

OFFICE OF THE GOVERNOR
BUDGET AND PROGRAM PLANNING
STATE OF MONTANA

GREG GIANFORTE
GOVERNOR



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HELENA, MONTANA 59620-0802

M E M O R A N D U M

TO: Derek Oestreicher, Deputy Attorney General
Montana Department of Justice

FROM: Ryan Osmundson, Director
Office of Budget and Program Planning

RE: Fiscal note for Ballot 13 initiative "Abolish the Death Penalty"

DATE: November 15, 2021

In accordance with section 13-27-312, MCA, we are submitting the attached fiscal note for the Abolish the Death Penalty initiative.

Please contact Amy Sassano if you have questions regarding the fiscal note.

c: Dana Corson, Director
Elections & Voter Services
Secretary of State

A handwritten signature in blue ink, appearing to be "Dana Corson".



GOVERNOR'S OFFICE OF
BUDGET AND PROGRAM PLANNING

Fiscal Note 2025 for Constitutional Initiative

Bill #	Ballot Issue No. 13	Title:	Abolish the Death Penalty
Primary Sponsor:	Jordan F Ophus	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 2024 Difference</u>	<u>FY 2025 Difference</u>	<u>FY 2026 Difference</u>	<u>FY 2027 Difference</u>
Expenditures:				
General Fund	\$0	\$0	\$0	\$0
Revenue:				
General Fund	\$0	\$0	\$0	\$0
Net Impact-General Fund Balance:	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

Description of fiscal impact: #13 – Abolish the Death Penalty – Costs for prosecution and defense of individuals charged with a crime punishable by the death penalty as well as the imposition of the death penalty are unpredictable in nature and not specifically budgeted. Elimination of the death penalty will have no fiscal impact to the state.

FISCAL ANALYSIS

Assumptions:

Office of the Public Defender (OPD)

1. The Office of the State Public Defender (OPD) has the statutory obligation to represent individuals entitled to counsel at public expense in both civil and criminal matters, including on direct appeal and in cases where there is a conflict of interest. In certain cases, a client is charged with a crime that, upon conviction, may be punished by imposition of a penalty of death. A decision by the state to seek imposition of the death penalty upon conviction, or OPD's assessment that a case may support a decision to seek imposition of the death penalty upon conviction, trigger a duty to review and consider whether to treat a case as a death penalty case.
2. The Montana Supreme Court's Standards for Competency of Counsel for Indigent Persons in Death Penalty Cases refer to the American Bar Association, Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases. The OPD, which supervises the delivery of public defense services, requires

that each attorney acting as lead counsel in a death penalty case meet the standards of the Montana Supreme Court and the American Bar Association. Section 1.1 of the ABA Guidelines provides that the Guidelines apply from the moment the client is taken into custody and extend to all stages of every case in which the jurisdiction may be entitled to seek the death penalty, including initial and ongoing investigation, pretrial proceedings, trial, post-conviction review, clemency proceedings and any connected litigation.

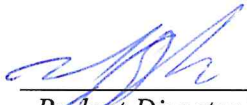
- 3. Historically, death penalty case funding has been primarily provided to the OPD through supplemental appropriations, the OPD is not currently funded for death penalty cases for the 2023 biennium.
- 4. OPD is not currently funded for death penalty cases for the 2025 biennium.
- 5. Costs associated with death penalty cases are primarily funded via supplemental appropriations, therefore, the fiscal impact for the next four years is zero as they are not currently funded in present law.

Department of Corrections

- 6. Should this ballot initiative pass, 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 just as they have been.
- 7. The department would not incur the expense of developing and implementing an updated execution protocol, the expense necessary to acquire those drugs which are legally available to carry out a constitutionally defensible lethal injection, the expense of all security protocols surrounding an execution and finally the defense of any legal challenges to such procedures. However, these expenses are not currently budgeted.

Department of Justice

- 8. The fiscal impacts of abolishing the death penalty are not able to be quantified at this time due to the intensity and random nature of death penalty cases.
- 9. The state will need to continue to litigate the legality of the harshest available sentence, so no change in budgetary impact is anticipated.

<i>Sponsor's Initials</i>	<i>Date</i>	 <i>Budget Director's Initials</i>	<i>11-10-21</i> <i>Date</i>
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