

LFC Requester:	Austin Davidson
-----------------------	------------------------

**AGENCY BILL ANALYSIS
2024 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO:

AgencyAnalysis.nmlegis.gov

{Analysis must be uploaded as a PDF}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original **Amendment**
Correction **Substitute**

Date 1/16/2024
Bill No: HB77

Sponsor: John Block & Harlan Vincent **Agency Name and Code Number:** 770-NMCD
Capital Felony Offenses Death **Person Writing Analysis:** Anisa Griego-Quintana
Short Title: By Lethal Injection, Separate Sentencing Hearing **Phone:** 505-479-2296 **Email:** anisa.griego-quinta@cd.nm.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		
0	1,065,000	Recurring	General

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		
0	0	0	N/A	N/A

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	0	Substantial	Substantial	Substantial	N/A	N/A

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: HB77 amends the Sentencing Act to reinstate the death penalty for certain capital felony convictions where aggravating circumstances exist, in which event a jury shall determine at a separate hearing whether the defendant shall be sentenced to (1) life imprisonment; (2) life imprisonment without the possibility of release or parole; or (3) death. The death penalty requires execution by lethal injection. The level of the punishment determination shall be guided by specified aggravating circumstances, and whether other mitigating circumstances exist. New to the act is a provision that would require a separate, second Sentencing Trial be held to determine which of the three types of punishment will be imposed on the defendant. Requires an automatic review of a death penalty conviction and sentence by the Supreme Court. Establishes procedures for execution by death. Prohibits execution of an “insane” person.

EXCEPTIONS TO IMPOSITION OF DEATH PENALTY. If defendant was under the age of 18 at time the capital felony offense was committed, the defendant may be sentenced to life imprisonment or life imprisonment without the possibility of release or parole but shall not be punished by death.

In the event the death sentence is deemed unconstitutional or otherwise invalidated by the Supreme Court or the U.S. Supreme Court, the person previously sentenced to death for a capital felony shall be sentenced to life imprisonment without the possibility of release or parole.

“VIOLENT FELONY” DEFINITION EXPANDED. The definition of a ‘violent felony’ has been changed to include kidnapping that results in “physical injury or a sexual offense” (rather than “great bodily harm) inflicted upon the victim by the victim’s captor.

CAPITAL FELONY, DETERMINATION OF SENTENCE. Sec. 31-20A-2, relating to Capital Felony, Determination of Sentence, has been changed to include a new Subsec. B, to provide that if a jury finds, beyond a reasonable doubt, that one or more aggravating circumstances exist, as enumerated in Subsec. B of Sec. 31-20A-5, the jury shall determine whether the defendant shall be sentenced to death or life imprisonment without the possibility of release or parole. The determination shall be guided by (1) whether aggravating circumstances and mitigating circumstances exist.

AGGRAVATING CIRCUMSTANCES. The aggravating circumstances to be considered by

the sentencing court or jury under Subsec. A of Sec. 31-20A-2 are essentially the same as in existing law. A new Subsec. B. has been included to specify that the aggravating circumstances to be considered by the sentencing court or jury under Subsec. B of Sec. 31-20A-2 are limited to:

- *The victim was a peace officer who was acting in the lawful discharge of an official duty when the peace officer was murdered.
- *The victim was a child under the age of 18.
- *While incarcerated in a penal institution in New Mexico, the defendant, with the intent to kill, murdered an employee or a contractor of the penal institution; and
- *The defendant attempted to harm or kill a peace officer who was acting in the lawful discharge of an official duty.

The term “penal institution” includes facilities under the authority of the Corrections Department and county and municipal jails.

CAPITAL FELONY, SENTENCING PROCEDURE, SEPARATE TRIAL: Death Sentence, Life Imprisonment, or Life Imprisonment Without Possibility of Release or Parole

Provides that at the conclusion of a jury trial on a capital felony case, the jury shall retire to deliberate on a verdict of guilty or not guilty **WITHOUT** any consideration of punishment. In a nonjury trial, the court shall do the same: consider a finding of guilty or not guilty **WITHOUT** any consideration of punishment.

Upon a verdict of “guilty of a capital felony,” by either the jury or the court, or upon a plea of guilty, the court shall conduct a separate sentencing proceeding to determine the defendant’s sentence: life imprisonment, life imprisonment without the possibility of release or parole, or death (if applicable).

Where the trial was by jury, the bill requires another separate mandatory sentencing proceeding by the original trial judge and before the original trial jury or a jury impaneled for the purpose of sentencing.

For a nonjury trial, the bill also requires another separate sentencing proceeding before the original trial judge “or jury.”.

