

2016 Regular Session

SENATE BILL NO. 450

BY SENATOR BISHOP

INDIGENT DEFENSE. Provides relative to prosecution of and representation to indigent defendants in capital cases. (8/1/16)

1 AN ACT

2 To amend and reenact R.S. 14:30(C) and R.S. 15:178, 181, and 182 and to enact R.S.
3 15:169(C) and 184, relative to the prosecution and defense of indigent defendants in
4 capital cases; to provide oversight responsibility to ensure the appropriate use and
5 availability of funds prior to the initiation or completion of capital prosecutions; and
6 to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 14:30(C) is hereby amended and reenacted to read as follows:

9 §30. First degree murder

10 * * *

11 C. (1) If the district attorney ~~seeks~~ **intends to seek** a capital verdict, **the**
12 **district attorney shall notify the district court and attorney general within thirty**
13 **days of indictment of the aggravating circumstances under Code of Criminal**
14 **Procedure Article 905.4(A) upon which it intends to rely. If prosecution is**
15 **authorized under R.S. 15:184, and the offender is convicted,** the offender shall
16 be punished by death or life imprisonment at hard labor without benefit of parole,
17 probation, or suspension of sentence, in accordance with the determination of the

1 jury. The provisions of Code of Criminal Procedure Article 782 relative to cases in
2 which punishment may be capital shall apply.

3 (2) If the district attorney does not seek a capital verdict or does not receive
4 authorization under R.S. 15:184, the offender, upon conviction, shall be punished
5 by life imprisonment at hard labor without benefit of parole, probation or suspension
6 of sentence. The provisions of Code of Criminal Procedure Article 782 relative to
7 cases in which punishment is necessarily confinement at hard labor shall apply.

8 Section 2. R.S. 15:178, 181, and 182 are hereby amended and reenacted and R.S.
9 15:169(C) and 184 are hereby enacted to read as follows:

10 §169. Representation of capital defendants

11 * * *

12 C. Prior to the appointment of counsel in a capital case under this section
13 or under R.S. 15:178, the Capital Cost Commission shall certify whether
14 sufficient funds exist to maintain a capital prosecution.

15 * * *

16 §178. Appointment of appellate and post-conviction counsel in death penalty case

17 In a capital case in which the trial counsel was provided to an indigent
18 defendant and in which the jury imposed the death penalty, the court, after
19 imposition of the sentence of death, shall appoint the Louisiana Public Defender
20 Board, which shall promptly cause to have enrolled counsel to represent the
21 defendant on direct appeal and in any state post-conviction proceedings, if
22 appropriate. The Capital Cost Commission shall certify whether the funds exist
23 to proceed with a capital appeal or post-conviction or whether the defendant
24 sentenced should be re-sentenced under R.S. 14:30 (C)(2). An indigent
25 defendant shall have no basis to appeal or contest the decision. Proceedings on
26 appeal or post-conviction shall be stayed pending certification of funding
27 pursuant to R.S. 15:169.

28 * * *

29 §181. Limited effect

1 The provisions of this Part are intended to facilitate the providing of legal
2 services and related expenses only to the extent required by the Constitution of
3 Louisiana or the Constitution of the United States of America and specific statutory
4 provisions affording the right of counsel to indigent defendants in criminal cases. No
5 provision of this Part or rule adopted pursuant thereto creates or shall be construed
6 to confer substantive or procedural rights in favor of any person accused of an
7 offense. **Notwithstanding any other provision of law, the provision of R.S. 14:30**
8 **(C)(2) shall apply unless the Capital Cost Commission has certified sufficient**
9 **funds available to comply with the substance of this Part.**

10 §182. Limited effect in capital cases

11 The provisions of R.S. 15:178 are intended for the sole and exclusive purpose
12 of providing legal services and related expenses for capital defendants who have
13 been sentenced to death and are not intended to confer substantive or procedural
14 rights not otherwise provided by law. **The consequence of re-sentencing pursuant**
15 **to R.S. 14:178 shall not extend or confer additional time to the defendant to**
16 **appeal.**

17 * * *

18 **§184. Capital Cost Commission**

19 **A. The Capital Cost Commission shall be made up of five members,**
20 **selected as follows:**

21 **(1) The governor shall select one member to serve a four year term and**
22 **designate the chairman.**

23 **(2) The chief justice of the Louisiana Supreme Court shall designate one**
24 **member to serve a three year term.**

25 **(3) The attorney general shall designate one member to serve a three**
26 **year term.**

27 **(4) The president of the Louisiana State Bar Association shall designate**
28 **one member to serve a two year term.**

29 **(5) The chair of the Louisiana Public Defender Board shall designate one**

1 member to serve a two year term.

2 B. The Capital Cost Commission shall meet at least quarterly to assess
3 the availability of funds, the costs of proceedings in capital cases, and the
4 compliance with the findings set forth in Senate Concurrent Resolution No. 54
5 of the 2014 Regular Session of the Louisiana Legislature and any report made
6 thereto.

