

HOUSE BILL 7

52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SPECIAL SESSION, 2016

INTRODUCED BY

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AN ACT

RELATING TO CAPITAL FELONY SENTENCING; REINSTATING THE DEATH PENALTY; PROVIDING SENTENCING PROCEDURES; PROVIDING MITIGATING CIRCUMSTANCES; REQUIRING AUTOMATIC REVIEW OF CONVICTION AND SENTENCE BY THE SUPREME COURT; PROVIDING PROCEDURES FOR EXECUTION; PROHIBITING EXECUTION OF CERTAIN PERSONS; REQUIRING EXECUTION BY LETHAL INJECTION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 31-18-14 NMSA 1978 (being Laws 1979, Chapter 150, Section 1, as amended) is amended to read:

"31-18-14. SENTENCING AUTHORITY--CAPITAL FELONIES.--

A. When a defendant has been convicted of a capital felony, the defendant shall be punished by life imprisonment; life imprisonment without the possibility of release or parole; or death. The punishment shall be imposed after a sentencing

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1 hearing separate from the trial or guilty plea proceeding. If
2 the defendant has not reached the age of eighteen at the time
3 of the commission of the capital felony for which the defendant
4 was convicted, the defendant may be sentenced to life
5 imprisonment or life imprisonment without the possibility of
6 release or parole but shall not be punished by death.

7 B. In the event that the sentence of death in a
8 capital felony case is held to be unconstitutional or otherwise
9 invalidated by the supreme court or the United States supreme
10 court, the person previously sentenced to death for a capital
11 felony shall be sentenced to [~~life imprisonment or~~] life
12 imprisonment without possibility of release or parole."

13 SECTION 2. Section 31-18-23 NMSA 1978 (being Laws 1994,
14 Chapter 24, Section 2, as amended) is amended to read:

15 "31-18-23. THREE VIOLENT FELONY CONVICTIONS--MANDATORY
16 LIFE IMPRISONMENT--EXCEPTION.--

17 A. When a defendant is convicted of a third violent
18 felony, and each violent felony conviction is part of a
19 separate transaction or occurrence, and at least the third
20 violent felony conviction is in New Mexico, the defendant
21 shall, in addition to the sentence imposed for the third
22 violent felony conviction when that sentence does not result in
23 death, be punished by a sentence of life imprisonment. The
24 life imprisonment sentence shall be subject to parole pursuant
25 to the provisions of Section 31-21-10 NMSA 1978.

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1 B. The sentence of life imprisonment shall be
2 imposed after a sentencing hearing, separate from the trial or
3 guilty plea proceeding resulting in the third violent felony
4 conviction, pursuant to the provisions of Section 31-18-24 NMSA
5 1978.

6 C. For the purpose of this section, a violent
7 felony conviction incurred by a defendant before the defendant
8 reaches the age of eighteen shall not count as a violent felony
9 conviction.

10 D. When a defendant has a felony conviction from
11 another state, the felony conviction shall be considered a
12 violent felony for the purposes of the Criminal Sentencing Act
13 if that crime would be considered a violent felony in New
14 Mexico.

15 E. As used in the Criminal Sentencing Act:

16 (1) "great bodily harm" means an injury to the
17 person that creates a high probability of death or that causes
18 serious disfigurement or that results in permanent loss or
19 impairment of the function of any member or organ of the body;
20 and

21 (2) "violent felony" means:

22 (a) murder in the first or second
23 degree, as provided in Section 30-2-1 NMSA 1978;

24 (b) shooting at or from a motor vehicle
25 resulting in great bodily harm, as provided in Subsection B of

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1 Section 30-3-8 NMSA 1978;

2 (c) kidnapping resulting in great bodily
3 harm inflicted upon the victim by the victim's captor, as
4 provided in Subsection B of Section 30-4-1 NMSA 1978;

5 (d) criminal sexual penetration, as
6 provided in Subsection C or D or Paragraph (5) or (6) of
7 Subsection E of Section 30-9-11 NMSA 1978; and

8 (e) robbery while armed with a deadly
9 weapon resulting in great bodily harm as provided in Section
10 30-16-2 NMSA 1978 and Subsection A of Section 30-1-12 NMSA
11 1978."

