



[SF 357](#) – Death Penalty (LSB1306SV)

Staff Contact: Isabel Waller (515.281.6561) isabel.waller@legis.iowa.gov

Fiscal Note Version – New

Description

[Senate File 357](#) provides for the death penalty for capital murder committed by a person age 18 or older if the person is convicted of the multiple offenses of murder in the first degree; kidnapping in the first, second, or third degree; and sexual abuse in the first, second, third, or fourth degree with respect to the same victim, and the victim is a minor. The death penalty is required to be conducted by lethal injection.

The Bill provides that if a person is indigent and charged with capital murder, payment of costs for two attorneys is authorized. The Supreme Court is required to establish standards for the competency of counsel in death penalty cases. The State Public Defender is charged with providing or contracting with qualified lead and co-counsel for death penalty cases, as well as conducting or sponsoring specialized training programs for attorneys representing individuals who may be executed. The Bill also provides that if at any point in federal postconviction proceedings an indigent person is not afforded court-appointed counsel, the State must provide counsel to the person if the person is not otherwise represented by legal counsel.

The Bill provides for a bifurcated trial for a case in which the death penalty may be imposed. During the first phase, the jury or the court decides only whether the defendant is guilty or not guilty. The second phase is the penalty proceeding in which it is determined whether the defendant will be sentenced to death or to life imprisonment.

The Supreme Court is required to review all judgments and sentences in which the death penalty is imposed.

The Bill establishes provisions related to the sanity of an inmate under the death penalty, including a court determination of sanity. If the individual is suffering from a mental illness which causes the individual to lack the capacity to understand the sentence imposed and participate in legal proceedings, the execution must not take place until after the individual's capacity is restored.

The Bill takes effect January 1, 2024, and only applies to offenses committed on or after that date.

Background

Murder in the first degree under Iowa Code section [707.2](#) is a Class A felony. A Class A felony is punishable by lifetime imprisonment.

A conviction for all three applicable crimes against a minor occurs approximately once every 8 to 10 years. None occurred in CY 2021 or CY 2022.

At the end of CY 2020, the death penalty was authorized by 31 states and the federal government. In all 31 states, lethal injection was authorized as a method of execution, but an

alternative method of execution was authorized in 15 of these states. The federal government also utilizes lethal injection.

At the end of CY 2020, 2,469 individuals were held under the sentence of death in the United States. During CY 2021, 11 prisoners were executed. Five states and the federal government conducted these executions. All were conducted by lethal injection.

Assumptions

- The following will not change over the projection period: charge, conviction, and sentencing patterns and trends; prisoner length of stay (LOS); revocation rates; plea bargaining; and other criminal justice system policies and practices.
- A lag effect of six months is assumed from the effective date of this Bill to the date of first entry of affected offenders into the correctional system.
- Marginal costs for county jails cannot be estimated due to a lack of data. For purposes of this analysis, the marginal cost for county jails is assumed to be \$50 per day.
- The death penalty will be utilized infrequently.
- The Department of Corrections (DOC) will incur costs for creating an execution facility.
- The Department of Administrative Services (DAS) estimates the construction of the execution facility will cost approximately \$3.3 million, but costs may be higher.
- Contracting with an executioner is estimated to cost approximately \$5,000 per execution.
- The execution medication will include pentobarbital, pancuronium bromide, and potassium chloride. The total cost for all three medications is approximately \$8,900 per execution.
- The Bureau of Justice Statistics reports that individuals on death row serve an average of 18.7 years from sentencing to execution.
- The average LOS for an individual serving life in prison for a Class A felony is 361.0 months.
- The marginal cost per day in prison is \$23.42.
- The State Public Defender provided the following estimates for each death penalty case:
 - The initial trial will require two attorneys and 5,000 hours total.
 - The hourly rate for contract attorneys that are qualified to handle a death penalty case will be approximately \$200 per hour.
 - The initial trial in a similar case without the death penalty would cost the Office at most \$200,000.
 - Expert witness fees for the mitigation phase of a death penalty trial will cost approximately \$200,000.
 - Initial appeals will cost approximately \$200,000, postconviction proceedings will cost approximately \$600,000, and the appeal of the postconviction proceeding will cost approximately \$200,000.
- District court and appellate review costs to the Judicial Branch will be higher for death penalty cases than non-death penalty Class A felony cases. The increase in costs to the Judicial Branch cannot be determined, but district court costs are estimated to increase by 50.0% to 188.0%.
- The average district court cost to the Judicial Branch in judicial officer and court staff time for a Class A felony is approximately \$9,900.
- The multiphase appellate review procedure for death penalty cases would likely require significant Judicial Branch staff time, but the costs for this personnel time cannot be estimated.

Correctional Impact

Senate File 357 is not estimated to have a significant correctional impact because the individuals who would be sentenced to the death penalty would have been serving a life sentence in the State prison system. Additionally, individuals are rarely convicted of all three applicable crimes (kidnapping, sexual abuse, and murder) against a minor in Iowa. Refer to the Legislative Services Agency (LSA) memo addressed to the General Assembly, [Cost Estimates Used for Correctional Impact Statements](#), dated January 20, 2023, for information related to the correctional system.

