

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

April 13, 2009

TO: Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

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

IN RE: SB1139 by Hinojosa (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 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 to determine if the defendant is a person with mental retardation. Both the defendant and the State would have the right to a direct interlocutory appeal of the mental retardation determination to the Court of Criminal Appeals. 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.

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 451 capital cases filed in fiscal year 2008, and it is assumed 451 capital cases would be filed in fiscal year 2010. It is assumed that the death penalty would be sought in 15 percent of the cases, or in 68 cases. The estimate assumes that 95 percent of those cases, or 65 cases, would claim mental retardation. It is assumed that that a visiting judge would be needed to cover the hearing on mental retardation or to cover a district judge's regular docket in 50 percent of the cases or in 33 cases, and assuming each hearing on mental retardation would be two days in length, the estimated fiscal implication would be nearly \$36,000 per year (visiting judge daily rate of \$539 x 33 cases x 2 days = \$35,574). 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, JP