12 SECTION 3. Section 31-20A-2 NMSA 1978 (being Laws 1979,
13 Chapter 150, Section 3, as amended) is amended to read:

14 "31-20A-2. CAPITAL FELONY--DETERMINATION OF SENTENCE.--

15 A. If a jury finds, beyond a reasonable doubt, that
16 one or more aggravating circumstances exist, as enumerated in
17 Subsection A of Section 31-20A-5 NMSA 1978, the defendant shall
18 be sentenced to life imprisonment without possibility of
19 release or parole. If the jury does not ~~[make the finding]~~
20 find that one or more of the aggravating circumstances
21 enumerated in that subsection exist, the defendant shall be
22 sentenced to life imprisonment.

23 B. If a jury finds, beyond a reasonable doubt, that
24 one or more aggravating circumstances exist, as enumerated in
25 Subsection B of Section 31-20A-5 NMSA 1978, the jury shall

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1 determine whether the defendant shall be sentenced to death or
2 life imprisonment without the possibility of release or parole.
3 The determination pursuant to this subsection shall be guided
4 by the following considerations:

5 (1) whether aggravating circumstances exist as
6 enumerated in Subsection B of Section 31-20A-5 NMSA 1978;

7 (2) whether mitigating circumstances exist as
8 enumerated in Section 8 of this 2016 act; and

9 (3) whether other mitigating circumstances
10 exist."

11 SECTION 4. Section 31-20A-5 NMSA 1978 (being Laws 1979,
12 Chapter 150, Section 6, as amended) is amended to read:

13 "31-20A-5. AGGRAVATING CIRCUMSTANCES.--

14 A. The aggravating circumstances to be considered
15 by the sentencing court or jury pursuant to the provisions of
16 Subsection A of Section 31-20A-2 NMSA 1978 are limited to the
17 following:

18 ~~[A. the victim was a peace officer who was acting~~
19 ~~in the lawful discharge of an official duty when he was~~
20 ~~murdered;~~

21 B.] (1) the murder was committed with intent
22 to kill in the commission of or attempt to commit [kidnaping]
23 kidnapping, criminal sexual contact of a minor or criminal
24 sexual penetration;

25 [G.] (2) the murder was committed with the

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1 intent to kill by the defendant while attempting to escape from
2 a penal institution of New Mexico;

3 ~~[D.] (3) while incarcerated in a penal~~
4 ~~institution in New Mexico, the defendant, with the intent to~~
5 ~~kill, murdered a person who was at the time incarcerated in or~~
6 ~~lawfully on the premises of a penal institution in New Mexico;~~
7 ~~[As used in this subsection, "penal institution" includes~~
8 ~~facilities under the jurisdiction of the corrections and~~
9 ~~criminal rehabilitation department and county and municipal~~
10 ~~jails;~~

11 ~~E. while incarcerated in a penal institution in New~~
12 ~~Mexico, the defendant, with the intent to kill, murdered an~~
13 ~~employee of the corrections and criminal rehabilitation~~
14 ~~department;~~

15 ~~F.] (4) the capital felony was committed for~~
16 ~~hire; and~~

17 ~~[G.] (5) the capital felony was murder of a~~
18 ~~witness to a crime or any person likely to become a witness to~~
19 ~~a crime, for the purpose of preventing report of the crime or~~
20 ~~testimony in any criminal proceeding or for retaliation for the~~
21 ~~victim having testified in any criminal proceeding.~~

22 B. The aggravating circumstances to be considered
23 by the sentencing court or jury pursuant to the provisions of
24 Subsection B of Section 31-20A-2 NMSA 1978 are limited to the
25 following:

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1 (1) the victim was a peace officer who was
2 acting in the lawful discharge of an official duty when the
3 peace officer was murdered;

4 (2) the victim was a child under the age of
5 eighteen; and

6 (3) while incarcerated in a penal institution
7 in New Mexico, the defendant, with the intent to kill, murdered
8 an employee or a contractor of the penal institution.

9 C. For the purpose of this section, "penal
10 institution" includes facilities under the jurisdiction of the
11 corrections department and county and municipal jails."

12 SECTION 5. A new section of Chapter 31 NMSA 1978 is
13 enacted to read:

14 "[NEW MATERIAL] CAPITAL FELONY--SENTENCING PROCEDURE.--

15 A. At the conclusion of all capital felony cases
16 heard by a jury, and after proper charge from the court and
17 argument of counsel, the jury shall retire to consider a
18 verdict of guilty or not guilty without any consideration of
19 punishment. In nonjury capital felony cases, the judge shall
20 first consider a finding of guilty or not guilty without any
21 consideration of punishment.

