

TENNESSEE GENERAL ASSEMBLY  
FISCAL REVIEW COMMITTEE



**FISCAL NOTE**

**HB 1317 - SB 1364**

January 4, 2016

**SUMMARY OF BILL:** Removes death as a possible penalty for first degree murder; repeals Tenn. Code Ann. § 39-13-206 relative to the appeal and review of death sentence verdicts; and repeals Tenn. Code Ann. § 39-13-217 relative to prioritizing capital cases in court dockets.

**ESTIMATED FISCAL IMPACT:**

**Increase State Expenditures – \$578,800/Incarceration\***

**Decrease State Expenditures – \$600/FY16-17 through FY24-25  
\$2,321,400/FY25-26 and Subsequent Fiscal Years**

*Assumptions:*

- The bill repeals the death penalty in Tennessee.
- Under current law, a person convicted of first degree murder can be sentenced to life in prison, life in prison without the possibility of parole, or death.
- The bill would make first degree murder punishable by life in prison or life in prison without the possibility of parole.
- The bill will increase expenditures relative to incarceration costs and decrease expenditures relative to purchasing lethal injection drugs and funding the Office of the Post-Conviction Defender (Post-Conviction Defender).

*Assumptions Relative to Incarceration Costs:*

- Tennessee executed six inmates from 1977 to 2009—all six occurred between 2000 and 2009. Data from the Department of Correction (DOC) shows the average time served before execution was 20.33 years. DOC data shows the average time served for first degree murder is 28.54 years. It is assumed that this reflects the time served for a sentence of life in prison, rather than a sentence of life in prison without the possibility of parole as an inmate sentenced to life in prison without the possibility of parole is never released from DOC custody. DOC records an inmate's time served upon the inmate's release from DOC custody.

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- For purposes of this note, it is assumed that the defendants, who would be sentenced to death if it were an available sentence, will be sentenced to life in prison without the possibility of parole, rather than life in prison.
- The average age of the last six inmates executed was 51.83 years of age. Death Penalty USA, <http://www.deathpenaltyusa.org/usa/state/tennessee.htm> (last visited Dec. 14, 2015).
- According to a 2015 study by the World Health Organization, the life expectancy for an American male is 76 years of age. World Health Organization, <http://apps.who.int/gho/data/view.main.680?lang=en> (last visited Dec. 14, 2015).
- A recent study at Vanderbilt University, however, shows that incarcerated individuals show a 15.6 percent increase in the odds of death, which translates to a two-year decline in life expectancy for every year served inside prison. Evelyn J. Patterson, *The Dose-Response of Time Served in Prison on Mortality: New York State, 1989-2003*, 103 AM. J. PUB. HEALTH 523 (2013).
- It is assumed that the average life expectancy of an inmate serving a life sentence without the possibility of parole is 60 years. This is calculated by reducing the American male life expectancy of 76 by two years for every year served beyond 52 years of age, which is the average age of execution in Tennessee.
- The bill will increase the average time served by an inmate that would otherwise be sentenced to death.
- Data from the DOC shows approximately two and one-half defendants per year are convicted of first degree murder and sentenced to death. The bill will result in three defendants per year being sentenced to life in prison without the possibility of parole rather than death and serving an additional eight years (2,922 days) in DOC custody (60 life expectancy – 52 average age of inmates at execution).
- According to the U.S. Census Bureau, population growth in Tennessee has been 1.12 percent per year for the past 10 years, yielding a projected compound population growth of 11.78 percent over the next 10 years. Population growth will not affect the fiscal impact of this legislation due to the low number of inmates affected.
- According to the DOC, 49.1 percent of offenders will re-offend within three years of their release. A recidivism discount of 49.1 percent has been applied to this estimate to account for the impact of offenders who would re-offend under current law within the additional time added by this bill. A recidivism discount does not apply to this bill, because the inmates in question are not subject to release from DOC custody.
- According to the DOC, the average operating cost per offender per day for calendar year 2015 is \$66.03.
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on three offenders serving an additional eight years (2,922 days) for a total of \$192,939.66 (\$66.03 x 2,922 days). The cost for three offenders is \$578,818.98 (\$192,939.66 x 3).

*Assumptions Relative to Lethal Injection Drugs:*

- Tennessee uses pentobarbital for lethal injections. Tim Ghianni, *Tennessee Moves to*

*Single-Drug Executions Despite Pentobarbital Shortage*, REUTERS (Sept. 27, 2013), <http://www.reuters.com/article/usa-execution-tennessee-idUSL2N0HN2CR20130928>.

- The average cost of pentobarbital is \$1,286.86 per dose. Molly Hennessy-Fiske, L.A. TIMES (Feb. 24, 2012), <http://articles.latimes.com/2012/feb/24/nation/la-na-nn-execution-drugs-20120224>.
- Tennessee executed six inmates over the last 15 years, approximately 0.4 per year. It is assumed that Tennessee purchases pentobarbital as needed, i.e., once every two years.
- The bill will decrease state expenditures relative to pentobarbital by an average of \$643.43 per year ( $\$1,286.86 / 2$  years).

*Assumptions Relative to Post-Conviction Defender Conference:*

- Tennessee Code Annotated § 40-30-206 charges the Post-Conviction Defender with representing any person convicted and sentenced to death in the state who is without counsel and who is unable to secure counsel due to indigence for the purpose of instituting and prosecuting collateral actions challenging the legality of the judgment and sentence imposed against the person.
- The bill, if enacted, would negate the purpose of the Post-Conviction Defender. The Post-Conviction Defender would have to wind down its current caseload, which would take several years.
- It is assumed that the Post-Conviction Defender needs nine years to wind down.
- The FY15-16 budget for the Post-Conviction Defender is \$2,320,800. It is assumed that the budget would remain constant over the wind down period.
- Beginning in fiscal year 2025-26 and in each subsequent fiscal year, the decrease in state expenditures will be \$2,320,800.

*Assumptions Relative to Total Decrease in Expenditures:*

- A decrease in state expenditures of \$643 per year from FY16-17 through FY24-25.
- A total decrease in state expenditures of \$2,321,443 ( $\$643 + \$2,320,800$ ) in FY25-26 and subsequent fiscal years.

*Assumptions Relative to the Courts, District Attorneys, and Public Defenders:*

- The bill neither decreases nor increases the caseloads of the courts, district attorneys, or public defenders. It changes the sentencing phase of first degree murder cases.
- It is assumed that any impact to the courts, district attorneys, and public defenders can be accommodated within existing resources.
- The Administrative Office of the Courts, the District Attorneys General Conference, and the District Public Defenders Conference confirm that the bill will not significantly impact their operations.

*\*Tennessee Code Annotated, Section 9-4-210, requires that: For any law enacted after July 1, 1986, which results in a net increase in periods of imprisonment in state facilities, there shall be appropriated from recurring revenues the estimated operating cost of such law. The amount appropriated from recurring revenues shall be based upon the highest cost of the next 10 years.*

**CERTIFICATION:**

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in blue ink that reads "Krista M. Lee". The signature is written in a cursive, flowing style.

Krista M. Lee, Executive Director

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