

**TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE**



FISCAL NOTE

SB 1679 - HB 1447

April 3, 2009

SUMMARY OF BILL: Creates the nine-member Commission of the Office of Death Penalty Representation Services (the "Commission") and the Office of Death Penalty Representation Services (the "Office") within the Judicial Department. The Office consists of the Trial-Appellate Unit and the Post-Conviction Unit. The Commission is required to develop standards for representation of defendants in death-eligible cases, establish methods for determining indigency and providing representation, recommend compensation rates for appointed counsel, and recommend to the General Assembly a budget for the Office as part of the Judicial Department's budget. The Office is required to recruit and assign counsel and supervise the system of providing representation at all stages of a death case, including pre-trial, trial, direct appeal, and state post-conviction review. The Office shall monitor the performance of counsel, enforce adherence to standards of representation, and conduct continuing legal education (CLE) programs. The existing budget of the office of the post-conviction defender shall be transferred to the newly created Post-Conviction Defender Unit to be administered by the Executive Director of the Office.

ESTIMATED FISCAL IMPACT:

**Increase State Expenditures – \$147,000/One-Time
\$6,050,100/Recurring**

Other Fiscal Impact – Additional pre-trial and trial representation and services provided to death-eligible defendants may result in a reduction in costs during the direct appeal and post-conviction phases of a case due to reduced claims of ineffective assistance of counsel, fewer issues raised on appeal, and shortened appeal times. The fiscal impact of any such savings is indirect and cannot reasonably be quantified.

A transfer of funds in the amount of \$1,947,100 from the Office of Post-Conviction Defender to the newly-created post-conviction unit to be administered by the Executive Director of the Office of Death Penalty Representation Services.

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Funds will also be transferred from the Indigent Defense Fund to the Capital Indigent Defense Fund. The amount transferred will be equivalent to the amount that otherwise would have been allocated from the Indigent Defense Fund for the defense of capital cases.

A more precise cost estimate is not possible because the Office of the Post Conviction Defender has not provided any information to assist in the preparation of this fiscal note.

Assumptions:

Commission

- Travel expenses for nine Commission members of \$1,389.96 per meeting ($\$0.54 \times 286 \text{ miles} = \154.44×9). Given the substantial responsibilities of the Commission, it is assumed that the Commission will meet six times each year at a cost of \$8,339.76 ($\$1,389.96 \times 6 = \$8,339.76$). No legislative members will be appointed.
- The Commission will utilize staff of the Office to prepare information and analysis for Commission action and will not require separate staff.

Office

- The current Office of Post-Conviction Defender will be transferred to the post-conviction defender unit. There will be a transfer of funds in the amount of \$1,947,100 from the Post-Conviction Defender to the newly created Office.
- Four administrative positions at a total cost of \$312,721: an executive director at a salary of \$120,000; an administrative assistant at a salary of \$30,000; a non-attorney auditor at a salary of \$40,000; and a receptionist at a salary of \$28,000. Benefits of 43.45 percent are added to these salaries ($\$218,000 \times 1.4345 = \$312,721$). Three support positions at a total cost of \$200,830: one technology support at a salary of \$60,000; one human resources assistant at a salary of \$40,000; and one fiscal (billing) at a salary of \$40,000. Benefits of 43.45 percent are added to these salaries ($\$140,000 \times 1.4345 = \$200,830$).
- Fifteen positions in the Trial Division of the Trial Appellate Unit at a total cost of \$1,075,875: an executive director at a salary of \$140,000; eight attorneys at a salary of \$50,000 each ($\$400,000$); four administrative assistants at a salary of \$30,000 each ($\$120,000$); and two investigators at a salary of \$45,000 each ($\$90,000$). Benefits of 43.45 percent are added to these salaries ($\$750,000 \times 1.4345 = \$1,075,875$).

- Six positions in the Appellate Division of Trail Appellate Unit at a total cost of \$372,970: four attorneys at a salary of \$50,000 each (\$200,000); and two administrative assistants at a salary of \$30,000 each (\$60,000). Benefits of 43.45 percent are added to these salaries ($\$260,000 \times 1.4345 = \$372,970$).
- Four positions for enforcement of representation standards and resource support (brief banks, legal research assistance, and case advice) within the Trial Appellate Unit and Post Conviction Unit at a total cost of \$285,210: three attorneys at a salary of \$50,000 each (\$150,000); and one administrative assistant at a salary of \$30,000. Benefits of 43.45 percent are added to these salaries ($\$180,000 \times 1.4345 = \$258,210$).
- Four continuing education positions at a total cost of \$243,865: an education manager at a salary of \$55,000; an education coordinator at a salary of \$35,000; an attorney at a salary of \$50,000; and an administrative assistant at a salary of \$30,000. Benefits of 43.45 percent are added to these salaries ($\$170,000 \times 1.4345 = \$243,865$).
- Recurring costs of \$50,000 for conducting CLE programs.
- Recurring costs of \$25,000 for staff travel.
- Recurring expenditures at a total of cost \$185,256 for office space and utilities (\$13,400 per month), on-line legal services (\$838 per month), postage (\$1,000 per month), and a copy machine (\$200 per month) ($\$15,438 \times 12 = \$185,256$).
- One-time expenditures of \$147,000 for office set-up (computers, phones, furniture, printers, office supplies, etc.) for 42 positions at a cost of \$3,500 per position ($42 \times \$3,500 = \$147,000$).

Compensation for Private Attorneys, Experts, Investigators, Mitigation Specialists and Other Support

- The total average annual payment to private attorneys, experts, investigators, mitigation specialists, and other support in capital cases from FY03-04 through FY07-08 was \$2,102,000. In FY07-08, \$593,970 was paid to attorneys in non-capital first-degree murder cases (not including experts, investigators, etc.).
- Payments to appointed counsel will substantially increase under the rate structure recommended by the Commission. Rates will be higher, caps will be higher, and more expert services will be approved in these cases. Appointed counsel in all first-degree murder cases will be paid at the rates established by the Commission. The cost of private counsel, experts, and support services in death and death-eligible cases will increase by \$3,290,000 (an increase of \$2,102,000 for death cases and \$1,188,000 for death-eligible cases).

CERTIFICATION:

This is to duly certify that the information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink, reading "James W. White". The signature is written in a cursive style with a large initial "J" and a distinct "W".

James W. White, Executive Director

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