

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

March 28, 2011

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

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

IN RE: HB1670 by Coleman (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 HB1670, As Introduced: a negative impact of (\$398,328) through the biennium ending August 31, 2013.

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
2012	(\$199,164)
2013	(\$199,164)
2014	(\$199,164)
2015	(\$199,164)
2016	(\$199,164)

All Funds, Five-Year Impact:

Fiscal Year	Probable (Cost) from General Revenue Fund 1
2012	(\$199,164)
2013	(\$199,164)
2014	(\$199,164)
2015	(\$199,164)
2016	(\$199,164)

The bill would amend the Code of Criminal Procedure to permit counsel for the defendant in a capital case, at least 30 days 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 the judge 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. 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. The bill would take effect September 1, 2011.

Fiscal Analysis

The bill would have a negative fiscal impact on the State of approximately \$199,164 per fiscal year from the General Revenue Fund. Costs would increase for the following reasons: (1) more state payments to visiting judges; and, (2) more state payments to jurors. There would also be an increased workload in the Court of Criminal Appeals (associated with handling appeals from mental retardation determinations), but this analysis assumes such costs could be absorbed within the court's existing resources.

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. According to the Office of Court Administration, there were 503 capital cases filed in fiscal year 2010. 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 503 capital cases are filed in fiscal year 2012 and each year thereafter, with the death penalty sought in 15 percent of cases, or 75 cases. This analysis assumes defendants would claim mental retardation in 50 percent of these trials, resulting in 38 cases. Assuming a visiting judge would be assigned in 50 percent of such cases, and that each trial would be lengthened on average by 8 days results in 151 days in which the State would pay for visiting judge services (50 percent x 38 cases x 8 days = 151 additional trial days.) The State pays visiting judges approximately \$480.77 per day (\$125,000 in annual compensation/ 260 days = \$480.77). Accordingly, visiting judge costs statewide are estimated to be \$72,548 each fiscal year (\$408.77 x 151 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 7 more days of jury service per juror (after the first day) for 38 cases. Additional juror-service days would cost \$3,332 (14 jurors x \$34 x 7 days). Accordingly, additional juror costs statewide are estimated to be \$126,616 each fiscal year (38 trials x \$3,332 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. These costs would vary depending on the number of hearings requested under the provisions of the bill.

In smaller counties 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.

The Travis County District Clerk's office does not anticipate a significant fiscal impact associated with the bill.

Source Agencies: 211 Court of Criminal Appeals, 212 Office of Court Administration, Texas Judicial Council, 696 Department of Criminal Justice

LBB Staff: JOB, ESi, ZS, TB, KKR, AI