Minority Impact

The minority impact of Senate File 357 cannot be estimated because the racial breakdown of individuals convicted of all three offenses (kidnapping, sexual abuse, and murder) against a minor is unknown. However, in FY 2022, there were 105 individuals convicted of at least one of the three applicable offenses. Of these 105 individuals, 80.0% were Caucasian, 14.8% were African American, and 5.1% were other races. Iowa's population is 84.5% Caucasian, 3.6% African American, and 11.9% other races. Additionally, the [Bureau of Justice Statistics](#) reports that at the end of CY 2020, approximately 56.5% of individuals under the sentence of death were Caucasian and 41.1% were African American. Of the 11 individuals under the sentence of death who were executed in the United States in CY 2021, 54.5% were African American and 45.5% were Caucasian. Refer to the LSA memo addressed to the General Assembly, [Minority Impact Statement](#), dated January 20, 2023, for information related to minorities in the criminal justice system.

Fiscal Impact

Senate File 357 is estimated to have a fiscal impact to the DOC, the Office of the State Public Defender, and the Judicial Branch. Some of these costs will only be incurred once. Other costs for each individual facing the death penalty will be incurred over multiple years as the trial is held, the sentence is served, and the death penalty is imposed.

Department of Corrections

One-Time Costs — The DOC will incur a one-time cost of at least \$3.3 million for an execution facility, which would include a waiting room, viewing room, and execution chamber.

Recurring Costs — The DOC will incur costs for each execution. This includes costs for a contract executioner and execution medication, for a total of \$13,900 per execution. Additionally, there will be a difference in DOC supervision costs for each individual of approximately \$97,000, as shown in **Table 1**. This would be incurred over multiple years, not at the time of execution. The DOC is funded through the General Fund.

Table 1 — Difference in DOC Supervision Cost Per Individual

	LOS (Days)	Cost Per Day	Supervision Cost
Life in Prison	10,973	\$23.42	\$ 256,988
Death Row	6,825	\$23.42	(159,842)
Difference			\$ 97,146

Office of the State Public Defender

The Office of the State Public Defender estimates that it will incur increased costs of approximately \$2.0 million for each individual it represents in a death penalty case, as shown in **Table 2**. These costs will be incurred over multiple fiscal years and will be to the Indigent Defense Fund, which is funded through the General Fund.

Table 2 — Cost Per Individual Represented by the State Public Defender

Initial Trial	\$1,000,000
Penalty Phase	200,000
Initial Appeal	200,000
Postconviction Trial	600,000
Postconviction Appeal	200,000
Capital Murder Trial Costs	\$2,200,000
Estimated Trial Costs Under Current Law	200,000
Additional Cost Per Case	\$2,000,000

The Office of the State Public Defender also expects to incur approximately \$100,000 to \$150,000 in expenses for conducting specialized training programs for attorneys representing individuals who are facing the death penalty. This represents the cost to create the training program and conduct it initially. If the Office of the State Public Defender is required to continue to conduct the training in subsequent years, the Office anticipates increased expenses to update and replicate the training each year. These expenses would be to the State Public Defender operating budget, which is funded through the General Fund.

Additionally, the State Public Defender would incur additional expenses when it is required to provide counsel in federal postconviction proceedings, but the extent of these expenses cannot be estimated.

Judicial Branch

The total fiscal impact to the Judicial Branch for the increase in court time needed for death penalty cases cannot be estimated. However, the Judicial Branch is estimated to incur increased district court costs of between \$5,000 and \$19,000 for each individual on trial who is facing the death penalty. There may also be increased jury costs for the initial trial, but the amount is unknown. Additionally, there will be increased costs associated with the appellate review under the Bill, but the extent of this increase cannot be estimated. The Judicial Branch is funded through the General Fund.

Table 3 summarizes the fiscal impact by agency. All fiscal impacts are to the General Fund.

Table 3 — Fiscal Impact of SF 357 by Agency

Agency	Description of Cost	Cost
Department of Corrections	Building an Execution Facility	\$3.3 million*
Department of Corrections	Administering an Execution (Per Individual)	\$13,900
Department of Corrections	Supervision Cost (Per Individual)	-\$97,000**
State Public Defender	Attorney Representation (Per Individual)	\$2.0 million
State Public Defender	Conducting Training Programs	\$100,000 to \$150,000 Initially; Potentially More in Future Years
Judicial Branch	District Court (Per Individual)	\$5,000 to \$19,000; Possible Increase in Jury Costs
Judicial Branch	Appellate Review (Per Individual)	Unknown Cost
*One-time costs		
**Represents the difference between supervising an individual in prison until the point of execution versus a life sentence		

Sources

Department of Corrections
 Division of Criminal and Juvenile Justice Planning, Department of Human Rights
 Office of the State Public Defender
 Judicial Branch
 Department of Administrative Services
 U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics

/s/ Jennifer Acton

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The fiscal note for this Bill was prepared pursuant to [Joint Rule 17](#) and the Iowa Code. Data used in developing this fiscal note is available from the Fiscal Services Division of the Legislative Services Agency upon request.
