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## FISCAL IMPACT REPORT

ORIGINAL DATE 1/27/09  
 SPONSOR Chasey LAST UPDATED 1/31/09 HB 285  
 SHORT TITLE Abolish Death Penalty SB \_\_\_\_\_  
 ANALYST C. Sanchez

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non- Rec	Fund Affected
<b>Total</b>	NA	Indeterminate	Indeterminate	Indeterminate	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)

Public Defender (PD)

Department of Corrections (DOC)

### SUMMARY

#### Synopsis of Bill

House Bill 285 abolishes the death penalty by amending Section 31-18-14 NMSA 1978 and substituting either a sentence of life or life without possibility of release or parole for a death sentence.

HB 285 amends Section 31-20A-2 NMSA 1978 to remove the subsection concerning the jury's determination of a life or death sentence and providing that upon a finding by the jury, beyond a reasonable doubt, that one or more Section 31-20A-5 aggravating circumstances exist, the defendant shall be sentenced to life imprisonment without possibility of release or parole.

Additionally, Section 31-21-10 NMSA 1978 is amended to provide that an inmate sentenced to life imprisonment without possibility of release or parole is not eligible for parole and shall remain incarcerated for life. The bill repeals Sections 31-14-1 through 31-14-16, 31-18-14.1, 31-20A-2.1 through 31-20A-4, and 31-20A-6 NMSA 1978, the sections relating to capital felony sentencing, capital felony cases heard by jury, and the execution of the death sentence.

HB 285 provides that the Act applies to crimes committed on or after July 1, 2009.

The effective date of the Act is July 1, 2009.

## **FISCAL IMPLICATIONS**

According to the Public Defender Department, abolishing the death penalty would save New Mexico millions of dollars. The State Bar Task Force on the Administration of the Death Penalty in New Mexico Final Report,<sup>1</sup> completed in 2004, outlines exactly why death penalty cases are so costly: These cases require heightened standards for defense counsel and at least two highly qualified defense attorneys at each stage of proceedings.<sup>2</sup> They require extensive trial level litigation as well as constitutionally and statutorily mandated appeal.<sup>3</sup> Unlike any other criminal trial, these cases demand that a certified court reporter transcribe all proceedings.<sup>4</sup> The survivors of the victim should be accorded particular respect.<sup>5</sup> Jury selection is a long, arduous process that potentially touches on the constitutional and religious rights of New Mexicans, and costs at least four times as much as a non-death first-degree murder case.<sup>6</sup> Due to changes in federal habeas corpus law, these cases must be long and thoroughly litigated in state court habeas proceedings as well.<sup>7</sup> The Task Force ultimately recognized and recommended substantial changes to the way death penalty cases are prosecuted and defended in New Mexico, which may further increase costs.

Although a study has ever been done in New Mexico on the total costs of a death penalty case to the state (including the prosecution, the public defender, and the extensive drain on court resources.), a recent Duke University study done on North Carolina's costs found that the death penalty costs North Carolina \$2.16 million dollars per execution over a system that imposes life imprisonment.<sup>8</sup>

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<sup>1</sup> State Bar of New Mexico Task Force to Study the Administration of the Death Penalty in New Mexico Final Report, submitted to the Board of Bar Commissioners January 23, 2004 (The Honorable Rudy S. Apodaca and Jerry Todd Wertheim, co-chairs), *available online at* [http://www.nmbar.org/Content/NavigationMenu/Publications\\_Media/Reports\\_Surveys/Report\\_on\\_the\\_Death\\_Penalty/TskfrcDthPnltyRprt.pdf](http://www.nmbar.org/Content/NavigationMenu/Publications_Media/Reports_Surveys/Report_on_the_Death_Penalty/TskfrcDthPnltyRprt.pdf).

<sup>2</sup> *Id.* at 7-10. See also American Bar Association, *Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases* (February 2003).

<sup>3</sup> *Id.* at 12-21.

<sup>4</sup> *Id.* at 22.

<sup>5</sup> *Id.*

<sup>6</sup> State Bar of New Mexico Task Force to Study the Administration of the Death Penalty in New Mexico Final Report at 23; Telephone conversation with court administrator Fern Goodman, 2/1/05. Fern estimated that the costs to be \$20-25,000 for a death jury and \$7-8,000 for a non-death jury. This is her conservative estimate, and it does not include the costs of a change of venue or the cost of bringing witnesses or experts concerning juror exposure and venue.

<sup>7</sup> *Id.* at 24.

<sup>8</sup> P. Cook, "The Costs of Processing Murder Cases in North Carolina," Duke University, May 1993.

