



*The Big Sky Country*

## MONTANA HOUSE OF REPRESENTATIVES

### SPONSOR'S REBUTTAL TO FISCAL NOTE

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**House Bill Number:** HB366

**Date Prepared:** 02-10-17

**Short Title:** Abolish death penalty and replace with life without possibility of parole

**Sponsor:** Representative Adam Hertz

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#### **Generally, why do you disagree with the fiscal note?**

The Fiscal Note does not appropriately reflect the cost savings that House Bill 366 would bring. As long as we continue to have the death penalty on the books, there will most certainly be death penalty cases sought. With each death penalty case sought (whether or not a sentence of death is ultimately imposed), there will be significant cost to the State. The assumption that there would not be cost savings associated with the passage of HB366 is flawed.

The Office of Public Defender offers actual numbers concerning the cost of capital defense over the course of the last five fiscal years. These numbers give us the ability to safely estimate the average annual cost of capital defense to that agency. This savings should necessarily be included in the fiscal note.

The Fiscal Note fails to reflect the costs to the Department of Justice in the prosecution of death penalty cases. It is illogical that the Department of Justice cannot provide actual numbers of their cost as the Office of Public Defender does. Even without actual costs from the Department of Justice, we can assume that the costs to the Department of Justice are at least comparable to the costs of the Office of Public Defender. This assumption gives us the ability to at least estimate the average annual cost of death penalty related litigation to the Department of Justice. This cost savings fails to be reflected in the fiscal note.

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#### **Specifically, what in the fiscal note do you feel is flawed?**

The fiscal note offers the assumption that the administration of death penalty cases will cost the state 2-4 times more than a system of life without possibility of parole but fails to evaluate the full impact on the state budget. Keeping the death penalty on the books will require ongoing expenditures by the Department of Justice and OPD of at least \$881,574 annually.

The fiscal note fails to calculate cost savings to the Office of the Public Defender of new and ongoing capital cases. The cost to that agency are clear: Capital defense is on average \$440,187 annually. With a change in the law, a \$440,187 per year cost to the Office of Public Defender would not be incurred. The fiscal note should reflect a cost savings to this agency.

The Fiscal Note fails to specify the costs to the Department of Justice in the prosecution of death penalty cases. While 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"; the fiscal note and the agency fail to quantify this cost savings. Although we can assume the passage of HB 366 would reduce costs to the Department of Justice, thereby saving the state money. An assumption can also be made that the costs of prosecution would be similar to the costs of defense in a capital case. The average cost of capital defense to the Office of Public Defender is \$440,787 per year. We should assume similar cost savings to the Department of Justice (\$881,574 over the biennium.) Whatever the actual dollar amount, it should be reflected as cost savings in the Department of Justice's section of the fiscal note.

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## What is your estimate of the fiscal impact?

### Office of Public Defender

The current fiscal note shows no impact on OPD; however based on past expenses, we can accurately estimate the cost of the capital defense to the agency.

- Between FY 2012 and FY 2015, OPD spent a little over \$2.1 million for 5 death penalty cases.
  - The fiscal note from House Bill 370 in the 2015 legislative session breaks this amount down by fiscal year and gives us a total of \$2,112,167 .
- In FY2016, 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.
- If one considers the amount spent by the Office of Public Defender over these five fiscal years, it would result in an average of \$440,787 spent annually. This amount should be reflected as a budget savings in the HB366 fiscal note.

The cost to the agency for capital case defense is an average of \$440,787. Under current law, an estimated cost of \$440,787 would be incurred in FY2018 and FY2019. A change in law with the passing of HB366 would mean that there would be an \$881,574 cost savings to the Office of Public Defender over the next biennium. The fiscal note should reflect a cost savings to this agency of \$440,787 annually resulting from the passage of House Bill 366.

### Department of Justice

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.

Based on the idea that the cost of death penalty prosecution is similar to the cost of death penalty defense, we should assume a cost savings of \$440,787 annually to the Department of Justice.

### Fiscal Summary

	FY 2018 Difference	FY 2019 Difference	FY 2020 Difference	FY2021 Difference
<b>Expenditures:</b>				
General Fund – Dept. of Corrections	\$0	\$0	\$0	\$0
General Fund – Office of Public Defender	(\$440,787)	(\$440,787)	(\$440,787)	(\$440,787)
General Fund – Dept. of Justice	(\$440,787)	(\$440,787)	(\$440,787)	(\$440,787)
<b>Revenue:</b>				
General Fund	\$0	\$0	\$0	\$0
<b>Net Impact – General Fund Balance</b>	\$881,574	\$881,574	\$881,574	\$881,574

**Sponsor Signature:** \_\_\_\_\_

*Adam Hertz*