



*Colorado Legislative Council Staff Fiscal Note*  
**FINAL**  
**FISCAL NOTE**

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<b>Drafting Number:</b> LLS 09-0282	<b>Date:</b> June 30, 2009
<b>Prime Sponsor(s):</b> Rep. Weissmann Sen. Carroll M.	<b>Bill Status:</b> Lost in Senate
	<b>Fiscal Analyst:</b> Jessika Shipley (303-866-3528)

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**TITLE:** CONCERNING CAPITAL CRIMES, AND MAKING AN APPROPRIATION IN CONNECTION THEREWITH.

<b>Fiscal Impact Summary</b>	<b>FY 2009-2010</b>	<b>FY 2010-2011</b>
<b>State Revenue</b>		
<b>State Expenditures</b> General Fund	(\$1,036,772)	(\$1,036,772)
<b>FTE Position Change</b>	(2.0 FTE)	(2.0 FTE)
<b>Effective Date:</b> The bill was lost in the Senate on May 6, 2009.		
<b>Appropriation Summary for FY 2009-2010:</b> See State Appropriations section		
<b>Local Government Impact:</b> See Local Government section		

**Summary of Legislation**

This bill went through a number of versions and a conference committee before it was ultimately lost in the Senate. This summary reflects the reengrossed version of the bill, which is the closest to that which was most often discussed and debated. The bill eliminates the death penalty. It declares the intent of the General Assembly to use any savings resulting from the abolition of the death penalty to increase funding for the Cold Case Homicide Team of the Colorado Bureau of Investigation, created in 2007.

**State Expenditures**

This bill is expected to reduce General Fund expenditures by \$1,036,772 for FY 2009-10 and FY 2010-11 in the Judicial Branch and the Department of Law.

**Judicial Branch, Alternate Defense Counsel.** This bill is expected to create a cost savings for the Office of the Alternate Defense Counsel (ADC) of \$582,758 in FY 2009-10 and FY 2010-11. The ADC contracts with attorneys throughout the state to provide representation for indigent defendants in cases where the public defender has a conflict of interest. The fiscal note assumes, given historical data, that the ADC would be assigned 2 new death penalty cases each year without the bill that would shift to first degree murder cases under the bill. Between January 1997 and January 2009, the ADC spent \$11.5 million defending clients in death penalty cases, both at the trial

court and post-conviction/appellate level. The ADC handled an average of 3 cases per year (both new cases and appellate work) for that 12-year period, for an average cost per case of \$311,839. The average cost for a first degree murder case without the death penalty is \$20,460. The total savings per case as a result of this bill are \$291,379, or \$582,758 for 2 cases each year.

***Judicial Branch, State Public Defender.*** This bill is expected to result in decreased expenditures for the Office of the State Public Defender (OSPD) of \$275,548 in FY 2009-10 and FY 2010-11. The OSPD incurs mandated costs for expert consultations and testimony, expenses for witnesses, investigators and experts, in-state travel, general supplies and copies, transcripts, and discovery. The OSPD defends an average of 4 death penalty cases each year. Under the bill, the 4 death penalty cases would become non-death penalty murder cases. Converting 4 death penalty cases each year to non-death penalty murder cases will result in mandated costs savings of \$275,548 each year.

***Judicial Branch, Trial Courts.*** The bill will result in decreased mandated costs for the trial courts of \$32,950 each year. There are certain mandated costs included in the annual budget for the state trial courts. These include items such as mailing jury summonses, per diem payments to jurors, and mileage paid to jurors, among other things. Most death penalty cases require a high number of alternate jurors and average 18 members. The average death penalty trial lasts approximately 8 weeks and individual jurors are paid \$50 per day of jury duty and about \$10 per juror for mileage and other statutorily required expenses. The average non-death penalty murder trial lasts about 2 weeks. This bill will result in a savings of 6 weeks of payments to jurors per murder trial and fewer jury summonses mailed to potential jurors.

