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FISCAL NOTE

Drafting Number: LLS 19-0326 Date: March 5, 2019
Prime Sponsors: Sen. Williams A.; Gonzales Rep. Arndt Bill Status: Senate Judiciary
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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 beginning in FY 2019-20.

Appropriation Summary: No appropriation required

Fiscal Note Status: Preliminary Note. This fiscal note reflects the introduced bill. While all agencies were canvassed for this fiscal note, not all agencies were able to respond with complete information within the timeframe provided.

Summary of Legislation

This bill repeals the death penalty in Colorado by prohibiting an offender convicted and sentenced for a criminal offense charged on or after July 1, 2019 from being sentenced to death and makes conforming amendments.

Background and Assumptions.

Under current law, the death penalty may be sought as a sentence for an offender convicted of a class 1 felony murder, including but not limited to premeditated first degree murder or first degree kidnaping or child abuse that results in death.

Actual death-penalty 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.

Because the number of death penalty cases occurring per year varies, impacts from such cases occur over multiple fiscal years, and the overall impact on future class one felony case length due the likelihood of less offender plea bargains is unknown, 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 are incurred. 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 2019-20, this bill decreases state expenditures and workload as described below.

Judicial Department. By repealing the death penalty juror related and transcript costs which are estimated to cost an additional \$30,000 per death penalty case, are reduced. Workload is also reduced for the trial courts because non-death penalty cases generally have shorter trials and require less court resources.

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 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.

Alternate Defense Counsel. Repealing the death penalty decreases The Office of Alternate Defense Counsel costs and workload by \$256,334 and 2,995 hours per death penalty case on average. This includes attorney, investigator, paralegal, social worker, and other costs incurred related to death penalty appeals.

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.

Department of Corrections. This bill decreases 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. Instead, inmates sentenced to death serve their sentences under intensive supervision. Generally, the cost to house an inmate on death row is \$53,596 per year compared to \$41,365 for an inmate

sentenced to life without parole for an annual difference of \$12,231. Because this bill applies to charges on or after July 1, 2019 and does not commute or alter the sentence for any current offenders sentenced to DOC, no change in current appropriations is expected.

Local Government

Beginning in FY 2019-20, 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. Savings will be offset to the extent that more cases proceed to trial, rather than being plea bargained.

Effective Date

The bill takes effect upon signature of the Governor, or upon becoming law without his signature.

State and Local Government Contacts

Corrections Judicial	Counties Law	District Attorneys Public Safety	Information Technology Sheriffs
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