



# OHIO LEGISLATIVE SERVICE COMMISSION

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## Fiscal Note & Local Impact Statement

**Bill:** S.B. 40 of the 132nd G.A.

**Status:** As Introduced

**Sponsor:** Sens. Eklund and Williams

**Local Impact Statement Procedure Required:** Yes

**Subject:** Sentencing a person with serious mental illness

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### State Fiscal Highlights

- The Office of the State Public Defender may incur additional expenditures in order to reimburse counties for the provision of legal representation to indigent defendants in death penalty cases and death row inmates asserting claims of serious mental illness at the time of committing their offense.
- The State Public Defender and the Office of the Ohio Attorney General, both of which are involved in, and incur costs related to, the death penalty appeals process, may realize a longer term savings effect for each case that results in life imprisonment instead of the death penalty, as capital cases and their related appeals process are considerably more expensive than noncapital cases.
- The Department of Rehabilitation and Correction may experience an increase in annual incarceration expenditures, as offenders sentenced to life imprisonment that otherwise might have received a death sentence and executed will serve considerably longer prison stays.

### Local Fiscal Highlights

- In the trial phase of certain cases, county criminal justice systems (prosecutors, indigent defense counsel, and courts of common pleas) will experience a potentially significant increase in costs and workload related to proving, or challenging, a finding of serious mental illness at the time the offense was committed.
- The resentencing provision as it relates to current death row inmates may generate significant one-time costs for certain counties, including the sheriff who may have to handle any necessary inmate transportation and security matters.
- For each case that results in life imprisonment instead of the imposition of the death penalty as a result of the bill's provisions, a longer term expenditure savings effect may be created for the county criminal justice system where the offense was committed, specifically the county prosecutor, as capital cases and their related appeals process are considerably more expensive than noncapital cases.

## Detailed Fiscal Analysis

The bill: (1) prohibits a person convicted of aggravated murder who shows that they had a "serious mental illness" at the time of the offense from being sentenced to death for that offense and instead requires them to be sentenced to life imprisonment, (2) requires the resentencing of a person previously sentenced to death who proves that they had a "serious mental illness" at the time of the offense to life imprisonment (and provides a mechanism for resentencing), and (3) defines "serious mental illness" for purposes of the bill's provisions.

These changes represent one 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.

The county is responsible for trying and sentencing defendants in aggravated murder cases regardless of whether there is a death specification. These costs include both the costs for the prosecution and defense counsel, as many defendants in murder cases are indigent. Any aggravated murder trial, regardless of the presence of a death specification, will likely incur costs for expert witness consultation and testimony, psychologists, and investigators. Those costs are not likely to differ significantly based solely on the presence or absence of a death specification, however, death penalty cases are bifurcated, meaning there are two phases: a guilt phase and a penalty phase. As such, many of the costs incurred in the guilt phase tend to be duplicated in the penalty phase, thereby significantly increasing the overall costs to try a death penalty case. Other costs, such as jury compensation, defense mitigation and prosecution experts, the number of defense attorneys required, and defense counsel compensation vary by case and by county.

A mix of quantitative and qualitative studies of other states have found that the cost of a case in which a death penalty has been sought and imposed is higher, perhaps significantly so, than a murder case in which life imprisonment has been imposed. These studies generally support the following conclusions:

- In some states, capital cases exceed the cost of life imprisonment cases in the range of up to between \$1 million and \$3 million per case.
- The total amount expended in a capital case is between two and a half and five times as much as a noncapital case.

### **Prohibition against sentencing to death**

The bill expands beyond current Supreme Court rulings and prevents execution in more cases by prohibiting a person convicted of aggravated murder who shows that they had a serious mental illness at the time of committing the offense from receiving a death sentence. Instead, the bill specifies that any such person is required to be sentenced to life imprisonment.

### **Trial cost increase**

This provision likely means an increase in workload on certain death penalty eligible aggravated murder cases to prove, or challenge, a finding of serious mental illness at the time the offense was committed. Specifically, additional costs may be incurred by the prosecution and defense to pay for expert witnesses, which can be significant and cost in the thousands of dollars, and for the Office of the State Public Defender to reimburse counties for all or a portion of their costs incurred in the provision of legal representation to indigent defendants in death penalty cases.