Where a plea of guilty to a capital felony was entered, the separate sentencing proceeding shall be held by the original trial judge or by a jury upon demand of a party (apparently, either the prosecutor or defendant may request a jury). At the beginning of the sentencing hearing, the court shall explain to the jury that a sentence of life imprisonment means that the defendant shall serve 30 years before being eligible for a parole hearing.

In the jury sentencing proceeding:

- *all evidence admitted at trial shall be considered.
- *evidence may be presented as to the circumstances of the crime.
- *evidence may be presented as to any aggravating or mitigating circumstances.
- *the court shall give appropriate instructions and allow arguments.
- *the jury shall retire to determine the punishment.

In a nonjury sentencing proceeding, or a plea of guilty where no jury has been demanded, the

judge shall allow argument and determine the punishment to be imposed.

MANDATORY DEATH SENTENCE. In a jury sentencing proceeding where the jury unanimously finds beyond a reasonable doubt and specifies at least one of the aggravating circumstances listed in Subsec. B. of Sec. 31-20A-5, the court shall sentence the defendant to death.

LIFE IMPRISONMENT WITHOUT POSSIBILITY OF RELEASE OR PAROLE SENTENCE. Where a sentence of death is not unanimously specified or the jury does not make the required finding or is unable to reach a unanimous verdict, the court shall sentence the defendant to life imprisonment with the possibility of release or parole.

LIFE IMPRISONMENT. In a nonjury sentencing proceeding and in cases involving a plea of guilty, where no jury has been demanded, the court shall determine and impose the sentence; provided that the judge shall not impose the death penalty except upon a finding beyond a reasonable doubt and specification of at least one of the aggravating circumstances listed in Subsec. B of Sec. 31-20A-5.

MITIGATING CIRCUMSTANCES. Authorizes the sentencing court or the jury to consider 10 mitigating circumstances when deliberating on the sentence that the defendant will receive that range from no significant history of prior criminal activity, to being under duress or domination of another person, to impairment to “appreciate” the criminality of the conduct, to being under the influence of mental or emotional “disturbance,” to acting under circumstances that “tended” to excuse or reduce the crime, to the likelihood of being rehabilitated, to the defendant’s age, etc.

SUPREME COURT REVIEW OF DEATH SENTENCE. Provides for the mandatory review by the Supreme Court of a judgment of conviction and sentence of death and for the court to rule on the validity of the sentence of death. However, the death sentence shall NOT be imposed if:

- *The evidence does not support the finding of a statutory aggravating circumstance.
- *The evidence supports a finding that the mitigating circumstances outweigh the aggravating circumstances.
- *The sentence of death was imposed under the influence of passion, prejudice or any other arbitrary factor, or
- *The sentence of death is excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant.

Includes provisions that no error in the sentencing proceeding shall result in the reversal of the conviction for a capital felony. If reversed on appeal because of error only in the sentencing proceeding, the Supreme Court shall remand solely for a new sentencing hearing, and it shall apply only to the issue of punishment. Provides for admission of all exhibits and transcript of testimony and other evidence from the first sentencing to be admissible in the new sentencing proceeding. Specifies criteria for empaneling the new jury and allows for disqualification of a new judge who may be appointed to preside over the new sentencing hearing.

PROHIBITS CAPITAL PUNISHMENT OF PERSONS WITH INTELLECTUAL DISABILITY. Defines “intellectual disability” and prohibits a sentence of death from being imposed on such a person. Upon a finding of “intellectual disability,” the court shall sentence

the defendant to life imprisonment with the possibility of parole. However, a ruling by the court that evidence of diminished intelligence does not preclude a sentence of death shall not restrict the defendant's opportunity to introduce the evidence at the sentencing proceeding or to argue that the evidence should be given mitigating significance.

WARRANT OF EXECUTION FOR JUDGMENT OF DEATH. Establishes a process for issuance, attestation and service of a warrant of conviction and judgment and a date for execution (not less than 60 nor more than 90 days from date of judgment) under the authority of the warden of the penitentiary of New Mexico.

Provides notice to the Governor of the conviction and judgment. While only the Governor may suspend the execution of a judgment of death, the warden may suspend the execution of death if there is good reason to believe that the defendant "has become insane," in which case the district court is charged with the duty of inquiring into the question and rendering a judgment (upon filing of a petition by the district attorney for a hearing on the matter). Upon a finding of insanity, the court shall order that the defendant be taken to the New Mexico Behavioral Health Institute at Las Vegas for safe confinement until defendant's sanity is restored. If defendant's sanity is restored, the superintendent of the institute shall certify that fact to the Governor, who shall then issue to the warden, the Governor's warrant appointing a day for execution.