22 B. Upon a verdict by the jury or judge that the
23 defendant is guilty of a capital felony, or upon a plea of
24 guilty to a capital felony, the court shall conduct a separate
25 sentencing proceeding to determine whether the defendant should

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1 be sentenced to life imprisonment, life imprisonment without
2 the possibility of release or parole, or death. In a jury
3 trial, the sentencing proceeding shall be conducted as soon as
4 practicable by the original trial judge before the original
5 trial jury. In a nonjury trial, the sentencing proceeding
6 shall be conducted as soon as practicable by the original trial
7 judge. In the case of a plea of guilty to a capital felony,
8 the sentencing proceeding shall be conducted as soon as
9 practicable by the original trial judge or by a jury upon
10 demand of a party.

11 C. In the sentencing proceeding, all evidence
12 admitted at the trial shall be considered and additional
13 evidence may be presented as to the circumstances of the crime
14 and as to any aggravating or mitigating circumstances, pursuant
15 to Section 31-20A-5 NMSA 1978 and Section 8 of this 2016 act.

16 D. In a jury sentencing proceeding, the judge shall
17 give appropriate instructions and allow arguments and the jury
18 shall retire to determine the punishment to be imposed. In a
19 nonjury sentencing proceeding, or upon a plea of guilty where
20 no jury has been demanded, the judge shall allow argument and
21 determine the punishment to be imposed."

22 SECTION 6. A new section of Chapter 31 NMSA 1978 is
23 enacted to read:

24 "[NEW MATERIAL] CAPITAL FELONY CASE HEARD BY JURY--
25 SENTENCING HEARING--EXPLANATION BY COURT TO JURY.--At the

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1 beginning of a sentencing hearing for a capital felony case,
2 subsequent to a verdict by the jury that the defendant is
3 guilty of a capital felony, the court shall explain to the jury
4 that a sentence of life imprisonment means that the defendant
5 shall serve thirty years of the sentence before the defendant
6 becomes eligible for a parole hearing, as provided in Section
7 31-21-10 NMSA 1978."

8 SECTION 7. A new section of Chapter 31 NMSA 1978 is
9 enacted to read:

10 "[NEW MATERIAL] COURT SENTENCING.--In a jury sentencing
11 proceeding in which the jury unanimously finds beyond a
12 reasonable doubt and specifies at least one of the aggravating
13 circumstances enumerated in Subsection B of Section 31-20A-5
14 NMSA 1978 and unanimously specifies the sentence of death
15 pursuant to Subsection B of Section 31-20A-2 NMSA 1978, the
16 court shall sentence the defendant to death. Where a sentence
17 of death is not unanimously specified or the jury does not make
18 the required finding or is unable to reach a unanimous verdict,
19 the court shall sentence the defendant to life imprisonment
20 without the possibility of release or parole in accordance with
21 Section 31-20A-2 NMSA 1978. In a nonjury sentencing proceeding
22 and in cases involving a plea of guilty, where no jury has been
23 demanded, the judge shall determine and impose the sentence;
24 provided that the judge shall not impose the sentence of death
25 except upon a finding beyond a reasonable doubt and

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1 specification of at least one of the aggravating circumstances
2 enumerated in Subsection B of Section 31-20A-5 NMSA 1978."

3 SECTION 8. A new section of Chapter 31 NMSA 1978 is
4 enacted to read:

5 "[NEW MATERIAL] MITIGATING CIRCUMSTANCES.--The mitigating
6 circumstances to be considered by the sentencing court or the
7 jury pursuant to the provisions of Subsection B of Section
8 31-20A-2 NMSA 1978 shall include but not be limited to the
9 following:

- 10 A. the defendant has no significant history of
11 prior criminal activity;
- 12 B. the defendant acted under duress or under the
13 domination of another person;
- 14 C. the defendant's capacity to appreciate the
15 criminality of the defendant's own conduct or to conform the
16 defendant's own conduct to the requirements of the law was
17 impaired;
- 18 D. the defendant was under the influence of mental
19 or emotional disturbance;
- 20 E. the victim was a willing participant in the
21 defendant's conduct;
- 22 F. the defendant acted under circumstances that
23 tended to justify, excuse or reduce the crime;
- 24 G. the defendant is likely to be rehabilitated;
- 25 H. the defendant cooperated with authorities; and

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1 I. the defendant's age."

