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FISCAL IMPACT STATEMENT

LS 6130 **NOTE PREPARED:** Jan 6, 2010
BILL NUMBER: SB 43 **BILL AMENDED:** Jan 5, 2010

SUBJECT: Murder Sentencing and Sentence Enhancement.

FIRST AUTHOR: Sen. Boots **BILL STATUS:** CR Adopted - 1st House
FIRST SPONSOR:

FUNDS AFFECTED: X **GENERAL** **IMPACT:** State & Local
DEDICATED
FEDERAL

Summary of Legislation: This bill has the following provisions:

A. It makes committing a murder in the physical presence of a person who: (1) is less than 16 years of age; and (2) might be able to see or hear the murder; an aggravating circumstance that may be considered during the sentencing hearing for the murder.

B. It allows a court to sentence a person to an additional fixed term of imprisonment that: (1) is not less than the advisory sentence for the underlying offense nor more than three times the advisory sentence for the underlying offense; and (2) does not exceed 30 years; if the person knowingly or intentionally committed certain offenses in the physical presence of a person less than 16 years of age who might be able to see or hear the offense.

C. It allows a court to sentence a person to an additional fixed term of imprisonment of 10 years if the person knowingly or intentionally violated a protective order in the commission of certain offenses.

Effective Date: July 1, 2010.

Explanation of State Expenditures: *Aggravating Circumstance to Make Defendant Eligible for Death Penalty or Life Without Parole* – Adding this condition as an aggravating circumstance would permit the prosecuting attorney to request either the death penalty or life without parole if no other conditions exist in the case that would authorize the prosecuting attorney to do so.

Any added costs to the state will depend on whether the prosecuting attorney chooses to file for this added enhancement and the outcome of the case. Cases that are contested, where trial and appeal occur, will be more expensive than if the defendant pleads guilty in exchange for generally life without parole. If the prosecuting attorney chooses to request life without parole, the costs will generally be less expensive for the

state and county in which the case is being decided.

To compare the costs of this added option, LSA examined the out-of-pocket costs of 92 murder trials between 2000 and 2007. Because under IC 33- 40-6-4 the Public Defense Fund reimburses counties for 50% of the costs of attorneys and certain investigations when a death penalty case is being tried and 40% of the costs when the case is life without parole, the following table shows the combined costs. Out-of-pocket costs include attorney fees, expert witness payments, jury trials, staff overtime, and appeals costs. Any added costs for the prosecuting attorney's office or the county sheriff are not included in this analysis.

Costs of 92 Murder Cases Between 2000 and 2007
Where a Person Was Sentenced to DOC by type of Punishment*

Request	Trial or Plea	Outcome	Number of Cases	Costs of Attorneys, Expert Witnesses, Other Costs and Appeals	Discounted Cost of Incarceration	Combined Cost
Death	Trial	Death Sentence	6	$449,887	$55,886	$505,773
Death	Trial	Life w/o Parole	1	$518,002	$110,445	$628,447
Death	Plea	Life w/o Parole	19	$122,441	$109,072	$231,513
Life w/o Parole	Trial	Life w/o Parole	7	$42,658	$108,889	$151,547
Life w/o Parole	Plea	Life w/o Parole	7	$21,985	$108,721	$130,706
Life w/o Parole	Trial	Term of Years	3	$51,146	$107,439	$158,585
Life w/o Parole	Plea	Term of Years	2	$37,382	$111,416	$148,798
Term of Years	Trial	Term of Years	36	$23,837	$110,087	$133,924
Term of Years	Plea	Term of Years	11	$3,986	$108,720	$112,706

*Note: Does not include added costs incurred by the offices of the Prosecuting Attorney or the Sheriff during the course of the trial.

Added Fixed Term for Certain Offenses – This sentencing option is similar to habitual offender sentencing. Generally, any felony that results in serious bodily injury or death as the result of some intentional act is either a Class A or B felony. The following table shows the range of added years that an offender could be sentenced. The enhancement for a Class A felony is 30 years, so the court has no discretion in how much the offender may be sentenced.

Minimum and Maximum Enhancements for Person Convicted of Committing a Violent Crime in the Presence of a Person Younger than 16 Years of Age

Felony	Not less than Advisory Sentence	Nor More than
Class A	30	30
Class B	10	30

Additional Fixed Term of Imprisonment of 10 Years When Person is Convicted of Certain Violent Crimes and Knowingly and Intentionally Violated a Protective Order – Any added costs associated with these three provisions could increase the need for new prison beds. Generally, adult male facilities are operating at full capacity. Longer sentences would likely result in the Department of Correction (DOC) increasing the number of beds in facilities or sending more offenders to county jails. The average cost for DOC to house offenders in county jails is $35 per day, or $12,775 per year.

Explanation of State Revenues:

Explanation of Local Expenditures: Under current law, the prosecuting attorney would not be able to request either the death penalty or life without parole unless one of 16 aggravating circumstances under IC 35-50-2-9 could be cited when a murder occurred. This bill would add a new aggravation circumstance.

Background Information- Of the three possible sentencing options for murder, the death penalty is generally the most expensive for trial courts to conduct because two attorneys are required to represent the accused, and a bifurcated trial is conducted to determine guilt or innocence and whether a sentence of death is warranted. Life without parole is the next most expensive option because, while two attorneys are not required for legal representation, a bifurcated trial is required to determine guilt or innocence and then whether a sentence of life without parole is warranted. Determinate sentencing of between 45 and 65 years is the least expensive option because one trial is conducted and two attorneys are not required to represent the defendant.

The following table summarizes the differences between these three options.

Sentencing Option	Number of Defense Attorneys Needed	Type of Trial Conducted
Death Penalty	Two	Bifurcated - one to determine guilt or innocence and one to determine whether death penalty is warranted; a sentencing hearing is separate.
Life Without Parole	One	Bifurcated - one to determine guilt or innocence and one to determine whether death penalty is warranted; a sentencing hearing is separate.
Determinate Sentence Between 45 and 65 Years	One	A single trial to determine guilt or innocence; a sentencing hearing is separate.

Consequently, the costs of legal representation for a case where the most serious sentence is between 45 and 65 years would likely be lower than the costs of a case involving life without parole.

The following table displays the cost components for 26 death penalty cases, 19 cases where life without parole is the most serious sentence, and 47 murder cases in which the most serious sentence is a term of years.

Cost Components for Murder Trials Based on 92 Murder Cases Between 2000 and 2007							
Original Request	**Number of Cases**	**Jury Trials**	**Attorney Costs**	**Expert Witnesses**	**Other Costs**	**Costs of Appeals**	**Total Costs**
Death Penalty	26	$4,885	$90,754	$38,260	$0	$95,870	$229,769
Life Without Parole	19	$3,525	$10,560	$51,066	$1,866	$35,280	$102,297
Term of Years	47	$5,497	$50,082	$6,108	$56	$2,540	$64,284

Additional Fixed Term for Certain Violent Crimes – In cases being decided by a jury, if a prosecuting attorney requests added sentencing when the violent crime has been committed in the physical presence of a person under the age of 16, jury costs would increase if the jury would have to deliberate for additional time. LSA estimates that each jury day costs $1,315.

Explanation of Local Revenues:

State Agencies Affected: DOC; Public Defender Commission.

Local Agencies Affected: Trial courts; Prosecuting attorneys; County sheriffs.

Information Sources: DOC; Public Defender Commission; LSA survey.

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