

**LFC Requester:**

**Austin Davidson**

**AGENCY BILL ANALYSIS  
2024 REGULAR SESSION**

**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**      X      **Amendment**    \_\_\_\_\_  
**Correction**    \_\_\_\_\_    **Substitute**    \_\_\_\_\_

**Date Prepared:**    01/18/2024

**Bill No:**    SB73

**Sponsor:**    Sen. C. Brandt

**Agency Name and Code Number:**    305 – New Mexico  
Department of Justice

**Person Writing Analysis:**    Lee Green, ASG

**Short Title:**    Death Penalty for  
Murdering Police

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**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		

(Parenthesis ( ) Indicate Expenditure Decreases)

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

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

(Parenthesis ( ) Indicate Expenditure Decreases)

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

**SECTION III: NARRATIVE**

*This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator’s request. The analysis does not represent any official policy or legal position of the NM Department of Justice.*

**BILL SUMMARY**

Synopsis: SB73 reinstates the death penalty for killing a peace officer, whether in lawful discharge of his or her duties or if the defendant targeted the peace officer because of the status of being a peace officer. It also amends the aggravating circumstances of NMSA 1978, section 31-20A-5 (1981), by adding a peace officer, not in lawful discharge of his or her duties, but targeted solely because of being a peace officer.

**FISCAL IMPLICATIONS**

None.

**SIGNIFICANT ISSUES**

- Sometime after the repeal of the death penalty in New Mexico in 2009, the New Mexico Supreme Court overturned two death sentences for violating the proportionality provision of NMSA 1978, Section 31-20A-4(C) (repealed). *See Fry v. Lopez*, 2019-NMSC-013, ¶¶ 2–3 (“In 2009, the Legislature abolished the death penalty as a sentencing option for murders committed after July 1, 2009. Today, Petitioners Robert Fry and Timothy Allen, who committed their crimes before 2009, are the last inmates who remain on death row in New Mexico. Fry and Allen filed Petitions for Writs of Habeas Corpus seeking to dismiss their death sentences in light of the prospective-only application of the repeal. In this consolidated appeal of the district court’s denial of Petitioners’ motions to dismiss their death sentences, we hold that Petitioners’ death sentences are disproportionate and violate Section 31-20A-4(C)(4).”). It is unclear how the Court’s decision in that consolidated case would impact review of a death sentence.
- The bill removes two groups as victims from the aggravating circumstances list in NMSA 1978, Section 31-20A-5: persons “at the time incarcerated in or lawfully on the premises” of “criminal rehabilitation” penal institutions and employees of “criminal rehabilitation” penal institutions. It is unclear why or exactly whom the bill is attempting to exclude. For example, the New Mexico Supreme Court have held after extensive analysis that corrections officers at both public and private correctional facilities are peace officers for the purpose of finding probable cause for aggravating circumstances. *State v. Ogden*, 1994-NMSC-029, ¶¶ 22–41, 118 N.M.

234; *State v. Young*, 2004-NMSC-015, ¶¶ 11–23, 135 N.M. 458.

- The bill does not address NMSA 1978, § 31-18-14 (2009), which states: “When a defendant has been convicted of a capital felony, the defendant shall be sentenced to life imprisonment or life imprisonment without possibility of release or parole.” The sentencing court is bound by the “shall.” “‘Shall’ and ‘must’ express a duty, obligation, requirement or condition precedent.” NMSA 1978, § 12-2A-4 (1997); *see also Corum v. Roswell Senior Living, LLC*, 2010-NMCA-105, ¶ 10, 149 N.M. 287. The district court, therefore, *must* sentence a defendant convicted of a capital felony to life imprisonment with or without the possibility of release or parole. Without addressing Section 31-18-14, this bill will be at risk of immediate litigation should it pass.

#### **PERFORMANCE IMPLICATIONS**

None.

#### **ADMINISTRATIVE IMPLICATIONS**

None.

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

Related to HB77, which is significantly broader and also includes murder of a peace officer; however, it does not include murder of a peace officer who was not in lawful discharge of duties and was, instead, targeted for being a peace officer.

#### **TECHNICAL ISSUES**

The language is imprecise.

Better phrasing is modeled in HB77 which reads in pertinent part: “If a jury finds, beyond a reasonable doubt, that one or more aggravating circumstances exist, as enumerated in Subsection B of Section 31-20A-5 NMSA 1978, the jury shall determine whether the defendant shall be sentenced to death or life imprisonment without the possibility of release or parole.” HB77 then goes on to further amend the aggravating and mitigating statutes.

#### **OTHER SUBSTANTIVE ISSUES**

None.

#### **ALTERNATIVES**

N/A

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

Status quo.

#### **AMENDMENTS**

None.