



Ohio Legislative Service Commission

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Fiscal Note & Local Impact Statement

Bill: S.B. 270 of the 129th G.A.

Date: February 13, 2012

Status: As Introduced

Sponsor: Sen. Brown

Local Impact Statement Procedure Required: Yes

Contents: Abolishment of the death penalty

State Fiscal Highlights

STATE AGENCIES

FY 2013 – FUTURE YEARS

Public Defender

Revenues - 0 -

Expenditures Potential savings of up to \$3.8 million annually in death penalty representation costs

Attorney General

Revenues - 0 -

Expenditures Potential savings of up to \$1.4 million annually in death penalty appellate expenditures

Department of Rehabilitation and Correction

Revenues - 0 -

Expenditures Substantial increase likely over time to incarcerate more offenders for life

Note: The state fiscal year is July 1 through June 30. For example, FY 2013 is July 1, 2012 – June 30, 2013.

- **Public Defender.** The Office of the State Public Defender could experience a savings of up to \$3.8 million annually in money that would otherwise have been expended to provide appellate representation in death penalty cases and to reimburse counties for all or a portion of their costs incurred in the provision of legal representation to indigent defendants in death penalty cases.
- **Attorney General.** The Attorney General could experience an expenditure savings of up to \$1.4 million annually in money that might otherwise have been expended to represent the state in certain appeals where an individual was sentenced to death and the appellate process has begun.
- **Rehabilitation and Correction.** The Department of Rehabilitation and Correction would likely experience a substantial increase in incarceration expenditures in future years, as offenders that would otherwise have been executed under current law could end up serving considerably longer prison stays. The average stay on death row is close to 15 years, while the average length of stay for life without parole is estimated at 40 years, a difference of 25 years.

Local Fiscal Highlights

LOCAL GOVERNMENT

FY 2012 – FUTURE YEARS

Counties

Revenues

- 0 -

Expenditures

Immediate, likely significant, one-time resentencing cost for certain county sheriffs;
Potential long-term statewide savings effect for county criminal justice systems generally

Note: For most local governments, the fiscal year is the calendar year. The school district fiscal year is July 1 through June 30.

- **Sheriffs.** Certain county sheriffs could experience a substantial increase in costs to transport inmates currently on death row to and from resentencing hearings as required by the bill.
- **Indigent defense.** County indigent defense systems could experience an expenditure savings of more than \$1 million annually statewide in money that might otherwise have been expended to provide legal representation to indigent defendants in death penalty cases.
- **Prosecutors and courts.** County prosecutors and courts of common pleas may experience a savings effect, as the abolition of the death penalty may permit both to focus their time and effort on other legal matters.

Detailed Fiscal Analysis

Overview

The bill abolishes the death penalty and requires the trial court that originally sentenced an offender to death to hold a hearing and resentence each offender to life imprisonment without the possibility of parole. Although its effect may generate long-term savings for county criminal justice systems, the bill will likely create significant one-time costs for certain county sheriffs and a long-term increase in the state's prison system, as the number of offenders serving a life sentence would rise. This fiscal analysis is divided into the following two sections: (1) implementation costs associated with resentencing offenders currently on death row and (2) long-term fiscal effects of abolishing the death penalty for the state and counties.

Resentencing costs

Of Ohio's 88 counties, 34 currently have one or more offenders on death row awaiting execution. Under the bill, the sentencing court will be required to hold a hearing and resentence each offender to life in prison without parole. Assuming that these hearings must be held at the sentencing court, additional work will be created for certain county sheriffs, prosecutors, public defenders or appointed counsel, and courts of common pleas. The extent to which a given county would be affected depends largely on the number of offenders that would have to be resented. Table 1 below shows the affected counties along with their corresponding number of offenders currently on death row. The total number of offenders on death row is 147.

County	Number	County	Number	County	Number	County	Number
Hamilton	28	Mahoning	5	Licking	2	Madison	1
Cuyahoga	23	Stark	5	Richland	2	Noble	1
Franklin	11	Lorain	3	Ashtabula	1	Preble	1
Lucas	10	Portage	3	Brown	1	Ross	1
Butler	7	Allen	2	Clinton	1	Vinton	1
Summit	7	Belmont	2	Delaware	1	Warren	1
Montgomery	6	Clermont	2	Jefferson	1	Wood	1
Trumbull	6	Green	2	Lake	1	Total	147
Clark	5	Guernsey	2	Lawrence	1		

*As of December 12, 2011

According to the Buckeye State Sheriffs' Association, due to the security risk, death row offenders would be transported separately, meaning multiple trips for some counties, and would require the accompaniment of at least one deputy, if not two. In many cases this could involve overtime pay depending upon the number of deputies required and the amount of time necessary to transport the offender, which in some

cases could be up to several hours each way. For some counties, such as Hamilton (28 death row offenders) and Cuyahoga (23 death row offenders), the one-time costs incurred to transport and secure death offenders could be significant. If these hearings could be held using video conferencing technology, the costs to the sheriff would be eliminated.

