



OHIO LEGISLATIVE SERVICE COMMISSION

Maggie Wolniewicz

Fiscal Note & Local Impact Statement

Bill: S.B. 139 of the 131st G.A. **Date:** November 30, 2016
Status: As Reported by House Judiciary **Sponsor:** Sens. Seitz and Williams

Local Impact Statement Procedure Required: No

Contents: Postconviction relief proceedings in death penalty cases

State & Local Fiscal Highlights

- Generally speaking, the bill's changes are not likely to result in a significant increase in costs or workload for the state or county criminal justice systems to implement.

Detailed Fiscal Analysis

The bill makes changes to the policies and procedures that apply to cases in which the death penalty has been imposed. These changes represent four of the 56 recommendations made by the Joint Task Force to Review the Administration of Ohio's Death Penalty in their final report issued in May 2014. The Task Force was commissioned by the Chief Justice of the Ohio Supreme Court and charged with reviewing Ohio's policies concerning the death penalty in order to address continuing concerns of fairness and reliability.

Generally speaking, the bill's changes are not likely to result in a significant increase in costs or workload for the state or county criminal justice systems to implement. Additionally, due to its narrow scope, the bill will only impact those counties in which a death sentence has been imposed.

Since the death penalty was reinstated in October 1981, the number of capital indictments filed per year has varied substantially, ranging from a high of 171 in 1984 to a low of 21 in 2013. The overall number of death sentences issued, however, has remained relatively stable each year, ranging from a high of 24 in 1985 to a low of one in 2009. In each of the past three years, the number of capital indictments filed was below 30, and the number of death sentences issued was below five.

Copy of original trial file

The bill requires that the clerk of a court of common pleas retain a copy of the original trial file when a death penalty is imposed. LSC research indicates that at least

some clerks already copy and maintain these files, however, for any that may not, this provision may result in some increase in both costs and workload. Due to the serious nature of these types of cases, death penalty trial files tend to be significantly larger than the average felony level trial file, thus making a copy could prove to be more time consuming. However, since very few death sentences are imposed in any given year, and at least some clerks are already doing this, any impact is likely to be minimal, at most.

Petition for postconviction relief page limits

The bill specifies that there is no page limit on petitions for postconviction relief, or prosecuting attorney responses by answer or motion, in death penalty cases or in appeals of denials of such relief. Although current law does not impose, nor address whether there is, a limit to the number of pages or length of such petitions, Rule 35 of the Ohio Rules of Criminal Procedure states that each separately identified ground for relief that is included in the petition must not exceed three pages in length. There is no page limit for attachments of exhibits or other supporting materials. Trial courts are also permitted to extend these page limits. As such, removing the page limits on petitions for postconviction relief in death penalty cases is unlikely to result in significant additional costs.

Depositions and subpoenas during postconviction relief proceedings

The bill provides for depositions and subpoenas in certain circumstances during discovery in postconviction relief proceedings where a person has been sentenced to death. The bill also specifies that any postconviction discovery authorized by the court must be completed not later than 18 months after the start of discovery proceedings unless the court extends that time for good cause shown. Under current law, unchanged by the bill, a petition for postconviction relief in death penalty cases must be filed no later than 365 days from the date on which the trial record is filed in the Supreme Court. As such, this provision will primarily impact an individual who is sentenced to death on or after the effective date of the bill. However, given the time frame within which a petition for postconviction relief must be filed, it is possible that this provision may apply to the one death sentence that was issued in 2015, depending upon the date in which the trial record was filed with the Supreme Court.

In the event that a person sentenced to death requests a deposition during discovery in postconviction relief proceedings and the court grants that request, the amount of time it takes a court to make a determination as to whether the petition should be granted or denied will likely increase, as will the workload for prosecutors and indigent defense. Given that the postconviction relief proceedings would be taking place anyway, it is difficult to determine the magnitude of any impact that may be experienced as a result of allowing depositions. It is also unclear as to how many cases might meet the bill's criteria to permit such a deposition.

Postconviction relief determinations

The bill requires a judge hearing a postconviction relief proceeding where a person has been sentenced to death to state specifically in the findings of fact and conclusions of law why each claim was either denied or granted. According to the Judicial Conference, judges typically do this already, so any impact is likely to be minimal, at most.

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