2 SECTION 9. A new section of Chapter 31 NMSA 1978 is
3 enacted to read:

4 "[NEW MATERIAL] REVIEW OF JUDGMENT AND SENTENCE.--

5 A. A judgment of conviction and sentence of death
6 shall be automatically reviewed by the supreme court.

7 B. In addition to other matters on appeal, the
8 supreme court shall rule on the validity of the sentence of
9 death.

10 C. A sentence of death shall not be imposed if:

11 (1) the evidence does not support the finding
12 of a statutory aggravating circumstance;

13 (2) the evidence supports a finding that the
14 mitigating circumstances outweigh the aggravating
15 circumstances;

16 (3) the sentence of death was imposed under
17 the influence of passion, prejudice or any other arbitrary
18 factor; or

19 (4) the sentence of death is excessive or
20 disproportionate to the penalty imposed in similar cases,
21 considering both the crime and the defendant.

22 D. No error in the sentencing proceeding shall
23 result in the reversal of the conviction for a capital felony.
24 If the trial court is reversed on appeal because of error only
25 in the sentencing proceeding, the supreme court shall remand

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1 solely for a new sentencing proceeding. The new sentencing
2 proceeding ordered and mandated shall apply only to the issue
3 of punishment.

4 E. In cases of remand for a new sentencing
5 proceeding, all exhibits and a transcript of all testimony and
6 other evidence admitted in the prior trial and sentencing
7 proceeding shall be admissible in the new sentencing
8 proceeding, and:

9 (1) if the sentencing proceeding was before a
10 jury, a new jury shall be impaneled for the new sentencing
11 proceeding;

12 (2) if the sentencing proceeding was before a
13 judge, the original trial judge shall conduct the new
14 sentencing proceeding; or

15 (3) if the sentencing proceeding was before a
16 judge and the original trial judge is unable or unavailable to
17 conduct a new sentencing proceeding, another judge shall be
18 designated to conduct the new sentencing proceeding and the
19 parties are entitled to disqualify the new judge on the grounds
20 set forth in Section 38-3-9 NMSA 1978 before the newly
21 designated judge exercises any discretion."

22 SECTION 10. A new section of Chapter 31 NMSA 1978 is
23 enacted to read:

24 "[NEW MATERIAL] PROHIBITION AGAINST CAPITAL PUNISHMENT OF
25 MENTALLY RETARDED PERSONS--PRESENTENCING HEARING.--

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1 A. As used in this section, "mentally retarded"
2 means significantly below average general intellectual
3 functioning existing concurrently with deficits in adaptive
4 behavior. An intelligence quotient of seventy or below on a
5 reliably administered intelligence quotient test shall be
6 presumptive evidence of mental retardation.

7 B. A sentence of death shall not be imposed on any
8 person who is mentally retarded.

9 C. Upon a motion of the defense requesting a ruling
10 that a sentence of death be precluded pursuant to this section,
11 the court shall hold a hearing, prior to conducting the
12 sentencing proceeding pursuant to Section 7 of this 2016 act.
13 If the court finds, by a preponderance of the evidence, that
14 the defendant is mentally retarded, it shall sentence the
15 defendant to life imprisonment without the possibility of
16 release or parole. A ruling by the court that evidence of
17 diminished intelligence introduced by the defendant does not
18 preclude a sentence of death pursuant to this section shall not
19 restrict the defendant's opportunity to introduce the evidence
20 at the sentencing proceeding or to argue that the evidence
21 should be given mitigating significance. If the sentencing
22 proceeding is conducted before a jury, the jury shall not be
23 informed of any ruling denying a defendant's motion pursuant to
24 this section."

25 **SECTION 11.** A new section of Chapter 31 NMSA 1978 is
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1 enacted to read:

2 "[NEW MATERIAL] WARRANT OF EXECUTION UPON JUDGMENT OF
3 DEATH--TIME OF EXECUTION.--When a judgment of death is rendered
4 by any court of competent jurisdiction, a warrant signed by the
5 judge and attested by the court clerk under the seal of the
6 court shall be drawn and delivered to the sheriff. The warrant
7 shall state the conviction and judgment and appoint a day on
8 which the judgment is to be executed, which shall not be less
9 than sixty nor more than ninety days from the date of judgment,
10 and shall direct the sheriff to deliver the defendant, at a
11 time specified in the warrant but not more than ten days from
12 the date of judgment, to the warden of the penitentiary of New
13 Mexico for execution."

