

PRISON/JAIL POPULATION COST ESTIMATE STATEMENT
NINETY-FIRST SESSION
LEGISLATIVE ASSEMBLY 2016

SENATE BILL NO. 94

AN ACT TO REPEAL THE DEATH PENALTY.

A prison/jail population cost estimate statement has been requested on SB94 due to the repeal of "death" as a penalty for a Class A felony. Section 1 of the Act removes the penalty of death for prospective Class A felony convictions. As a result, persons who are sentenced to death for a Class A conviction will instead be sentenced to life imprisonment. Section 2 of the Act commutes all current death row sentences to a sentence of life imprisonment without parole.

SDCL 2-1-20(2) requires the Legislative Research Council to calculate the projected cost of the bill on the state prison system and county jails on an annual basis and the cost over a ten year period. Because the number of individuals who will receive a death sentence and the time line of events for each individual so sentenced is unpredictable, it is not possible to predict a total annual or ten-year impact on prison costs. It is possible, however, to estimate the average impact per inmate sentenced to death.

Due to the nature of the long-term impact of this sentence, the LRC will extend past the ten year period required by statute and analyze the per inmate impact based on the average time served.

In addition to the actual incarceration costs, there are litigation costs for appeals, "extraordinary" appeals, and the actual cost of the execution. Furthermore, there are constructively undeterminable costs, such as possible avoidance of future litigation through deterrence, and possible costs of administrative isolation. While these may have an effect on the final fiscal cost, they must be excluded due to their nebulous nature and risk of inaccuracy. This analysis will explore appeals and incarceration costs alone.

Both inmates on death row and those serving a life sentence have the right to the same core appeals. The right to these proceedings cannot be denied without waiver. These six core criminal proceedings consist of: adjudication of guilt, direct appeal, state habeas corpus, appeal from the state habeas corpus, federal habeas corpus, and appeal from federal habeas corpus. Because these appeals are available to both types of inmates, it is difficult to determine the likelihood an inmate will exercise his or her appeals, and how many appeals will be pursued.

Furthermore, some possible capital cases are pled to life imprisonment to avoid the death penalty, and at times some or all of the six core appeals are waived in those cases, eliminating those potential costs.

In addition to the core appeals, both death row inmates and inmates serving a life sentence have the possibility for “extraordinary” litigation, defined here as any proceeding outside of the six core proceedings. Since these proceedings are also available to both capital and non-capital cases, it is difficult to determine an accurate estimate of the number of possible appeals and the likelihood those appeals are sought. Because the number of appeals varies so greatly between death row inmates and inmates serving life in prison without parole, and because all of the appeals are available to both types of inmates, it is the opinion of the LRC that these costs must be considered similar for death row inmates and inmates serving a life sentence without parole for purposes of this analysis. As a result, we cannot estimate a substantial financial impact in the area of litigation.

Therefore, the main cost differences between inmates on death row versus inmates serving a life sentence without parole manifest in the average time served for both sentences.

DOC data indicates that the average time served by an inmate on death row in South Dakota is between twelve and thirteen years. DOC data also indicates the average cost per year per current death row prisoner is \$27,506. Data provided by the Attorney General indicates that it costs \$60,525 to execute an inmate on death row. Taking the average yearly cost multiplied by the average number of years imprisoned before execution, and adding the cost of execution, the average cost for a death row inmate in South Dakota is approximately \$418,103 for incarceration and death. This number does not include any costs for litigation.

DOC data indicates that the average time served by an inmate serving life in prison without parole is between twenty and twenty-one years. DOC data also indicates that the average cost per year per prisoner is \$27,506. Taking the average yearly cost multiplied by the average number of years served, the cost for an inmate serving life in prison without parole in South Dakota is approximately \$577,626. This number does not include any costs for litigation.

Therefore, an inmate serving life in prison without parole instead of being sentenced to death will cost approximately \$159,523 more in incarceration costs over the course of the inmate’s sentence.

There are three inmates currently sentenced to death. Two of the inmates are in their mid-to-upper fifties, one of whom is scheduled for execution in the next three years. The third inmate is in his mid-thirties, and has roughly thirteen

years of appeals left before execution. DOC data indicates an average lifespan of 57 years for inmates. If their sentences are commuted, and we assume they live to the average lifespan, there will be no real financial difference between life in prison or execution for the inmates in their fifties, but around an \$187,029 increase for the inmate in his thirties for a sentence of life imprisonment without parole. Therefore, the possible impact for Section 2 of this Act is around \$187,029. There is no impact to jail costs.

Approved: /S/ Jason Hancock Date: 2/9/16

Director, Legislative Research Council