

**From:** Hart, William Sr. [mailto:WHart@ncdoj.gov]  
**Sent:** Monday, July 13, 2009 11:31 AM  
**To:** Rep. Paul Stam  
**Subject:** Fiscal note on Severe Mental Disability Bill

Representative Stam:

In response to your request for information, the fiscal note itself is located at:

<http://www.ncga.state.nc.us/Sessions/2009/FiscalNotes/House/PDF/HIN0137v1.pdf>

The input by DOJ, most of which is contained in the fiscal note, was based on my memo as follows:

**Criminal Division resource needs if  
"Capital Procedure/Severe Mental Disability" bill passes**

If the Attorney General were to have responsibility to handle these claims in the trial court as well as in the appellate courts, the Capital Litigation Section would need five additional Attorney IVs and a Paralegal I. In addition, there would be costs to the State for hiring of mental health experts to examine the defendants, to consult with the State's attorneys, to prepare reports, and to testify in court, costs which could range from \$1,625,000.00 to \$3,125,000.00. Justification is set forth below.

A review of case files of convicted murderers currently on death row has shown that in at least seventy-five percent (75%) of those cases, one of the following statutory mitigating factors was found and considered by the jury in reaching its verdict of death:

(f)(2): The capital felony was committed while the defendant was under the influence of mental or emotional disturbance.

(f)(6): The capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was impaired.

That result supports a reasonable inference that more than 75% of the 162 convicted murderers currently on death row may file postconviction motions alleging that they had a "severe mental disability or defect" at the time they committed their murder(s) that "significantly impaired" their capacity to "(i) appreciate the nature, consequences, or wrongfulness of the person's conduct; (ii) exercise rational judgment in relation to conduct; or (iii) conform the person's conduct to the requirements of the law." Thus, it can be expected that we will have to handle a large amount of additional work in 125 or more capital cases already in postconviction by responding to a new motion that will require additional preparation (reading trial transcript, police reports, and medical records), legal research, filing of documents, consultation with experts, interviewing witnesses and preparation for hearing, and hearing.

Based on the amount of time that our attorneys have spent on average in handling capital case postconviction claims of mental retardation, it would take over thirty work days to prepare for and hold a hearing in an average case claiming "severe mental disability." The additional work would include: (1) a review of the entire trial transcript except for jury selection; (2) a review of mental health and other medical records that were available at the time of trial; (3) a review of the entire investigative file that was available at trial; (4) a review of the defendant's medical file while incarcerated in the Department of Correction; (5) consultation with mental health experts; (6) a review of any new test results and reports by any new experts that examine defendant or provide an opinion; (7) interviews of witnesses; (8) legal research; (9) preparation of legal documents; and (10) appearance at a hearing on the issue. To handle this additional workload, the Capital Litigation Section would need five additional Attorney IVs and an additional Paralegal I.

Experience in mental retardation claims, to date, has demonstrated how costly and time-consuming such hearings can be for only approximately 10% to 20% of the present death row population alleging mental retardation; if the proposed bill is passed, nearly 125+ death row cases will be affected at comparably higher costs given the relative numbers and required expertise. Mental retardation cases involve testing and evaluation by forensic psychologists, who generally charge between \$250 to \$300 per hour (mental retardation evaluations by expert forensic psychologists retained by the State generally range between \$5,000 to \$10,000 per case, depending upon the complexity; since Indigent Defense Services provides the funding to such experts appointed on behalf of the defendants, it is unknown how much such defense experts typically are paid). If the proposed bill becomes law, the determination of "severe mental disability" will necessitate the involvement of not only forensic psychologists, but also forensic psychiatrists, and such experts are more expensive (expert forensic psychiatrists retained by the State generally charge \$250 to \$450 per hour, and evaluations by such experts range between \$10,000 to over \$20,000 per case, depending upon the complexity). Given these estimates, the normal "severe mental disability" MAR could necessitate the hiring of both a psychologist (at a range of approximately \$5,000 to \$10,000 per case), as well as a psychiatrist (at a range of approximately \$8,000 to \$15,000 per case). Therefore, the cost for the State's hiring the needed experts for the "normal" case alleging "severe mental disability" could be approximately \$13,000 to \$25,000 per case. Assuming 125+ death row inmates challenge their death sentences under the proposed legislation, the State could be facing costs for such expert assistance in the range of \$1,625,000.00 to \$3,125,000.00.

Please let me know if you need any additional information.

Bill

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