



GOVERNOR'S OFFICE OF  
BUDGET AND PROGRAM PLANNING

## Fiscal Note 2015 Biennium

**Bill #** HB0370

**Title:** Abolish death penalty and replace with life in prison without parole

**Primary Sponsor:** Kary, Doug

**Status:** As Introduced

- |                                                           |                                                                   |                                                          |
|-----------------------------------------------------------|-------------------------------------------------------------------|----------------------------------------------------------|
| <input type="checkbox"/> Significant Local Gov Impact     | <input checked="" type="checkbox"/> Needs to be included in HB 2  | <input type="checkbox"/> Technical Concerns              |
| <input type="checkbox"/> Included in the Executive Budget | <input checked="" type="checkbox"/> Significant Long-Term Impacts | <input type="checkbox"/> Dedicated Revenue Form Attached |

### FISCAL SUMMARY

	<u>FY 2014 Difference</u>	<u>FY 2015 Difference</u>	<u>FY 2016 Difference</u>	<u>FY 2017 Difference</u>
<b>Expenditures:</b>				
General Fund - OPD	(\$500,000)	(\$500,000)	-----Unable to Determine-----	
General Fund - Other		-----Unable to Determine-----	-----Unable to Determine-----	
<b>Revenue:</b>				
General Fund	\$0	\$0	\$0	\$0
<b>Net Impact-General Fund Balance:</b>	<u>\$500,000</u>	<u>\$500,000</u>	<u>Unknown</u>	<u>Unknown</u>

**Description of fiscal impact:** This bill repeals the death penalty. The fiscal impacts if this bill were enacted would be very difficult to quantify in an ongoing way due to the unpredictability of capital cases, however, there is \$500,000 general fund in each fiscal year of the 2015 biennium in the Executive Budget based on known cases that would be eliminated with the passage of this bill.

### FISCAL ANALYSIS

#### Assumptions:

#### **Department of Corrections**

1. There are currently two inmates on death row at Montana State Prison. The average number of years spent on death row for those two inmates is 24.84.
2. There are currently two inmates who have a stay of execution until the settlement of a lawsuit pertaining to the legalities of lethal injection. One inmate is still awaiting a clemency determination. The lawsuit is estimated to take approximately 14 months to reach a conclusion. Once the decision and appeals are final, it is assumed both executions could take place in FY 2014.
3. There is a current annual cost of \$35,659 to house an inmate. Cost of housing two inmates for an additional year is \$71,319.

**Office of the Public Defender (OPD)**

- 4. In FY 2012, OPD had four cases where the state recommended the death penalty. The cost of these cases in FY 2012 totaled \$397,963.
- 5. In FY 2013, there were also four such cases, one of the cases was filed in FY 2013 and the other three were ongoing from the previous fiscal year. OPD’s estimate for handling all four of these cases through the end of FY 2013 is \$1,200,000.
- 6. In general, death penalty cases are more complex, labor intensive, and cost more than the other types of cases OPD handles.
- 7. Outside attorney costs are often required for death penalty cases at a cost of \$120 per hour vs. \$60 per hour for non death penalty cases.
- 8. There are also ‘death penalty’ training courses that are required by law and any attorney that litigates one of these cases has to be ‘death penalty’ certified.
- 9. Given the dynamic nature of caseload in the OPD office, the overall impact of the elimination of the death penalty is unknown.

**Department of Justice**

- 10. There was no information provided regarding the fiscal impact for the cost of litigating death penalty appeals so none has been shown. The agency acknowledges staff attorney time involved on death penalty appeals can be considerably more costly than “normal” cases as they do require more staff attorney time.

**Long-Term Impacts:**

- 1. The average length of time from sentencing to execution is 20 years.
- 2. The average life expectancy for males is currently 76.05 years.
- 3. General fund cost for the incarceration of a male inmate is approximately \$35,659 per year.
- 4. The cost of incarcerating two inmates for 24.21 years at \$35,659 per year would be \$1,726,626.

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*Sponsor’s Initials*

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*Date*

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*Budget Director’s Initials*

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*Date*