

**TENNESSEE GENERAL ASSEMBLY  
FISCAL REVIEW COMMITTEE**



**FISCAL NOTE**

**SB 695 – HB 1034**

March 31, 2011

**SUMMARY OF BILL:** Abolishes the Post-Conviction Defender Commission and the Office of the Post-Conviction Defender (OPCD) effective July 1, 2011. Eliminates state post-conviction relief and authorizes the petition for DNA analysis through a writ of error coram nobis. Specifies when a defendant has a right of appeal from a plea of guilty or nolo contendere. Specifies that when affirming a conviction and sentence of death on direct appeal, the Tennessee Supreme Court must contemporaneously set a date for execution. Requires the date to be at least four months from the date of the judgment.

**ESTIMATED FISCAL IMPACT:**

**Decrease State Expenditures – Net Impact - \$1,500,900**

Assumptions:

- Under the current system, the original criminal prosecution is handled by the District Attorney General and the direct appeal is handled by the Office of the Attorney General (AG). The hearing on the post-conviction proceeding is handled by the District Attorney General and the appeal is handled by the AG. The post-conviction proceeding litigates alleged constitutional defects in the original criminal trial. If these issues are not raised in state post-conviction hearings, they will likely be raised in federal habeas corpus proceedings. If post-conviction proceedings are abolished, the AG will no longer have responsibility for handling post-conviction appeals thereby reducing the workload for lawyers in the Criminal Justice Division.
- The workload in federal habeas litigation for the AG's office will likely increase. Because some constitutional objections will be raised for the first time in the federal court, federal habeas corpus proceedings could be more timing consuming and complex. Without the state post-conviction tier of review, the federal courts may give less or no deference to the state court rulings.
- Based on data from the Administrative Office of the Court's Annual Report to the Judiciary, on average, there are approximately 490 post-conviction dispositions per year. Approximately 25 percent of these petitions receive summary disposition without appointment of counsel or a hearing. Seventy-five percent of these petitions will now be filed as federal habeas corpus petitions and will receive an evidentiary hearing resulting in 368 evidentiary hearings in the federal courts per year or approximately 7.4 hearings per week (50 weeks).

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- The AG will require three additional attorneys to handle the litigation at a recurring cost of \$392,400 [(\$74,300 salaries + \$26,300 benefits + \$30,200 operating costs) x 3 attorneys].
- The recommended budget for FY11-12 for the OPCD is \$2,023,100. Of that amount, \$1,606,200 is personnel expenditures with \$416,900 remaining for operational expenditures. The OPCD currently employs 19 staff members. The elimination of the OPCD will result in reduced expenditures of \$2,023,100, attributing approximately 10 percent (\$202,310) to administrative costs.
- Some cases currently filed as state post-conviction petitions will instead be filed as a state habeas corpus petition or as a writ of error coram nobis. It is assumed that costs to the Indigent Defense Fund will increase by 20 percent of the non-administrative portion of the OPCD's current budget for private appointed counsel to handle these claims. The net recurring decrease in state expenditures from the elimination of the OPCD is \$1,456,632 (\$1,820,790 x 80%). Costs to the Indigent Defense Fund will increase \$364,158 (\$1,820,790 x 20%).
- The Commission members serve pro bono and do not receive any compensation or reimbursement.
- The OPCD is currently representing 11 petitioners at the trial level and 15 at the appellate level. Currently, the OPCD pays its attorneys and investigators out of its budget while the Administrative Office of the Courts (AOC) pays for experts and mitigation specialists from the Indigent Defense Fund.
- According to the AOC, the three-year average for attorney fees in capital and non-capital cases is \$367,133. Between mid-2004 and March 24, 2011, 10 capital post-conviction cases were both initiated and concluded at the trial level, not including motions to reopen post-conviction petitions or cases that were concluded during the time period, but initiated prior to that time period or cases that were initiated during that time period but have yet concluded. Capital post-conviction petitions (not including motions to reopen) were filed and resolved during this time period for 10 offenders. Of the remaining 10 cases, the investigative/expert expenditures total \$451,257. The net recurring decrease in state expenditures from elimination of the OPCD is \$361,005.60 (\$451,257 x 80%). Costs billed to the Indigent Defense Fund will increase \$90,251.40 (\$451,257 x 20%).
- During FY09-10, the AOC paid court reporters a total of approximately \$94,544 (304 invoices x \$311) for transcripts of post-conviction cases. The net recurring decrease in state expenditures from elimination of the OPCD is \$75,635.20 (\$94,544 x 80%). Expenditures from the Indigent Defense Fund will increase \$18,908.80 (\$94,544 x 20%).
- If Tennessee's post-conviction proceedings are eliminated, the indigent offenders will be represented in federal court by the Federal Public Defender.

**CERTIFICATION:**

The information contained herein is true and correct to the best of my knowledge.



James W. White, Executive Director

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