

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 4926-01
Bill No.: HB 1625
Subject: Criminal Procedure; Evidence
Type: Original
Date: February 22, 2012

Bill Summary: This proposal prohibits any state agent from seeking the death penalty on the basis of race and permits the use of statistical evidence in criminal and post-conviction relief proceedings in death penalty cases.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2013	FY 2014	FY 2015
General Revenue	(\$498,629)	(\$261,706)	(\$263,467)
Total Estimated Net Effect on General Revenue Fund	(\$498,629)	(\$261,706)	(\$263,467)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2013	FY 2014	FY 2015
Total Estimated Net Effect on <u>Other</u> State Funds	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 6 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2013	FY 2014	FY 2015
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2013	FY 2014	FY 2015
General Revenue	2 FTE	2 FTE	2 FTE
Total Estimated Net Effect on FTE	2	2	2

- Estimated Total Net Effect on All funds expected to exceed \$100,000 savings or (cost).
- Estimated Net Effect on General Revenue Fund expected to exceed \$100,000 (cost).

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2013	FY 2014	FY 2015
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Office of the State Courts Administrator** and the **Office of the Governor** each assume the proposal would not fiscally impact their respective agencies.

Officials from the **Office of Prosecution Services** state the proposal would have no measurable fiscal impact on their agency. The creation of new duties applied retroactively to cases without funding will have a negative fiscal impact on local prosecutor's office although the cost is difficult to determine.

Officials from the **Office of the State Public Defender (SPD)** state, per this proposed legislation, the defendant has the burden of proving that at the time his or her death sentence was imposed, race was a significant factor in decisions to seek or impose the sentence of death in any county, city not within a county, judicial circuit, or the state at large .

The defendant shall state with particularity how the evidence supports a claim that at the time his or her death sentence was sought or imposed, race was a significant factor in decisions to seek or impose the sentence of death in any county, city not within a county, judicial circuit, or the state at large. The claim shall be raised by the defendant either by pretrial motion or in post-conviction proceedings under Missouri supreme court rule 24.035 or 29.15.

The defense shall show that the defendant's death sentence, imposed by the judgment, shall be vacated and the defendant re-sentenced to life imprisonment without eligibility for probation, parole, or release except by act of the governor.

Notwithstanding any other provision or time limitation contained in Missouri supreme court rules 24.035 and 29.15, a defendant may seek relief from a death sentence against him or her on the ground that racial considerations played a significant part in the decision to seek or impose his or her death sentence by filing a motion seeking relief. The motion shall be filed in the ordinary course of the defendant's pending case or post-conviction relief proceeding, or within one year of the effective date of this section, whichever is the later.

The provisions of this section shall be applied retroactively.

There are currently 50 men on Missouri's death row. 19 from St. Louis City and County. Approximately 30 counties will need statistical analysis for those already on death row. Eventually all 115 counties will need to be evaluated statistically to determine death charging practices and the imposition of death sentences.

RS:LR:OD

ASSUMPTION (continued)

For now, it will be done in all Capital cases before trial [open approx 15 per year] and death PCR's [5 open per year]. Each study will cost approximately \$5,000 and \$10,000 according to John Galliher at UMC who has done them in the past.

Immediate cost - current cases 30 [death row] plus 15 [current capital] = $45 \times \$7,500 = \$337,500$.

Long term potential cost 115 counties x \$7,500 = \$862,500 AND these would need to be updated each time a death penalty case arose.

Officials from the **Department of Corrections (DOC)** state they would have fiscal impact due to passage of this bill only if an offender's death sentence were vacated and the offender was then serving a life imprisonment. Capital punishment offenders sentenced to the custody of the DOC are housed at the direct per diem offender cost of \$16.878 per day or \$6,160 annually. Execution costs are approximately \$21,150. It is unknown how many cases would be heard due to the provisions of passage of this legislation or what the outcomes may be. Therefore, fiscal impact for the DOC is Unknown per each fiscal year.

Officials from the **Attorney General's Office (AGO)** state this proposal allows for the filing of a motion, even in old cases, if done within one year of the proposal's enactment. AGO assumes that every person facing a death sentence would file such a motion, leading to increased litigation in cases in which it is named special prosecutors. In addition, the AGO handles all felony appeals. AGO assumes that currently approximately 52 inmates are facing the death penalty in Missouri. If every inmate were to file an appeal within the next year or two, the AGO would need two additional Assistant Attorney General Is (each at \$42,500 annually) to handle the caseload. The AGO assumes a total cost of roughly \$150,000 per year to the General Revenue Fund.

<u>FISCAL IMPACT - State Government</u>	FY 2013	FY 2014	FY 2015
GENERAL REVENUE			
<u>Costs - Office of the State Public Defender - statistical analysis for those already on death row plus 15 current capital cases per year</u>	(\$337,500)	(\$112,500)	(\$112,500)
<u>Costs - Attorney General's Office</u>			
Personal Service	(\$85,000)	(\$85,850)	(\$86,709)
Fringe Benefits	(\$44,999)	(\$45,449)	(\$45,904)
Expense and equipment	(\$31,130)	(\$17,907)	(\$18,354)
<u>Total Costs - AGO</u>	<u>(\$161,129)</u>	<u>(\$149,206)</u>	<u>(\$150,967)</u>
FTE Change - AGO	2 FTE	2 FTE	2 FTE
ESTIMATED NET EFFECT TO THE GENERAL REVENUE FUND	<u>(\$498,629)</u>	<u>(\$261,706)</u>	<u>(\$263,467)</u>
Estimated Net FTE Change for General Revenue	2 FTE	2 FTE	2 FTE
<u>FISCAL IMPACT - Local Government</u>	FY 2013	FY 2014	FY 2015
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

FISCAL DESCRIPTION

This proposal prohibits any agent of the state from seeking, imposing, affirming, or inflicting a sentence of death on the basis of race or seeking, defending, imposing, affirming, or inflicting a death sentence that any agent at any point sought or imposed on the basis of race. Certain evidence relevant to establish a finding that race was the basis for seeking the death penalty may

FISCAL DESCRIPTION (continued)

include statistical evidence, and the defendant has the burden of proving that at the time of sentencing race was a significant factor in decisions to seek or impose the death sentence.

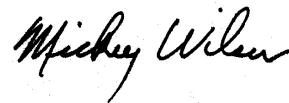
If a court determines that race was a significant factor in decisions to seek or impose the death penalty, it must order that a sentence of death cannot be sought against the defendant or that the defendant's death sentence must be vacated and the defendant re-sentenced to life imprisonment without eligibility for probation, parole, or release except by an act of the Governor. The provisions of the bill must be applied retroactively.

The bill contains an emergency clause.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Office of the State Courts Administrator
Department of Corrections
Office of Prosecution Services
Office of the State Public Defender
Office of the Governor
Attorney General's Office



Mickey Wilson, CPA
Director
February 22, 2012