



GOVERNOR'S OFFICE OF
BUDGET AND PROGRAM PLANNING

Fiscal Note 2023 Biennium

Bill # HB0335

Title: Repeal death penalty

Primary Sponsor: Stafman, Ed

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	\$0	(\$81,375**)	(\$81,375**)	(\$162,750**)
Revenue:				
General Fund	\$0	\$0	\$0	\$0
Net Impact-General Fund Balance	<u>\$0</u>	<u>(\$81,735**)</u>	<u>(\$81,735**)</u>	<u>(\$162,750**)</u>

Description of fiscal impact: State savings, based on historical expenditures, will primarily be generated by the lower cost of representation of clients at the Office of Public Defender if the death penalty is not a permissible punishment. ** Costs shown above are avoided costs that have historically been funded via one-time-only appropriations or supplemental appropriations (after the costs have been incurred) in the budget of the Office of Public Defender. Other agencies will see no measurable fiscal impact.

FISCAL ANALYSIS

Assumptions:

Office of Public Defender (OPD)

- Historically, death penalty case funding has been provided to the OPD through supplemental funding, in the 2021 biennium OPD was given a one-time only biennial appropriation of \$465,548. In FY 2020, OPD had four active cases in which the state filed notice of its intent to seek imposition of the death penalty if the defendant was convicted and spent a total of \$216,959. In FY 2021, OPD had the same four ongoing cases. The cost of these cases in the first 7 months of FY 2021 (July 1, 2020 – January 31, 2021) was \$374,805, and OPD has requested a supplemental appropriation of \$350,000 to cover projected expenses related to these cases.
- OPD has worked on ten death penalty cases over the past 20 years. The agency works on an individual case for an average of approximately three years. For the three primary death penalty cases worked by the OPD over the past three biennia, average annual costs incurred have been approximately \$216,500 per case per year. For purposes of this fiscal note, if the death penalty were to remain in statute, it is assumed that one

additional case would come in every two years and one case would drop off the caseload of the agency every two years. For continuity of defense OPD continues to pay death penalty certified counsel to represent defendants, even after the prosecutor no longer is seeking the death penalty. Therefore, there will be no savings generated from HB 335 for existing cases. For this reason, no savings are shown in the first year of the fiscal note period. Avoided costs for future death penalty cases reflect one case coming on in FY 2023 and an additional case coming on in FY 2025.

3. If a case were not charged as a death penalty case, it would still need to represent the defendant in the non-capital case. Taking a random sample of 10 murder cases, the attorney time for a case ranged from \$85,000 to \$150,000. The time spent on a case can be impacted by the circumstances of the crime as well as how many different charges are brought against the defendant. For purposes of this fiscal note, the median cost for an attorney of \$117,500 is used. A 15% factor is added for investigators, expert witnesses, etc. With the absence of the death penalty, the OPD would still incur a cost of approximately \$135,125 annually to defend a client if the death penalty were not sought.
4. The difference between the annual average amount spent on a capital case and the estimated annual amount spent on a non-capital case, is the avoided cost shown in this fiscal note.
5. OPD currently does not have a separate appropriation for death penalty cases for the 2023 biennium.
6. If HB 335 were to be passed and approved, the need to incur costs that drive supplemental appropriations would be reduced.

Department of Corrections (DOC):

7. The two current death penalty inmates in custody at Montana State Prison would be re-sentenced to life imprisonment without the possibility of parole. The DOC would continue to house the death row inmates.
8. The costs of carrying out a sentence of death does not currently exist within DOC budget.

Department of Justice

9. Since the prosecution of most death penalty cases occur at the county level, there would be no fiscal impact to the Department of Justice.

Judicial Branch

10. There would be no fiscal impact to the Judicial Branch.

NOT SIGNED BY SPONSOR

_____	2/18/21	KA	2/16/21
<i>Sponsor's Initials</i>	<i>Date</i>	<i>Budget Director's Initials</i>	<i>Date</i>