***Department of Law.*** The bill will result in a cost savings of \$145,516 and 2.0 FTE each year. In FY 2007-08, the department was appropriated \$376,643 and 4.0 FTE for the Capital Crimes Prosecution Unit, which has since been renamed the Homicide Investigation Assistance Unit. The unit currently performs a number of functions, including assisting district attorneys in prosecuting cold homicide cases. The unit requires a senior assistant attorney and a criminal investigator in order to continue functioning. Under the bill, the department will no longer need a senior assistant attorney and an administrative assistant for the unit.

***Department of Public Safety.*** This bill declares the intent of the General Assembly to use the anticipated General Fund savings from the abolition of the death penalty to increase funding to the Cold Case Homicide Team in the Colorado Bureau of Investigation (CBI). The fiscal note assumes this savings will be \$1,036,772 in FY 2009-10 and FY 2010-11.

The Cold Case Homicide Team was created within the CBI by HB07-1272. As a result of that bill, the department has been appropriated approximately \$68,000 and 1.0 FTE each year for the creation of a statewide cold case homicide database. The department indicates that it can expand and efficiently staff the Cold Case Homicide Team with \$833,376 and 8.0 FTE annually. The bill places no requirements on the department.

### **Local Government Impact**

Local governments are responsible for funding most of the costs associated with district attorney's offices. Assuming the homicide rate remains constant with or without the death penalty, there will be fiscal savings to counties under this bill. If the homicide rate increases dramatically as a result of abolishing the death penalty, counties will see a corresponding increase in costs.

### **State Appropriations**

The following General Fund appropriations reductions are required under House Bill 09-1274 for FY 2009-10:

Judicial Branch, Office of the Alternate Defense Counsel		\$582,758
Judicial Branch, Office of the State Public Defender		\$275,548
Judicial Branch, Trial Courts Division		\$32,950
Department of Law	2.0 FTE	\$145,516
<b>Total</b>	<b>2.0 FTE</b>	<b>\$1,036,772</b>

This analysis assumes it is at the discretion of the General Assembly to appropriate moneys to the Cold Case Homicide Team pursuant to Section 24-33.5-425, C.R.S., and established by House Bill 07-1272. The bill contains a clause that appropriates \$833,376 and 8.0 FTE to the Department of Public Safety for FY 2009-10. The fiscal note simply indicates that the bill does not *require* additional funding.

### **Departmental Differences**

**Judicial Branch, State Public Defender.** The OSPD indicates that it can reasonably reduce its annual operating budget by \$1 million with no reduction in FTE. This is \$724,452 more than the \$275,548 for mandated costs reflected in this fiscal note. The OSPD proposes to forfeit up front some of the resources it plans to request in the future for dedicated capital case staff and normal caseload staffing deficit reduction. The loss of this funding would be offset by the efficiency gained by representing the 4 death penalty cases as non-death penalty murder cases with a smaller litigation team.

The OSPD requires 4.1 FTE to defend each death penalty case versus 2.4 FTE for each non-death penalty murder case, for a difference of 1.7 FTE per case or 6.8 FTE for 4 cases each year. Because the OSPD is significantly understaffed (40 percent staffing deficit in FY 2008-09) and various standards of representation of clients must be maintained, the OSPD reports that it cannot reasonably reduce FTE as a result of this bill. The amount of \$724,452 represents only a portion of the personal services costs for 6.8 FTE. The fiscal note does not include this savings because this type of resource reallocation is generally addressed through the annual budget process.

***Department of Public Safety.*** The department estimates a need for \$833,376 and 8.0 FTE in FY 2009-10 and \$753,378 and 8.0 FTE in FY 2010-11. The needs occur in the CBI's Cold Case Homicide Team and include personal services and operating costs for:

- 1.0 FTE Criminal Investigator III to act as a team director;
- 4.0 FTE Criminal Investigator II to work in two teams across the state conducting complex or violent crime investigations;
- 1.0 FTE General Professional III to act as the team's intelligence analyst and criminal profiler; and
- 2.0 FTE Laboratory Criminal Investigator II to analyze crime scene evidence and do crime scene reconstruction.

The bill declares the intent of the General Assembly to use the savings generated by the repeal of the death penalty to increase funding to the Cold Case Homicide Team, however there is no statutory change to mandate this.

**Departments Contacted**

Corrections      District Attorneys      Judicial      Law      Public Safety