14 SECTION 12. A new section of Chapter 31 NMSA 1978 is
15 enacted to read:

16 "[NEW MATERIAL] JUDGE TO TRANSMIT STATEMENT OF
17 CONVICTION.--The judge of a court in which a defendant was
18 convicted and sentenced to death shall, immediately after the
19 conviction, transmit to the governor, by mail or otherwise, a
20 statement of the conviction and judgment."

21 SECTION 13. A new section of Chapter 31 NMSA 1978 is
22 enacted to read:

23 "[NEW MATERIAL] GOVERNOR MAY SUSPEND EXECUTION.--Only the
24 governor may suspend the execution of a judgment of death,
25 except that the warden of the penitentiary of New Mexico to

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1 whom a defendant is delivered for execution may suspend the
2 execution of a judgment of death in accordance with the
3 provisions of Sections 14 through 18 of this 2016 act."

4 SECTION 14. A new section of Chapter 31 NMSA 1978 is
5 enacted to read:

6 "[NEW MATERIAL] INSANITY OF DEFENDANT--HOW DETERMINED.--
7 If, after a defendant is delivered to the warden for execution,
8 there is good reason to believe that the defendant, under
9 judgment of death, has become insane, the warden shall call
10 that fact to the attention of the district attorney of the
11 county in which the state penitentiary is situated. The
12 district attorney shall immediately file in the district court
13 of the county a petition, stating the conviction and judgment
14 and the fact that the defendant is believed to be insane and
15 asking that the court inquire into the question of the
16 defendant's sanity. It shall be the duty of the district court
17 to inquire into the question and render a judgment."

18 SECTION 15. A new section of Chapter 31 NMSA 1978 is
19 enacted to read:

20 "[NEW MATERIAL] DUTY OF DISTRICT ATTORNEY UPON INQUIRY AND
21 HEARING.--The district attorney shall attend a hearing provided
22 for in Sections 14 and 18 of this 2016 act, and may produce
23 witnesses before the court, for which purpose the district
24 attorney may issue process in the same manner as process is
25 issued for witnesses to testify before the grand jury. Failure

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1 to comply with process issued may be punished in a like manner
2 as failure to comply with process issued by the court."

3 SECTION 16. A new section of Chapter 31 NMSA 1978 is
4 enacted to read:

5 "[NEW MATERIAL] ORDER OF COURT COMMITTING INSANE PERSON TO
6 HOSPITAL.--The court shall make and cause to be entered an
7 order reciting the fact of the inquiry made pursuant to Section
8 14 of this 2016 act and its result. If it is found that the
9 defendant is insane, the order shall direct that the defendant
10 be taken to the New Mexico behavioral health institute at Las
11 Vegas and kept there in safe confinement until the defendant's
12 sanity is restored."

13 SECTION 17. A new section of Chapter 31 NMSA 1978 is
14 enacted to read:

15 "[NEW MATERIAL] FINDINGS OF INQUIRY--DUTIES OF WARDEN--
16 PROCEDURE WHEN SANITY IS RESTORED.--If it is found that the
17 defendant is sane, the warden shall proceed to execute the
18 judgment as specified in the warrant. If it is found that the
19 defendant is insane, the warden shall suspend the execution and
20 transmit a certified copy of the order provided for in Section
21 16 of this 2016 act to the governor and deliver the defendant,
22 together with a certified copy of the order, to the
23 superintendent of the New Mexico behavioral health institute at
24 Las Vegas. When the defendant's sanity is restored, the
25 superintendent of the institute shall certify that fact to the

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1 governor, who shall then issue to the warden the governor's
2 warrant appointing a day for the execution of the judgment."

3 SECTION 18. A new section of Chapter 31 NMSA 1978 is
4 enacted to read:

5 "[NEW MATERIAL] PROCEEDINGS WHEN FEMALE DEFENDANT MAY BE
6 PREGNANT--DUTY OF DISTRICT ATTORNEY.--

7 A. If there is good reason to believe that a female
8 defendant who was sentenced to death is pregnant, the warden
9 shall call that fact to the attention of the district attorney
10 of the county in which the state penitentiary is situated. The
11 district attorney shall immediately file in the district court
12 of the county a petition, stating the conviction and judgment
13 and the fact that the defendant may be pregnant and asking that
14 the court inquire into the question of the defendant's
15 pregnancy. It shall be the duty of the district court to
16 inquire into the question and render a judgment. The court may
17 summon three disinterested physicians of good standing in their
18 profession to inquire into the alleged pregnancy. The
19 physicians shall, in the presence of the court, but with closed
20 doors, if requested by the defendant, examine the defendant,
21 hear any evidence that may be produced and make a written
22 finding and certificate of their conclusion, to be approved by
23 the court. The provisions of Section 15 of this 2016 act apply
24 to the proceedings provided in this subsection.

