

**LEGISLATIVE SERVICES AGENCY  
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**FISCAL IMPACT STATEMENT**

**LS 6878**

**BILL NUMBER:** SB 356

**NOTE PREPARED:** Jan 1, 2005

**BILL AMENDED:**

**SUBJECT:** Voluntary Election of Death Sentence.

**FIRST AUTHOR:** Sen. Waterman

**FIRST SPONSOR:**

**BILL STATUS:** As Introduced

**FUNDS AFFECTED:**  **GENERAL**  
 **DEDICATED**  
 **FEDERAL**

**IMPACT:** State & Local

**Summary of Legislation:** This bill allows certain incarcerated persons who have been sentenced to: (1) at least 200 years; (2) life imprisonment; or (3) life imprisonment without parole; to request the imposition of a death sentence by filing a petition in a circuit or superior court.

**Effective Date:** July 1, 2005.

**Explanation of State Expenditures:** This bill applies to offenders who have a sentence of at least 200 years or a sentence of life imprisonment without parole. Based on the offenders in Department of Correction (DOC) facilities on December 16, 2004, 216 offenders were identified who would be eligible under this bill to petition to be put to death.

When the offender is executed, the State Police will incur overtime costs for providing security during the execution. As an example, Gerald Bivins was sentenced to death for murder in 1992. He waived the remainder of his appeals to federal court and was executed by lethal injection on March 14, 2001. For his execution, the State Police reported spending \$4,012 for 160.5 overtime hours.

The Department of Correction also reports a significant increase in expenditures for the time leading up to the execution. DOC made the following estimates of costs incurred during the execution process based on the executions of Gerald Bivins in March 2001 and James Lowery in June 2001.

| <b>Overtime Costs Associated with an Execution<br/>(Based on Executions for James Brewer and Gerald Bivins)</b> |                 |
|---|-----------------|
| Overtime for all ranks, administrative, and clerical staff on day of execution                                  | \$12,155        |
| Chemicals, funeral arrangements, radios, food, and physician services relating to execution                     | \$3,335         |
| Staff overtime for weekly practices relating to scheduled execution   | \$4,355         |
| Central office travel expenses (mileage, hotel, per diem)   | \$743           |
| <b>Total costs:</b>   | <b>\$20,588</b> |

Besides the costs associated with specific executions, DOC reports monthly overtime practices costing \$17,421 that are not related to particular scheduled executions.

These added costs would have to be compared to the reduced costs of housing, medical care, food, clothing, and programming for these offenders were they to be granted an execution. The average annual adult institution cost in FY 2004 was \$21,308. (This does not include the cost of new construction.)

**Explanation of State Revenues:**

**Explanation of Local Expenditures:** Offenders electing to petition for the death penalty would petition in either the circuit or superior court in the county in which the offender is incarcerated. Counties would incur added costs for hearings and for psychiatrists or psychologists to examine the offender. Costs for examination and testimony will depend on the length of the hearings. The prosecuting attorney in the county in which the correctional facility is located would be responsible for representing the state at all hearings.

The 216 offenders who would be eligible for electing a death sentence are located in nine facilities in seven counties across the state.

| County   | Facilities   | Offenders |
|----------|--|-----------|
| Henry    | New Castle Facility  | 3         |
| LaPorte  | Indiana State Prison<br>Maximum Control Facility                   | 90        |
| Madison  | Pendleton Correctional Facility<br>Correctional Industrial Complex | 55        |
| Marion   | Indian Women's Prison  | 5         |
| Miami    | Miami Correctional Facility  | 6         |
| Parke    | Rockville Correctional Facility                                    | 1         |
| Sullivan | Wabash Valley Correctional Facility                                | 56        |
| Total    |  | 216       |

**Explanation of Local Revenues:**

**State Agencies Affected:** Department of Correction, Indiana State Police.

**Local Agencies Affected:** Trial Courts and Prosecuting Attorneys in Henry, LaPorte, Madison, Marion, Miami, Parke, and Sullivan Counties.

**Information Sources:** Department of Correction.

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