

**FINAL  
FISCAL NOTE**

**Drafting Number:** LLS 13-0283

**Date:** May 20, 2013

**Prime Sponsor(s):** Rep. Fields

**Bill Status:** Postponed Indefinitely

**Fiscal Analyst:** Jessika Shipley (303-866-3528)

**TITLE:** CONCERNING A REFERENDUM RELATED TO THE DEATH PENALTY.

<b>Fiscal Impact Summary</b>	<b>FY 2013-2014</b>	<b>FY 2014-2015</b>	<b>FY 2015-2016</b>
<b>State Revenue</b>			
<b>State Expenditures</b> General Fund			(\$247,319)
<b>FTE Position Change</b>			(1.2 FTE)
<b>Effective Date:</b> The bill was postponed indefinitely by the House Local Government Committee on March 27, 2013.			
<b>Appropriation Summary for FY 2013-2014:</b> None required.			
<b>Local Government Impact:</b> See Local Government Impact section.			

**Summary of Legislation**

This bill would have repealed the death penalty as a sentencing option for class 1 felony offenses committed on or after the effective date of the bill, and made conforming amendments,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

**State Expenditures**

*The bill was expected to reduce annual General Fund expenditures by at least \$247,319 and 1.2 FTE beginning in FY 2014-15.* Any savings generated as a result of the bill's passage would have been 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 2014-15, are discussed in the following sections. The fiscal note assumed the savings would not be realized until FY 2014-15 because current cases, appeals, and those crimes that were discovered, charged, or convicted before the effective date of the bill would have continued to require similar resources for at least a year.

The fiscal note made 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 would have required a General Fund reduction to the Judicial Branch for court costs and jury costs of \$19,126 in FY 2014-15 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.

<b>Table 1. Expenditures Under HB 13-1264</b>	
<b>Cost Components</b>	<b>FY 2013-14</b>
Fewer Juror Payments Required	(\$30,780)
Fewer Juror Summonses Issued	(\$1,598)
Estimated Reduced Transcript Costs	(\$25,000)
<b>Total Savings Per Case</b>	<b>(\$57,378)</b>
<b>Annual Savings Assuming One Case Going to Trial Every Three Years</b>	<b>(\$19,126)</b>

**Department of Law.** The bill would have required a General Fund reduction to the Department of Law of \$31,317 and 0.3 FTE in FY 2014-15 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 would not have ended as a result of the bill, it was logical to assume that the workload of the department would have been reduced by a similar amount (\$31,317 and 0.3 FTE) in the future if the death penalty was 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 assumed that the workload of the unit would not change as a result of the bill.

**Office of the State Public Defender (OSPD).** The bill would have reduced General Fund expenditures in the OSPD by \$196,876 and 0.9 FTE annually beginning in FY 2014-15. 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 would have resulted 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 would have been \$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 assumed the OADC would continue to represent the same number of defendants in class 1 felony cases and would simply not require as much funding through the annual budget process if those cases were 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 was 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 was well outside the five-year impact for a fiscal note and would have been 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.

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

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

**Local Government Impact**

The repeal of the death penalty might have resulted in operational cost savings for local district attorneys' offices. It is also possible that more class 1 felony cases would have gone to trial instead of plea bargaining if the death penalty was 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 would have referred a measure to the voters at the November 2014 general election. This measure would have been published in newspapers and an analysis of the measure would have been included in the Blue Book mailed to all registered voter households prior to the election. Under current law, costs for these functions would have been paid through a General Fund line item in the Long Appropriations Bill. Table 1 below identifies the anticipated costs for the 2014 Blue Book.

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

**Departments Contacted**

Alternate Defense Counsel  
Human Services

Corrections  
Judicial

District Attorneys  
Law