Provision is made for a stay of execution for a female defendant who may be pregnant. When the Governor receives notice that she is no longer pregnant, the Governor shall issue to the warden a warrant appointing a day for execution.

Provision is made for a defendant who is at large, and for whom there is still a judgement of death remaining in force, to be apprehended and brought before the court. If no legal reason exists against the execution of the judgment, the court shall issue an order to the warden to execute the judgment at a specified time. There is no appeal from an order directing and fixing the time for the execution of a judgment.

DEATH BY LETHAL INJECTION. Requires that death be carried out by an intravenous injection of a lethal substance in a quantity sufficient to cause death. The execution shall take place at the penitentiary, closed to public view, under the direction of the warden. The warden shall be present and shall invite a physician, the AG and at least 12 reputable citizens to be selected by the warden. The warden shall, at request of defendant, permit no more than two religious leaders or teachers, and any person, relative or friend, not to exceed five, to be present at the execution, together with such peace officers as the warden may think expedient.

After the execution, the warden shall make a return upon the death warrant to the court that rendered judgment, showing the time, mode and manner in which it the execution occurred.

One million sixty-five thousand dollars is appropriated from the general fund to the corrections department for expenditures in fiscal year 2025 to cover costs associated with this act. Any unexpended or unencumbered balance remaining at the end of the fiscal year 2025 shall revert to the general fund.

FISCAL IMPLICATIONS

The imposition of the death penalty would result in a substantial number of increased responsibilities for the NMCD, involving the management of death row facilities, specialized security measure and legal proceedings specific to capital punishment cases. Additionally, it may incur higher costs related to legal challenges, execution proceedings, and prolonged incarceration on death row. The impact on staff, resources, and overall operations can be substantial.

SIGNIFICANT ISSUES

The provision of the bill authorizing life imprisonment without parole for defendants who were convicted of a capital felony committed when they were under the age of 18 is contrary to the U.S. Supreme Court's holding in *Miller v. Alabama*, 567 U.S. 460, 465 (2012), that "mandatory life without parole for those under the age of 18 at the time of their crimes violates the Eighth Amendment's prohibition on 'cruel and unusual punishments.'" That provision also is contrary to NMSA 1978, § 31-18-15.3(D) (2023), which provides that "a serious youthful offender given an adult sentence shall not be sentenced to life imprisonment without the possibility of release or parole." NMSA 1978, § 32A-2-20(E) (2023) similarly states: "A child given an adult sentence shall not be sentenced to life imprisonment without the possibility of release or parole." In addition, under NMSA 1978, § 31-21-10.2 (2023) children sentenced as adults are eligible for parole earlier than adults who have been given life sentences.

From a healthcare management perspective, this will result in significant implications which may include:

- a) **Extended Time on Death Row:** In many cases, individuals sentenced to death spend a significant amount of time on death row, often for years or even decades, while awaiting execution. During this time, they continue to receive healthcare services. The cost of providing healthcare to inmates on death row, including medical exams, treatments, and mental health services, can be substantial.
- b) **End-of-Life Care:** Inmates who are sentenced to death may require end-of-life care as they approach their execution date. Providing medical care and services for terminally ill inmates can be expensive, including palliative care, hospice services, and other treatments.
- c) **Mental Health Services:** Many death row inmates experience mental health issues, including depression, anxiety, and post-traumatic stress disorder. The provision of mental health services and treatment for these individuals adds to the healthcare costs within the prison system.
- d) **Staffing and Security:** The healthcare staffing requirements for death row inmates can be higher due to the potential risks associated with executions and the need to prevent self-harm or harm to others. These additional measures can increase healthcare operational costs.
- e) **Execution Procedures:** The process of carrying out an execution itself requires medical personnel, often including physicians or nurses, to ensure that the execution is carried out

in a manner that complies with constitutional standards. These personnel need specialized training which is not currently available within the prison system.

- f) Allocation of Resources: The allocation of resources to maintain death row facilities, including healthcare infrastructure needed for these inmates, can divert funding away from other healthcare needs within the prison system, potentially impacting the overall quality of healthcare for all inmates.

PERFORMANCE IMPLICATIONS

None for the Corrections Department.

ADMINISTRATIVE IMPLICATIONS

None for the Corrections Department.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None for the Corrections Department.

TECHNICAL ISSUES

None for the Corrections Department.

OTHER SUBSTANTIVE ISSUES

None for the Corrections Department.

ALTERNATIVES

None proposed by the Corrections Department.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

None proposed by the Corrections Department.