There likely would be a minimal at most one-time cost to the court, prosecutor, and public defender for their participation in these resentencing hearings.

Abolishing the death penalty

It should be noted that actual cost and expenditure data is not readily available for all of the agencies involved in the investigation, prosecution, defense, adjudication, and post-conviction review. While the defense and incarceration costs can in some cases be estimated, no state or local agency maintains itemized bills that account for all of the time that state and local agencies spend over the lifetime of any given death penalty case. The following sections provide a description of where costs and savings may occur generally from the abolition of the death penalty. More specific information on cost components is included when available.

County fiscal effects

The county is responsible for trying and sentencing defendants in aggravated murder cases regardless of whether there is a death specification. These costs include both the costs for the prosecution and public defense counsel, as many defendants in murder cases are indigent. Any aggravated murder trial, regardless of the presence of a death specification, will likely incur costs for expert witness consultation and testimony, psychologists, and investigators. Those costs are not likely to differ significantly based solely on the presence or absence of a death specification, however, death penalty cases are bifurcated, meaning there are two phases; a guilt phase and a penalty phase. As such, many of the costs incurred in the guilt phase tend to be duplicated in the penalty phase, thereby significantly increasing the overall costs to try a death penalty case. Other costs, such as jury compensation, defense mitigation and prosecution experts, the number of defense attorneys required, and public defender compensation vary by case and by county. That said, courts, prosecutors, and public defenders may realize what might best be termed a savings effect, as the abolition of the death penalty, rather than producing an expenditure reduction, may instead permit them to allocate more time and effort on other legal matters. The general absence of expenditure data makes an estimation of that potential savings effect problematic.

Defense counsel costs

For death penalty cases involving an indigent person at the trial level, we can glean information from the Ohio Public Defender's annual reports on the costs that counties incur in providing that representation. As Table 2 on the following page summarizes for FYs 2006-2011, the total amount that counties incurred statewide in providing death penalty representation averaged \$2.3 million (fees plus expenses). Of

that total statewide amount, the Ohio Public Defender has reimbursed around \$670,521, or about 30%.

Table 2. Average Death Penalty Representation Costs, FY 2006-FY 2011	
Cost Center	Average
Total County Costs Statewide	\$2,262,263
Statewide Reimbursement	\$670,521
Net County Costs Statewide	\$1,591,742

Based on assumptions made regarding FY 2011 reimbursements and extrapolating from those estimates, the Office of the Ohio Public Defender has determined that the total amount of county reimbursement submissions statewide could have decreased by as much as \$1.5 million in FY 2011, if all of the death penalty cases had been tried instead as a murder case without a death specification.

State fiscal effects

Office of the Ohio Public Defender

The Office of the Ohio Public Defender has two notable roles and related expenses from which we can glean some fiscal information related specifically to death penalty cases.

Death Penalty Division. The Public Defender's Death Penalty Division provides competent legal counsel to indigent persons under the sentence of death (Ohio's death row inmates on direct appeal, state post-conviction, federal habeas corpus, and clemency appeals), as well as legal assistance, criminal investigation and mitigation, and trial services to private appointed attorneys in such cases. To finance the cost of these activities, the Public Defender has expended close to \$2 million annually, most of which is supported by non-GRF appropriations. In FY 2010, the division's expenditures totaled approximately \$1.8 million. Of that amount, \$1.4 million, roughly 80%, was used to pay the salaries and benefits of the division's 19 full-time equivalent staff. If, as a result of the bill, the Death Penalty Division was eliminated, the Public Defender could realize a savings of up to \$1.8 million annually. However, that savings could be mitigated to the degree that the Public Defender chose to reallocate those resources to perform other duties and responsibilities.

County cost reimbursements. The Ohio Public Defender is required to reimburse up to 50% of the costs that a county incurs in providing legal representation to an indigent person in a criminal trial. As seen in the table above, over the course of FY 2006-FY 2011, the Ohio Public Defender reimbursed counties statewide, on average, around \$670,000 per year for death penalty case representation. The Office of the Ohio Public Defender has determined that the total amount of county reimbursements paid out statewide could have decreased by as much as \$500,000 in FY 2011, if all of the death penalty cases had been tried as murder cases without a death specification.