25 B. If it is found that the female defendant is not

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1 pregnant, the warden shall execute the judgment. If it is
2 found that the female defendant is pregnant, the warden shall
3 suspend the execution of the judgment and transmit a certified
4 copy of the finding and certificate to the governor. When the
5 governor receives from the warden a certificate that the female
6 defendant is no longer pregnant, the governor shall issue to
7 the warden a warrant appointing a day for the execution of the
8 judgment."

9 SECTION 19. A new section of Chapter 31 NMSA 1978 is
10 enacted to read:

11 "[NEW MATERIAL] JUDGMENT OF DEATH REMAINING IN FORCE BUT
12 NOT EXECUTED--NO APPEAL FROM ORDER OF COURT.--If for any reason
13 a judgment of death has not been executed and remains in force,
14 the court in which the conviction is had, on the application of
15 the district attorney of the county in which the conviction is
16 had, shall order the defendant to be brought before it, or if
17 the defendant is at large, a warrant for the defendant's
18 apprehension may be issued. When the defendant is brought
19 before the court, the court shall inquire into the facts and,
20 if no legal reason exists against the execution of the
21 judgment, shall issue an order that the warden of the
22 penitentiary of New Mexico, to whom the sheriff is directed to
23 deliver the defendant, execute the judgment at a specified
24 time. The warden shall execute the judgment accordingly.
25 There is no appeal from an order, as provided herein, directing

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1 and fixing the time for the execution of a judgment."

2 SECTION 20. A new section of Chapter 31 NMSA 1978 is
3 enacted to read:

4 "[NEW MATERIAL] PUNISHMENT OF DEATH--HOW INFLICTED.--The
5 manner of inflicting punishment of death shall be by
6 administration of a continuous, intravenous injection of a
7 lethal quantity of an ultra-short-acting barbiturate in
8 combination with a chemical paralytic agent. Any reference in
9 the statutes relating to the means of execution shall be
10 construed to mean execution by lethal injection as provided in
11 this section."

12 SECTION 21. A new section of Chapter 31 NMSA 1978 is
13 enacted to read:

14 "[NEW MATERIAL] PLACE OF EXECUTION--DIRECTION OF WARDEN.--
15 The warden of the penitentiary of New Mexico shall provide a
16 suitable and efficient room or place, closed from public view,
17 within the walls of the penitentiary of New Mexico and therein
18 provide all necessary appliances requisite for carrying into
19 execution the sentence of death. In each individual case of a
20 sentence of death pronounced in this state, the sentence of
21 death shall be executed under the direction of the warden in
22 the room or place provided for that purpose."

23 SECTION 22. A new section of Chapter 31 NMSA 1978 is
24 enacted to read:

25 "[NEW MATERIAL] WHERE JUDGMENT IS EXECUTED--WHO MAY BE

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1 PRESENT.--A sentence of death shall be executed within the
2 walls of the penitentiary of New Mexico, and the execution
3 shall be under the supervision and direction of the warden of
4 the penitentiary. The warden of the penitentiary of New Mexico
5 shall be present at the execution and shall invite the presence
6 of a physician, the attorney general and at least twelve
7 reputable citizens to be selected by the warden. The warden
8 shall, at the request of the defendant, permit such religious
9 leaders or teachers, not exceeding two, as the defendant may
10 name, and any person, relative or friend, not to exceed five,
11 to be present at the execution, together with such peace
12 officers as the warden may think expedient, to witness the
13 execution. No persons, other than those mentioned in this
14 section, shall be present at the execution, nor shall any
15 person under the age of eighteen be allowed to witness the
16 execution."

17 SECTION 23. A new section of Chapter 31 NMSA 1978 is
18 enacted to read:

19 "[NEW MATERIAL] RETURN BY WARDEN.--After the execution,
20 the warden shall make a return upon the death warrant to the
21 court that rendered the judgment, showing the time, mode and
22 manner in which the warrant was executed."

23 SECTION 24. APPLICABILITY.--The provisions of this act
24 apply only to capital felonies committed on or after the
25 effective date of this act. Nothing contained in the

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1 provisions of this act shall be construed to alter in any way
2 the execution of a sentence of death imposed for a crime
3 committed before the effective date of this act.

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