an increase in resources. The bill would take effect September 1, 2009.

Local Government Impact

OCA indicates the bill is likely to have a negative fiscal impact on counties due to: (1) increased costs associated with indigent defendants (such as court-appointed attorney expenses), and (2) increased costs for experts (the bill calls for appointment of experts on the mental retardation issue). In larger counties these costs may not be significant. In smaller counties, however, some of these costs may be significant and 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, TB