

Colorado Legislative Council Staff Fiscal Note
STATE and LOCAL
CONDITIONAL FISCAL IMPACT

Drafting Number: LLS 13-0283
Prime Sponsor(s): Rep. Fields

Date: March 18, 2013
Bill Status: House Local Government
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TITLE: CONCERNING A REFERENDUM RELATED TO THE DEATH PENALTY.

Fiscal Impact Summary	FY 2013-2014	FY 2014-2015	FY 2015-2016
State Revenue			
State Expenditures General Fund			(\$247,319)
FTE Position Change			(1.2 FTE)
Effective Date: Upon voter approval of a statewide ballot measure to repeal the death penalty in November 2014.			
Appropriation Summary for FY 2013-2014: None required.			
Local Government Impact: See Local Government Impact section.			

Summary of Legislation

This bill repeals the death penalty as a sentencing option for class 1 felony offenses committed on or after the effective date of the bill, and makes conforming amendments, contingent upon the passage of a statewide ballot measure in the November 2014 general election.

State Expenditures

The bill is expected to reduce annual General Fund expenditures by at least \$247,319 and 1.2 FTE beginning in FY 2015-16. Any savings generated as a result of the bill's passage will be the difference in costs between a declared death penalty class 1 felony case and a non-death penalty class 1 felony case. The potential savings, beginning in FY 2015-16, are discussed in the following sections. The fiscal note assumes the savings will not be realized until FY 2015-16 because the bill cannot take effect until after the passage of a statewide ballot measure in November 2014 and because current cases, appeals, and those crimes that were discovered, charged, or convicted before the effective date will continue to require similar resources for at least a year.

The fiscal note makes the following two basic assumptions:

- the death penalty is infrequently sought by prosecutors in Colorado (one case has gone to trial in the past three years); and
- the bill will not reduce the number of offenders charged and convicted of class 1 felonies.

Judicial Branch. The bill will require a General Fund reduction to the Judicial Branch for court costs and jury costs of \$19,126 in FY 2015-16 and each year thereafter. Non-death penalty cases require fewer juror alternates, which results in fewer juror summonses sent and reduced payments made to jurors. Additionally, a non-death penalty case requires fewer transcripts. Table 1 explains the reduction to the Court Costs, Jury Costs, and Court-appointed Counsel Costs line item in the Judicial budget.

Cost Components	FY 2013-14
Fewer Juror Payments Required	(\$30,780)
Fewer Juror Summonses Issued	(\$1,598)
Estimated Reduced Transcript Costs	(\$25,000)
Total Savings Per Case	(\$57,378)
Annual Savings Assuming One Case Going to Trial Every Three Years	(\$19,126)

Department of Law. The bill will require a General Fund reduction to the Department of Law of \$31,317 and 0.3 FTE in FY 2015-16 and each year thereafter. Both the Appellate Division and the Special Prosecutions Unit within the Department of Law provide prosecutorial assistance on death penalty cases. The Appellate Division represents law enforcement and the state when defendants appeal criminal convictions. The division provides approximately 558 hours or 0.3 FTE worth of representation per year in response to the various appeals filed by the three individuals currently on death row in Colorado. While the appeals from these three individuals will not end as a result of the bill, it is logical to assume that the workload of the department will be reduced by a similar amount (\$31,317 and 0.3 FTE) in the future if the death penalty is repealed.

Upon the request of a district attorney or law enforcement agency, the Special Prosecutions Unit may provide both investigative and prosecutorial support in active and cold homicide cases, as well as support on other complex felony cases. Between 2005 and 2012, the Special Prosecutions Unit provided assistance on 52 cases. A very small number of those were death penalty cases. The fiscal note assumes that the workload of the unit will not change as a result of the bill.

Office of the State Public Defender (OSPD). The bill will reduce General Fund expenditures in the OSPD by \$196,876 and 0.9 FTE annually beginning in FY 2015-16. The OSPD provides legal representation to indigent defendants in criminal cases. The current cost for the OSPD, including staffing and mandated costs, to defend a death penalty case is \$268,691 and 1.4 FTE. The current cost for a non-death penalty class 1 felony case is \$71,815 and 0.5 FTE. Assuming the bill will result in one fewer death penalty case being assigned to the OSPD each year (to account for the number of cases that are settled prior to a trial, but still require work on the part of the office), the expected annual savings is \$196,876 and 0.9 FTE.

Office of the Alternate Defense Counsel (OADC). The OADC contracts with attorneys in private practice to represent indigent criminal defendants through the life of cases (including trials, appeals, and post-conviction relief) when the OSPD has a conflict of interest. The office estimates it spends an average of \$399,217 per year for each death penalty case and \$16,380 per year for each non-death penalty class 1 felony case, for a difference of \$382,837 per year per case. The fiscal note assumes the OADC will continue to represent the same number of defendants in class 1 felony cases and will simply not require as much funding through the annual budget process if those cases are not subject to the death penalty.

Department of Corrections (DOC). There are currently three offenders on death row in the DOC. The last execution in Colorado was in 1997. If these three offenders had committed their offenses after the effective date of the bill, they likely would have been sentenced to life without parole in the general prison population. Death row inmates are housed in the Colorado State Penitentiary (CSP) at an average cost of \$43,200 per year. General population inmates are housed in facilities with lower security levels at approximately \$27,500 per year. This difference of \$15,700 each year would be a operational savings to the DOC. However, as the bill does not apply to anyone currently in the DOC and the death penalty is so rarely implemented, it is expected that any cost adjustment will be handled through the annual budget process.

Additionally, the bill is expected to result in longer sentences for approximately one person every three years. The average length of stay for an offender awaiting execution is ten years. Any increase in the length of sentences is well outside the five-year impact for a fiscal note and will also be addressed through the regular budget process.

Expenditures Not Included

Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. The centrally appropriated costs subject to this policy are summarized in Table 2.

Table 2. Expenditures Not Included Under HB 13-1264*			
Cost Components	FY 2013-14	FY 2014-15	FY 2015-16
Employee Insurance (Health, Life, Dental, and Short-term Disability)			\$7,260
Supplemental Employee Retirement Payments			8,879
TOTAL	\$0	\$0	\$16,139

*More information is available at: <http://colorado.gov/fiscalnotes>

Local Government Impact

The repeal of the death penalty may result in operational cost savings for local district attorneys' offices. It is also possible that more class 1 felony cases will go to trial instead of plea bargaining if the death penalty is not a possibility. No specific information about the average cost of prosecuting a death penalty versus a non-death penalty case was available at the time the fiscal note was published. Such costs are likely to vary across the state and would depend on a number of factors, including the size of the county and the number of death penalty cases that are regularly handled by the various district attorneys.

Election Expenditure Impacts (For Informational Purposes Only)

The bill refers a measure to the voters at the November 2014 general election. This measure will be published in newspapers and an analysis of the measure will be included in the Blue Book mailed to all registered voter households prior to the election. Under current law, costs for these functions will be paid through a General Fund line item in the Long Appropriations Bill. Table 1 below identifies the anticipated costs for the 2014 Blue Book.

Table 1. Cost to Produce and Distribute the 2014 Blue Book to All Registered Voter Households	
Printing	\$450,000
Postage	\$450,000
Translation	\$15,000
Newspaper Publication (English & Spanish)	\$400,000
Total Cost (14 issues)	\$1,315,000
Average Cost per Issue	\$109,583

Departments Contacted

Alternate Defense Counsel
Human Services

Corrections
Judicial

District Attorneys
Law