



GOVERNOR'S OFFICE OF
BUDGET AND PROGRAM PLANNING

Fiscal Note 2019 Biennium

Bill #	HB0366
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Title:	Abolish death penalty and replace with life w/o parole
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Primary Sponsor:	Hertz, Adam
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Status:	As Introduced
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- Significant Local Gov Impact
 Needs to be included in HB 2
 Technical Concerns
 Included in the Executive Budget
 Significant Long-Term Impacts
 Dedicated Revenue Form Attached

FISCAL SUMMARY

	<u>FY 2018 Difference</u>	<u>FY 2019 Difference</u>	<u>FY 2020 Difference</u>	<u>FY 2021 Difference</u>
Expenditures:				
General Fund			----- Unable to Quantify -----	
Revenue:				
General Fund	\$0	\$0	\$0	\$0
Net Impact-General Fund Balance:	<u> </u>	<u> </u>	<u> </u>	<u> </u>

Description of fiscal impact: HB 366 repeals the death penalty and replaces the penalty with a sentence of life in prison without the possibility of parole. The unpredictable nature of the occurrence of death penalty cases in Montana causes difficulty in quantifying the fiscal impacts.

FISCAL ANALYSIS

Assumptions:

- Numerous studies have been conducted in states across the country comparing the cost of the death penalty versus the cost of life in prison without the possibility of parole. Studies have been conducted in states including: Nebraska, Pennsylvania, Indiana, Idaho, Washington, Oregon, and others. No such study has been conducted in the state of Montana. However, these studies indicate that the cost of the death penalty is anywhere from two times to four times higher than the cost of life in prison without the possibility of parole. (www.deathpenaltyinfo.org)
- The unpredictable nature of the occurrence of death penalty cases in Montana causes difficulty in quantifying the fiscal impacts. The following assumptions are provided for informational purposes.

Department of Corrections

- There are two inmates on death row at the Montana State Prison. The average number of years waiting on death row for these two inmates is 29 years.

4. The average life expectancy for males is currently 76.05 years. The average age of the two inmates on death row is 56.5 years.
5. If the death penalty were abolished, the Department of Corrections would incur the cost of incarcerating two individuals for an average of 19.55 years (life expectancy/less current average age of two death row inmates).
6. The general fund cost for the incarceration of a male inmate is approximately \$42,647 per year.
7. The average cost per day for medical services in FY 2016 at the Montana State Prison was \$29.05. The cost per day for medical services is included in the cost of incarceration.
8. Based on the last execution, which was carried out in 2006, the estimated cost of an execution is \$49,500. For two executions, a cost of \$99,000 could be incurred in any fiscal year under the current law. If HB 366 is enacted, this cost would not be incurred.

Department of Justice

9. There was no information provided by the Department of Justice 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.

Office of the Public Defender

10. In general, death penalty cases are more complex, labor intensive, and cost more than the other types of cases OPD handles.
11. Between FY 2012 and FY 2015 OPD spent a little over \$2.1 million for 5 death penalty cases. Some of this was funding through OTO (one-time only) funds and some of it was supplemental funding.
12. In FY 2016, OPD did not receive any new cases in which the state filed notice of its intent to seek imposition of the death penalty if the defendant was convicted. However, OPD currently has two cases that were ongoing from a previous fiscal year. The cost of these cases in FY 2016 totaled \$91,771.
13. In FY 2017, OPD had the same two ongoing cases. The cost of these cases in the first 7 months of FY 2017 (July 1, 2016 - January 31, 2017) was \$17,148.
14. OPD did not receive funding for these types of case in FY 2016 or FY 2017, the agency has had to divert funding from other areas of the agency’s budget to cover the costs of these cases.
15. OPD occasionally must utilize the services of private attorneys to provide representation in death penalty cases. The Public Defender Commission authorizes payment of \$120 per hour to private attorneys in these cases. In certain circumstances, the Commission may authorize a higher rate in a given case.
16. Given the dynamic nature of workloads in the agency, the overall impact of the elimination of the death penalty is unknown.

<i>Sponsor’s Initials</i>	<i>Date</i>	<i>Budget Director’s Initials</i>	<i>Date</i>
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