



GOVERNOR'S OFFICE OF  
BUDGET AND PROGRAM PLANNING

## Fiscal Note 2019 Biennium

<b>Bill #</b>	HB0350	<b>Title:</b>	Abolish State Death Penalty
<b>Primary Sponsor:</b>	Hopkins, Mike	<b>Status:</b>	As Introduced

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

### FISCAL SUMMARY

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

- Description of fiscal impact:** HB 350 repeals the death penalty. The fiscal impact of capital cases is unpredictable and difficult to quantify. HB 350 expressly provides for retroactive applicability of the Act and will require that persons under a death sentence on its effective date be re-sentenced to life without the possibility of parole by the initial sentencing court. Costs associated with death penalty cases are typically funded through supplemental appropriations; therefore, the fiscal impact is zero as they are not currently funded in present law.

### FISCAL ANALYSIS

#### Assumptions:

#### **Department of Corrections**

- There are two male inmates on death row at the Montana State Prison. The average number of years waiting on death row for these two inmates is 31 years.
- The average life expectancy for males is currently 78.05 years. The average age of the two inmates on death row is 58.5 years.

4. If the death penalty is abolished, the Department of Corrections will incur the cost of incarcerating two individuals for an average of 19.55 years.
5. The cost for the incarceration, including medical services, of a male inmate is \$39,971 per year to the General Fund.
6. The cost of incarcerating two inmates for 19.55 years at \$39,971 per year will be \$1,562,871 and is part of the current budget.
7. Based on the last execution, which was carried out in 2006, the estimated one-time 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. HB 350 will eliminate this potential cost.

**Office of Public Defender (OPD)**

8. In FY 2018, 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 ongoing from previous fiscal years. Case A opened in FY 2007 and case B opened in FY 2017. The cost of these cases in FY 2018 totaled \$539,811 (\$9,361 case A + \$530,450 case B).
9. In FY 2019, OPD had the same two ongoing cases. The cost of these cases in the first 6 months of FY 2019 (July 1, 2018 - December 31, 2018) is \$252,677 (\$744 case A + \$251,933 case B)
10. The calculations do not include the legal costs incurred defending the legality of the state's lethal injection protocol.
11. Costs associated with death penalty cases are typically funded via supplemental appropriations, therefore, the fiscal impact for the next four years is zero as they are not currently funded in present law.

**Technical Notes:**

1. The Department of Corrections is not currently able to carry out an execution because of the ruling of the First Judicial District Court in Ronald Smith, et al v. State of Montana, et al Lewis and Clark County Cause No. BDV-2008-303. In that case, after a bench trial, Judge Jeffrey Sherlock ruled that pentobarbital is not an ultra-fast acting barbiturate to accomplish the execution. Under the current statute, Mont. Code Ann. Sec. 46-19-103(3), the punishment of death must be inflicted by administration of a continuous, intravenous injection of a lethal quantity of an "ultra-fast acting barbiturate in combination with a chemical paralytic agent . . ." Until that language is amended or modified, the Department cannot carry out an execution under the statutory requirements.

MH

Sponsor's Initials

2/5/19

Date

TL

Budget Director's Initials

2/5/19

Date