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FISCAL IMPACT STATEMENT

LS 7045

BILL NUMBER: HB 1692

NOTE PREPARED: Jan 23, 2007

BILL AMENDED:

SUBJECT: Reimbursement of Expenses for New Criminal Trials.

FIRST AUTHOR: Rep. Cochran

FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: **GENERAL**
 DEDICATED
 FEDERAL

IMPACT: State & Local

Summary of Legislation: This bill requires the state to reimburse a trial court, prosecuting attorney, and public defender for certain expenses that would ordinarily be incurred by a county in conducting a new trial if: (1) a defendant appeals the defendant's criminal conviction to the Indiana Court of Appeals or Indiana Supreme Court; and (2) the Court of Appeals or Supreme Court remands the case to the trial court for a new trial.

Effective Date: July 1, 2007.

Explanation of State Expenditures: *Summary* – State expenditures would be unpredictable due to the effects of this bill. Between 2004 and 2006, one or more criminal cases were remanded to 18 counties for new trials. On average, the number of cases that are remanded for a new criminal trial average about 11 per year. And, on average, the cost of a new trial if it lasted one day would be \$4,357 if a jury was involved, a court-paid defense attorney was hired, and court translator services were needed. The average number of days for a trial to be completed was not known. It is also possible that the resources required for a single trial could be significantly more than the statewide average shown in the table below.

The unpredictable factor is whether the Supreme Court or the Court of Appeals would remand a death penalty case to a trial court for a complete new trial. For five trials where information was available, the average county expenditure was \$25,000.

Background – To "remand" means to send the case back to a lower court to consider or to take action. A higher court could remand the case if the trial judge failed to admit evidence or witnesses which the appellate court ruled should have been admitted or the trial judge ruled improperly on a litigant's motion. When the

court remands the case, it may require a full remand, essentially ordering an entirely new trial, or "with instructions" specifying, for example, that the lower court must consider certain alternatives or evidence not entertained at trial; or it may be a partial remand as when an appellate court affirms a conviction while directing the lower court to revisit the sentencing phase. When the appellate court concludes that the lower court's decision was not only wrong but prevented the lower court from reaching issues that must now be considered, it will usually remand the case to the lower court to consider those issues in the first instance rather than deciding them at the appellate level. When this action is taken, the appellate court will say that the lower court's decision is "reversed and remanded."

The State Court of Appeals reports that 34 criminal cases were remanded to the trial courts in 18 counties between 2004 and 2006.

Criminal Cases Remanded by County, 2004 through 2006					
County	2004	2005	2006		Grand Total
	Court of Appeals	Court of Appeals	Supreme Court	Court of Appeals	
Allen	2	1			3
Cass				1	1
Clark				1	1
Clinton	1	1			2
Daviess	1				1
Elkhart		2			2
Floyd		1			1
Grant				1	1
Hamilton			2		2
Huntington	1				1
Johnson	1			1	2
Kosciusko				1	1
Madison		2			2
Marion	4	3		2	9
Perry			1		1
St. Joseph		1			1
Tippecanoe	1				1
Vanderburgh	1			1	2
Grand Total	12	11	3	8	34

Criminal Cases Remanded by Type				
Nature	2004	2005	2006	Grand Total
Criminal*	2		1	4
Felony A	2	2	2	5
Felony B		2	1	3
Felony C	2	4	1	7
Felony D	1	1	4	3
Murder	1	1		2
Other**	4	1	3	8
Grand Total	12	11	12	32
* Unspecified felony				
** Either juvenile, postconviction relief, or other type of criminal case.				

The cost of remanded cases will depend in large part on how the case is disposed and the extent added variable costs outside of the fixed costs of staff are involved. The following are the added expenses that will increase the costs of each trial.

Cost of Remanded Trial Using Average Cost Per Case in 2005 Judicial Report		
Expenditure	Includes	Average Cost
Salary Cost per Day	Hearing officers, court reporters, bailiffs, jury commissioners, court administrator & staff, secretaries, law clerks, court clerks, probation officer, and other employees for a 250-day year	\$1,534
Jury Trial	Based on 2,087 jury trials in 2005	\$2,124
Indigent Defense	Pauper attorneys were appointed in 137,237 cases in 2005	\$176
Translators	Court interpreter services were used in 14,355 cases in 2005	\$523
Cost for Remanded Trial		\$4,357

The most expensive criminal cases will be remanded cases for a death penalty. Between 2000 and 2005, five death penalty cases have been filed each year on average, so the probability of a county receiving a remanded trial for a death penalty is relatively small. However the cost of a remanded case requiring a new trial will be expensive. The following table shows the costs of only the indigent defense expenditures that were paid by the counties for these defendants. This does not include the costs of a jury per diem, food and lodging or the costs of overtime for prosecuting attorneys and county sheriffs providing overtime.

Average Cost of Indigent Defense in New Trials Remanded to Counties for Death Penalty Cases				
<u>County</u>	<u>Defendant</u>		<u>Year of Trial</u>	<u>County Expenditure</u>
Lake	Roark	Dennis	1993	\$7,243
Posey	Harrison	James Patrick	1993	\$34,786
Lake	Williams	Edward Earl	2005	\$25,140
Marion	Dye	Walter	2004	\$10,356
Marion	Thompson	Jerry	2001	\$47,958
Spencer	Ward	Lee	2007	n/a
St. Joseph	Kubsch	Wayne	2005	n/a
				\$25,097

Explanation of State Revenues:

Explanation of Local Expenditures: See *Explanation of State Expenditures*.

Explanation of Local Revenues:

State Agencies Affected: Court of Appeals, Indiana Supreme Court.

Local Agencies Affected: Trial Courts.

Information Sources: *2005 Judicial Report*, Indiana Court of Appeals; 2006 Indiana Supreme Court Opinion.

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