



Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

FISCAL NOTE

Drafting Number: LLS 20-0009 Date: January 20, 2020
Prime Sponsors: Sen. Gonzales; Tate Bill Status: Senate Judiciary
Rep. Arndt; Benavidez Fiscal Analyst: Katie Ruedebusch | 303-866-3001
Katie.Ruedebusch@state.co.us

Bill Topic: REPEAL THE DEATH PENALTY

- Summary of Fiscal Impact: State Revenue, State Expenditure, State Transfer, TABOR Refund, Local Government, Statutory Public Entity

This bill repeals the death penalty, which reduces state and local government costs and workload on an ongoing basis in future fiscal years

Appropriation Summary: No appropriation is required.

Fiscal Note Status: The fiscal note reflects the introduced bill.

Summary of Legislation

This bill repeals the death penalty in Colorado and makes conforming amendments. Sentences for offenses charged before July 1, 2020, are not changed.

Background and Assumptions

Under current law, the death penalty may be sought as a sentence for an offender convicted of class 1 felony murder. Based on information provided by the Judicial Department, between zero and three death penalty cases are assumed to occur in a given year.

Actual death penalty-related costs and workload vary widely depending on the judicial district in which the case occurs, the circumstances of the crime, and the length of the trial. However, death penalty cases generally require more time and resources both at the state and local government level to try than class 1 felony cases that carry a potential sentence of life without parole. Also, due to the complexity of the case, costs and workload typically occur in multiple years for both types of cases.

Because the number of death penalty cases occurring per year varies, and impacts from such cases occur over multiple fiscal years, and the overall impact on future class 1 felony case length due the likelihood of fewer offender plea bargains is unknown. Therefore, this analysis assumes that reductions in costs and workload resulting from the repeal of the death penalty will be addressed in future years through the annual budget process as they occur. These potential

impacts are described in the state expenditures section. Future impacts may occur several years after the passage of the bill as existing death penalty cases move through the various trial phases and are appealed.

State Expenditures

Beginning in FY 2020-21, this bill decreases state expenditures and workload as described below.

Judicial Department. Beginning in FY 2020-21, workload is minimally reduced for the trial courts. This minimal reduction is due to the relatively low number of death penalty cases and that life imprisonment cases also require court resources. In addition, by repealing the death penalty, juror related and transcript costs may be reduced.

Agencies that provide indigent representation. Offenders facing death penalty charges are likely to be indigent and are often represented by the Office of the State Public Defender or by the Office of the Alternate Defense Counsel, if a conflict exists. Additionally, all death penalty appeals are handed by the Office of Alternate Defense Counsel. Repealing the death penalty decreases state expenditures and workload for indigent defense as discussed below.

- *Office of the State Public Defender.* Repealing the death penalty decreases public defender costs and workload. For informational purposes, based on an analysis of 10 death penalty cases over a 13-year period, a lead public defender spends approximately 4,370 hours per death penalty case, on average, compared to 2,500 hours per case for a felony 1 non-death penalty case. This amounts to a difference in pay of approximately \$86,000 for 1,870 additional hours of work per death penalty case for each lead public defender involved in the case. Other costs for death penalty cases that are generally higher than non-death penalty cases include operating as well as investigator, travel, forensic analysis, and expert witness costs. Given the variability in the frequency and circumstances of these cases, exact costs have not been estimated.
- *Office of the Alternate Defense Counsel.* Repealing the death penalty decreases the Office of Alternate Defense Counsel costs and workload by \$207,898 per death penalty case, on average. This includes attorney, investigator, paralegal, social worker, and other costs incurred related to death penalty appeals.

Department of Corrections. This bill may decrease future DOC operating costs. While death penalty sentences can occur under current law, the execution of an inmate on death row is rare and has not occurred since 1997, therefore no reduction in execution-related expenditures is expected. In addition, costs will decrease because DOC will no longer be required to house future inmates on death row, which requires more intense supervision than inmates sentenced to life without parole. Because this bill applies to charges on or after July 1, 2020, and does not commute or alter the sentence for any current offenders sentenced to DOC, no change in current appropriations is required.

Department of Law. This bill reduces workload for the criminal appeals section and the violent crimes assistance team in the Department of Law. The criminal appeals section may provide legal review on death penalty cases while the violent crimes assistance team assists local district attorneys, primarily in rural judicial districts, with violent crime cases. Sufficient appellate work and non-death penalty caseload exists for both sections, therefore any workload decrease is assumed to be minimal and will not require a reduction in appropriations.

Local Government

Beginning in FY 2020-21, this bill decreases district attorney and county sheriff costs and workload. Repealing the death penalty reduces trial related costs and workload for district attorneys and county sheriff court security and inmate transportation costs. Exact savings will vary by county depending on the number of class 1 felony cases handled in which the death penalty previously could have been sought, the circumstances of the crime, the size of the county, and current staffing levels.

Effective Date

The bill takes effect upon signature of the Governor, or upon becoming law without his signature, and applies to offenses charged on or after July 1, 2020.

State and Local Government Contacts

Corrections	Counties	Information Technology
Judicial	Law	Public Safety
Sheriffs		