



GOVERNOR'S OFFICE OF
BUDGET AND PROGRAM PLANNING

Fiscal Note 2023 Biennium

Bill # HB0244

Title: Revise death penalty laws related to lethal injection

Primary Sponsor: Lenz, Dennis R

Status: As Introduced

- 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 2022 Difference</u>	<u>FY 2023 Difference</u>	<u>FY 2024 Difference</u>	<u>FY 2025 Difference</u>
Expenditures:				
General Fund	*	*	*	*
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 244 revises laws related to the death penalty. It eliminates statutory language that was enjoined by a court, halting all executions. The Department of Corrections would have new costs associated with performing the procedure. As noted in the technical issues, the Department of Corrections anticipates additional legal costs. * Based on historical data and applying inflation, the estimated cost of an execution would be \$95,497. The year in which an execution may occur is not known.

FISCAL ANALYSIS


Assumptions:

1. The current version of 46-19-103(3), MCA requires use of a “lethal quantity of an ultra-fast acting barbiturate in combination with a chemical paralytic agent...” In 2015, a court ruled that pentobarbital was not “ultra-fast acting.” There has been a de facto moratorium on Montana’s death penalty since that time.
2. HB 244 removes the “ultra-fast acting” language, and replaces it with a “substance or substances in a lethal quantity sufficient to cause death...” This amendment avoids the 2015 court ruling. As a result, the new language is designed to allow pending and future executions to proceed.
3. The Montana State Prison does have a facility in which an execution could be carried out. If the offender to be executed were female, the offender would need to be transported from Montana Women’s Prison in Billings to Montana State Prison in Deer Lodge.

4. The department will need to review and update protocols for implementing an execution.
5. Based on historical data with inflation applied, the estimated cost of carrying out an execution would be \$95,497. This includes the cost of additional staffing, operating expenses, and the execution drugs. The Department of Corrections does not have a staff member trained to administer lethal injections, so the cost also includes contracted services to contract for the administering of the lethal injections.
6. The DOC currently has two offenders sentenced to death. If HB 244 is passed and approved, it is unknown which fiscal year the executions would occur

Technical Issues:

1. The Department of Corrections anticipates that if HB 244 were to be passed and approved, it would face litigation related to lethal injection. In the most recent death penalty case, the Department of Justice dedicated 4 attorneys to the case at one time. The Department of Corrections does not have in-house staff to accommodate such litigation nor does it have sufficient budget authority to contract for such services. The estimated cost of defending the Department of Corrections against such litigation is estimated to be a minimum of \$400,000.
2. It would provide clarity if the bill were to specify if it is the Department of Corrections or the Department of Justice that would be responsible for defending the state in this type of litigation.



Sponsor's Initials

2-10-21

Date

KA

Budget Director's Initials

2/8/21

Date