New Mexico does not receive much return on its death penalty investment. Fewer than half of the cases in which the prosecutor seeks the death penalty end in a death sentence. And, according to the National Bureau of Justice Statistics, 68% of all these convictions are overturned on appeal—the highest overturn rate in the United States.<sup>9</sup> Therefore, fewer than one-fourth of all death penalty prosecutions ultimately result in a defendant going to death row in New Mexico. Finally, New Mexico’s actual execution rate is even lower than the 12% of all convicted and sentenced murderers ultimately executed, nationally.<sup>10</sup> Taking this data to its logical conclusion, there is only a 4.5% chance that any multi-million dollar death penalty prosecution will ever end in an execution in New Mexico.

According to the Administrative Office of the Courts, Moreover, to assemble a jury for a death penalty case, the district court will summon as many as one thousand (1,000) people. An estimate of what a death penalty case cost for the jury and witness fee fund is approximately \$20,000-\$25,000. In contrast, a non-death penalty murder case cost approximately \$7,000-\$8,000.

According to the Corrections Department the bill could result in a moderate placement burden on the Department. Because the Department currently operates all of its facilities at or near capacity, it would be difficult to continually absorb new offenders who have been sentenced to life without the possibility of release or parole. If large numbers of offenders are convicted and sentenced under the provisions of the bill, it may become necessary for the state to build new facilities or enlarge those already in existence.

### **SIGNIFICANT ISSUES**

This bill would abolish the death penalty and amend existing criminal law regarding life sentences. Specifically, the bill provides that persons sentenced to life imprisonment as a result of the commission of a capital felony where the jury found beyond a reasonable doubt that one or more aggravating circumstances existed would not be eligible for parole and would be required to remain incarcerated for the entirety of their natural lives. Thus, the bill will effectively establish the penalty of a life sentence without the possibility of release or parole for any offenders convicted of a capital felony with one or more aggravating circumstances. If the jury does not make the required finding that one or more aggravating circumstances exist, the offender will be sentenced to life imprisonment (and eligible for but not guaranteed parole after 30 full years in prison).

### **ADMINISTRATIVE IMPLICATIONS**

Death penalty cases take up a considerable amount of judicial time because the district courts have to conduct not only a trial but a sentencing phase as well.

### **TECHNICAL ISSUES**

There may be concern that the provisions for carrying out the death penalty, Sections 31-14-1 through 31-14-16 NMSA 1978, are repealed in the Act, despite the fact that there are currently inmates on death row.

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<sup>9</sup> U.S. Dept. of Justice, Bureau of Justice Statistics, “Capital Punishment 2003,” appendix Table 4, 2004.

<sup>10</sup> U.S. Dept. of Justice, Bureau of Justice Statistics, “Capital Punishment 2003,” appendix Table 4, 2004.

## **OTHER SUBSTANTIVE ISSUES**

As of April 1, 2008, the Death Penalty was authorized by 37 states, the Federal Government, and the U.S. Military. Those jurisdictions without the Death Penalty include 13 states and the District of Columbia. (Alaska, Hawaii, Iowa, Maine, Massachusetts, Michigan, Minnesota, New Jersey, North Dakota, Rhode Island, Vermont, West Virginia, and Wisconsin).

Capital punishment was suspended in the United States from 1972 through 1976 primarily as a result of the Supreme Court's decision in *Furman v. Georgia*, 408 U.S. 238 (1972). In this case, the court found the imposition of the death penalty in a consolidated group of cases to be unconstitutional, on the grounds of cruel and unusual punishment in violation of the eighth amendment to the United States Constitution.

Capital punishment is often the subject of controversy. Opponents of the death penalty argue that it has led to the execution of innocent people, that life imprisonment is an effective and less expensive substitute, that it discriminates against minorities and the poor, and that it violates the criminal's right to life. Supporters believe that the penalty is justified for murderers by the principle of retribution, that life imprisonment is not an equally effective deterrent, and that the death penalty affirms the right to life by punishing those who violate it in the strictest form

The Public Defender Department reports that this bill would greatly streamline the litigation and appeal of what are now death penalty cases, because it will eliminate the death penalty specific pre-trial appeals, the greatly expanded jury selection, and the bifurcated trial procedures (a guilt phase and a penalty phase trial) that are now required under the Capital Felony Sentencing Act to comply with the United States Constitution Eighth Amendment's prohibition against cruel and unusual punishment. Abolishment of the death penalty would also negate the Capital Felony Sentencing Act's detailed appellate review in the New Mexico Supreme Court.

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

The death penalty will remain legal in New Mexico.

CS/mt:svb