### **Appellate cost savings**

If a case results in life imprisonment instead of the imposition of the death penalty, a longer term expenditure savings effect may be created for the county where the offense was committed, specifically the county prosecutor, and the state, specifically the State Public Defender and the Office of the Ohio Attorney General. All three of these public authorities are involved in, and incur costs related to, the death penalty appeals process. It is possible that this longer term savings effect may greatly exceed any additional trial costs incurred prior to the imposition of the death penalty.

### **State incarceration cost increase**

The Department of Rehabilitation and Correction would likely experience an increase in annual incarceration expenditures for each offender sentenced to life imprisonment under the bill instead of the death penalty, as offenders that otherwise would have been executed under current law will end up serving considerably longer prison stays. The average stay on death row is close to 17 years at a total cost of around \$700,000, while the average length of stay for life without parole is estimated at around 40 years at a total cost of more than \$1 million.

### **Resentencing to life imprisonment**

Under the bill, a person convicted of aggravated murder and sentenced to death prior to the bill's effective date is permitted to file a petition with the court claiming that they had a serious mental illness at the time of committing their offense. If the court finds that the person did in fact have a serious mental illness at the time of committing the offense, the court is required to resentence that person to life in prison.

There are currently 140 inmates on Ohio's death row. The number of these inmates that may choose to file such a petition is uncertain. As previously mentioned, these kinds of proceedings can be time consuming for the court, and costly to both the prosecution and defense. A petition alleging serious mental illness by a death row inmate must be filed within 365 days of the bill's effective date.

Of Ohio's 88 counties, 32 currently have one or more offenders on death row awaiting execution. As a result of motions being filed, work is created for the sentencing court, the county prosecutor, public defenders or appointed counsel, and possibly the county sheriff. The extent to which a given county will be affected depends largely on the number of offenders filing motions and any related hearings. The table below shows

the affected counties along with their corresponding number of offenders currently on death row.

Number of Offenders on Death Row by County* (Total 140)							
County	Number	County	Number	County	Number	County	Number
Hamilton	25	Montgomery	5	Guernsey	2	Jefferson	1
Cuyahoga	22	Stark	5	Licking	2	Lake	1
Franklin	11	Lorain	3	Belmont	1	Logan	1
Lucas	11	Mahoning	3	Brown	1	Noble	1
Summit	8	Portage	3	Clermont	1	Ross	1
Trumbull	8	Allen	2	Clinton	1	Vinton	1
Butler	7	Ashtabula	2	Delaware	1	Warren	1
Clark	5	Greene	2	Erie	1	Wood	1

\*As of January 3, 2017.

According to the Buckeye State Sheriffs' Association, due to the security risk, death row offenders would be transported separately, meaning multiple trips for some counties, and would require the accompaniment of at least one deputy, if not two. In many cases this could involve overtime pay depending upon the number of deputies required and the amount of time necessary to transport the offender, which in some cases could be up to several hours each way. For some counties, such as Hamilton (25 death row offenders) and Cuyahoga (22 death row offenders), the one-time costs incurred to transport and secure death offenders could be significant. If these hearings could be held using video conferencing technology, the costs to the sheriff would be eliminated. The one-time cost to the court, prosecutor, and public defender for their participation in handling these motions and related hearings is uncertain.

### **Definition of "serious mental illness"**

Generally speaking, the bill defines "serious mental illness" to include a diagnosis of at least one of five specified serious mental illness conditions that led to the impairment of a person's conduct at the time of the offense. The bill also states that a disorder manifested primarily by repeated criminal conduct or attributable solely to the effects of voluntary alcohol use or drug abuse does not constitute a serious mental illness. Whether all or some of the 140 death row inmates will fit this definition is uncertain. However, it would not be surprising if many, if not all, of these inmates will file a petition with the sentencing court claiming that they had a serious mental illness at the time of the offense.