

<b>LFC Requester:</b>	<b>Davidson, Austin</b>
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**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** 1/18/24  
**Bill No:** SB 73

**Sponsor:** Sen. Craig W. Brandt  
**Short Title:** Death Penalty for Murdering Police

**Agency Name and Code**    AOC 218  
**Number:** \_\_\_\_\_  
**Person Writing**    Kathleen Sabo  
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**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		
None	None	Rec.	General

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		
Unknown	Unknown	Unknown	Rec.	General

(Parenthesis ( ) Indicate Expenditure Decreases)

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

	<b>FY24</b>	<b>FY25</b>	<b>FY26</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>	Unknown	Unknown	Unknown	Unknown	Rec.	General

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: Relates to and conflicts with HB 77, reinstating the death penalty and amending Sections 31-20A-2 and 31-20A-5 NMSA 1978.

Duplicates/Relates to Appropriation in the General Appropriation Act: None.

**SECTION III: NARRATIVE**

**BILL SUMMARY**

Synopsis: SB 73 reinstates the death penalty for murdering a peace officer. Specifically, SB 73 amends Section 31-20A-5 NMSA 1978, to add as an aggravating circumstance, “B. the victim was a peace officer who was not acting in the lawful discharge of an official duty, but the defendant targeted the victim because of the victim’s status as a peace officer.”

SB 73 also amends 31-20A-2 NMSA 1978 to require the defendant to be sentenced to death if the jury finds, beyond a reasonable doubt, that the aggravating circumstance was that the victim was a peace officer who was acting in the lawful discharge of an official duty when the peace officer was murdered, or that the aggravating circumstance was that the victim was a peace officer who was not acting in the lawful discharge of an official duty, but the defendant targeted the victim because of the victim’s status as a peace officer.

**FISCAL IMPLICATIONS**

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced prosecutions, and appeals from convictions, as well as challenges to the constitutionality of the law. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

Increased penalties are likely to result in increased costs related to additional judge time, courtroom staff time, courtroom availability and jury fees. Indigent offenders are entitled to public defender services.

To impose the death penalty two jury proceedings are typically required: one to determine guilt and one to determine the sentence to be imposed, resulting in increased jury costs as a higher number of jurors will need to be called for the selection process, and if there are two separate proceedings, more costs will be incurred.

Past studies have indicated a significant cost differential for court services between non-capital and capital cases, and there is every reason to believe that the costs have increased markedly and that the differential has widened. In *State v. Young*, 2007-NMSC-058, 143 N.M. 1, 172 P.3d 138, arising out of the Santa Rosa prison riot cases, the NM Supreme Court found that “it is

indisputable that the prosecution and defense of capital murder cases are substantially more expensive than in non-capital cases.”

## **SIGNIFICANT ISSUES**

- 1) The death penalty was abolished in New Mexico in 2009, when NM became the 15<sup>th</sup> state to abandon capital punishment. As of 2023, 23 states and the District of Columbia had abolished the death penalty. (See the Death Penalty Information Center’s state by state guide to the death penalty at <https://deathpenaltyinfo.org/states-landing> .) The repeal in NM, however, was not retroactive, leaving two people on death row in NM. In June of 2019, the NM Supreme Court vacated those sentences and ordered the two prisoners be resentenced to life in prison.
- 2) In the FIR for 2017’s HB 72, a substantially similar bill to 2023’s HB 77, the following issues are raised, among others:
  - Arguments in favor of imposition of the death penalty as the general public would no longer be at risk for violence from the particular offender convicted and sentenced under the Act.
  - The belief that life without parole sufficiently protects the community from the same category of criminals that would be subject to the death penalty.
  - The failure of Section 31-20A-2(B) NMSA 1978 (HB 77, Section 3) to require the sentencer to weigh the mitigating circumstances against the aggravating circumstances, as mandated under the U.S. Supreme Court precedent interpreting the Eighth Amendment.
  - That studies from other state and the federal system continue, without exception, to show the enormous expense occasioned by death penalty cases.
  - The difficulty, at that time, of states being able to purchase lethal injection drugs, due to stopped production and manufacturer refusal to sell to states for the purpose of execution. (It is noted that some states recently passed laws allowing for alternative execution methods is lethal injection drugs are unavailable.

The FIR contains two attachments related to costs to the NM judicial system and the NM Corrections Department, and details of other states’ death penalty costs. (See the HB 72 FIR at <https://www.nmlegis.gov/Sessions/17%20Regular/firs/HB0072.PDF> .)

See also 2018’s HB 155 and the resulting FIR at <https://www.nmlegis.gov/Sessions/18%20Regular/firs/HB0155.PDF> .

- 3) It can be anticipated that a law providing for the death penalty will be challenged as cruel and unusual punishment and therefore unconstitutional under the 8<sup>th</sup> amendment of the U.S. Constitution. See *The Case Against the Death Penalty*, ACLU, December 11, 2012 at <https://www.aclu.org/documents/case-against-death-penalty> .
- 4) The Death Penalty Information Center reports that

A Death Penalty Information Center analysis of U.S. murder data from 1987 through 2015 has found no evidence that the death penalty deters murder or protects police. Instead, the evidence shows that murder rates, including murders of police officers, are consistently higher in death-penalty states than in states that have abolished the death penalty. And far from experiencing increases in murder rates or open season on law enforcement, the data show that states that have abolished the death penalty since 2000 have the lowest rates of police officers

murdered in the line of duty and that killings of police account for a much smaller percentage of murders in those states.

See *Capital Punishment and Police Safety* at <https://deathpenaltyinfo.org/policy-issues/deterrence/capital-punishment-and-police-safety> .

- 5) The state of Illinois considered legislation that would reinstate the death penalty for murder of a peace officer with HB 3495. See <https://deathpenaltyinfo.org/facts-and-research/recent-legislative-activity> and <https://deathpenaltyinfo.org/news/state-legislative-roundup-new-legislation-on-the-death-penalty> for information on new state legislation from across the country on the death penalty.

#### **PERFORMANCE IMPLICATIONS**

The courts are participating in performance-based budgeting. This bill may have an impact on the measures of the district courts in the following areas:

- Cases disposed of as a percent of cases filed
- Percent change in case filings by case type

#### **ADMINISTRATIVE IMPLICATIONS**

See “Fiscal Implications,” above.

#### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

Relates to and conflicts with HB 77, reinstating the death penalty and amending Sections 31-20A-2 and 31-20A-5 NMSA 1978.

#### **TECHNICAL ISSUES**

#### **OTHER SUBSTANTIVE ISSUES**

#### **ALTERNATIVES**

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

#### **AMENDMENTS**