7 C. The Capital Cost Commission shall certify by September first of each
8 calendar year, by vote of majority, the availability of funds necessary to proceed
9 in capital cases.

10 D. If insufficient funds exist to proceed in all capital cases, the
11 commission may certify which circumstances identified in Code of Criminal
12 Procedure Article 905.4 (A)(1) warrant proceeding under R.S. 14:30 (C)(1). In
13 all other circumstances, prosecution for first degree murder shall proceed
14 under R.S. 14:30 (C)(2).

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Jerry J. Guillot.

DIGEST

SB 450 Original

2016 Regular Session

Bishop

Present law, relative to first degree murder, provides that if the district attorney seeks a capital verdict, the offender shall be punished by death or life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence, in accordance with the determination of the jury. Provides that the provisions of C.Cr.P. Art. 782 relative to cases in which punishment may be capital shall apply.

Proposed law provides that if the district attorney intends to seek a capital verdict, he shall notify the district court and attorney general within 30 days of indictment of the aggravating circumstances under C.Cr.P. Art. 905.4(A) upon which it intends to rely. Provides that capital prosecution must be authorized under proposed law. Otherwise retains present law.

Present law provides that if the district attorney does not seek a capital verdict, the offender shall be punished by life imprisonment at hard labor without benefit of parole, probation or suspension of sentence. Provides that the provisions of C.Cr.P. Art.782 relative to cases in which punishment is necessarily confinement at hard labor shall apply.

Proposed law also provides that if the district attorney does not receive authorization under proposed law, the offender, upon conviction, shall be punished by life imprisonment at hard labor without benefit of parole, probation or suspension of sentence. Otherwise retains present law.

Relative to representation of capital defendants, proposed law provides that prior to the appointment of counsel in a capital case, the Capital Cost Commission shall certify whether

sufficient funds exist to maintain a capital prosecution.

Present law provides that in which the trial counsel was provided to an indigent defendant and in which the jury imposed the death penalty, the court, after imposition of the sentence of death, shall appoint the La. Public Defender Board, which shall promptly cause to have enrolled counsel to represent the defendant on direct appeal and in any state post-conviction proceedings, if appropriate. Proposed law provides that the Capital Cost Commission shall certify whether the funds exist to proceed with a capital appeal and/or post-conviction or whether the defendant sentenced should be re-sentenced under R.S. 14:30 (C)(2). Provides that an indigent defendant shall have no basis to appeal or contest the decision. Provides that proceedings on appeal or post-conviction shall be stayed pending certification of funding pursuant to R.S. 15:169. Otherwise retains present law.

Present law provides that laws relative to indigent defendant representation are intended to facilitate the providing of legal services and related expenses only to the extent required by the Constitution of Louisiana or the United States Constitution and specific statutory provisions affording the right of counsel to indigent defendants in criminal cases. Provides that no provision of present law or rule adopted pursuant thereto creates or shall be construed to confer substantive or procedural rights in favor of any person accused of an offense.

Proposed law provides that R.S. 14:30 (C)(2) shall apply unless the Capital Cost Commission has certified sufficient funds available to comply with the substance of proposed law. Otherwise retains present law.

Present law provides that the provisions of R.S. 15:178 are intended for the sole and exclusive purpose of providing legal services and related expenses for capital defendants who have been sentenced to death and are not intended to confer substantive or procedural rights not otherwise provided by law.

Proposed law provides that the consequence of re-sentencing pursuant to R.S. 14:178 shall not extend or confer additional time to the defendant to appeal. Otherwise retains present law.

Proposed law creates the Capital Cost Commission, consisting of five members, selected as follows:

- (1) The governor shall select one member to serve a four year term and designate the chairman.
- (2) The chief justice of the Louisiana Supreme Court shall designate one member to serve a three year term.
- (3) The attorney general shall designate one member to serve a three year term.
- (4) The president of the La. State Bar Association shall designate one member to serve a two year term.
- (5) The chair of the Louisiana Public Defender Board shall designate one member to serve a two year term.

Requires that the commission meet at least quarterly to assess the availability of funds, the costs of proceedings in capital cases, and the compliance with the findings set forth in SCR 54 of the 2014 RS and any report made thereto.

Requires that the commission certify by September 1st of each calendar year, by vote of majority, the availability of funds necessary to proceed in capital cases.

Provides that if insufficient funds exist to proceed in all capital cases, the commission may

certify which circumstances identified in C.Cr.P. Art. 905.4 (A)(1) warrant proceeding under R.S. 14:30 (C)(1). In all other circumstances, prosecution for first degree murder shall proceed under R.S. 14:30 (C)(2).

Effective August 1, 2016.

(Amends R.S. 14:30(C) and R.S. 178, 181, and 182; adds R.S. 15:169(C) and 184)