Attorney General

The Capital Crimes Unit within the Criminal Justice Section of the Office of the Attorney General works to uphold death sentences imposed by the state and assists prosecutors with capital litigation in state courts when requested and with responding to clemency requests prior to execution. In FY 2010, the Capital Crimes Unit had an annual budget of \$1.4 million, with approximately \$800,000 allocated to pay the salaries of 13.25 full-time equivalent staff. If the Capital Crimes Unit was eliminated as a result of the bill, there could be a savings of up to \$1.4 million annually; however, any savings would be mitigated to the degree that the Attorney General chose to reallocate those resources to perform other duties and responsibilities.

Department of Rehabilitation and Correction

The Department of Rehabilitation and Correction (DRC) is responsible for housing all offenders sentenced to a prison term and for carrying out the execution of all state-imposed death sentences. As such, DRC would experience a combination of factors that both increase and decrease the Department's expenditures; these factors, which are discussed below, include (1) incarceration costs and (2) execution costs. The net effect of these two factors will ultimately result in an expenditure increase over time, as offenders that would otherwise have been sentenced to death under current law will be serving longer periods of incarceration.

(1) Incarceration costs

Table 3 on the following page provides a comparison of the cost to incarcerate two categories of offenders: (1) those sentenced to death and (2) those sentenced to life without parole (LWOP). As seen in the table, the total cost to incarcerate either type of offender depends on one's assumption as to their length of stay in prison. That said, by abolishing the death penalty, DRC would experience an increase in incarceration costs as certain offenders would be spending longer periods of time in prison than would be the case under current law. This increase, however, would not occur immediately, but would happen gradually over time as inmates currently on death row are incarcerated past what would have been their execution date, and offenders who could have been sentenced to death under current law are incarcerated for more than the average length of incarceration prior to execution (14.6 years).

Table 3. Average incarceration cost comparison of death and life without parole sentences		
Time served (in years)	Death sentence	Life sentence without parole
5	\$91,250	N/A
10	\$182,500	N/A
14.6*	\$266,450	N/A
15	\$273,750	N/A
20	\$365,000	\$501,080
25	\$456,250	\$626,350
30	\$547,500	\$751,620
35	N/A	\$876,890
40**	N/A	\$1,002,160
45	N/A	\$1,127,430
50	N/A	\$1,252,700
55	N/A	\$1,377,970

N/A means "not applicable"

* Average time served on death row

** Estimated average time served for LWOP sentence

Death sentence. Death row incarceration costs are not calculated separately by DRC, so we used the per diems of the correctional institutions that house those inmates to calculate a weighted average. This amount translates into an average of about \$50 per day, or \$18,250 per year, to incarcerate an inmate serving a death sentence. The amount of time spent on death row since executions resumed in 1999 has ranged from three years to about 28 years, with an average time spent on death row of 14.6 years.

Life sentence without parole. A sentence of life without parole (LWOP) became a sanctioning tool available to Ohio's trial courts in July 1996. Since that time, 367 offenders have received an LWOP sentence, all of whom are still incarcerated in the state's prison system. This means that there is no actual time served data for offenders serving an LWOP sentence in Ohio, as in order to have completed their sentence an offender has to have died while incarcerated and none have.

What we do know is that the average age for these LWOP-sentenced offenders at the time of their commitment to prison was about 32. If we assume that a life-sentence offender is around 30 years of age at their time of commitment and will die in prison at around 70 years of age, their time served will be approximately 40 years. At a current annual incarceration cost of around \$25,000 per offender, the total cost of incarcerating that LWOP-sentenced offender can be estimated at around \$1 million (\$25,000 annual incarceration cost x 40 years).

This figure does not incorporate the likelihood that, as an LWOP-sentenced offender ages, their health will deteriorate and the costs for the state to provide appropriate health care will rise. This generally reflects the cumulative effect of an unhealthy lifestyle coupled with a prison environment that is not conducive to healthy living.

(2) Execution costs

DRC is also responsible for carrying out all state-imposed executions. These executions take place during regular business hours and are carried out by volunteer staff members. The primary cost of an execution is the drug used for the lethal injection. DRC currently uses pentobarbital at a cost of about \$2,000 for 5 grams. As such, the Department would initially save \$294,000 (147 death row inmates x \$2,000) in execution costs for the offenders currently on death row, however, that savings will be completely offset over time by the much larger increase in long-term incarceration costs.

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