

LFC Requester:	Austin Davidson
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**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}

<i>Check all that apply:</i>				Date Prepared:	1/16/24
Original	X	Amendment		Bill No:	HB77
Correction		Substitute			HB77

Sponsor:	John Block and Harlan Vincent	Agency Name and Code Number:	305 – New Mexico Department of Justice
Short Title:	Reinstate the Death Penalty	Person Writing Analysis:	Jennifyr Vickery
		Phone:	505-537-7676
		Email:	legisfir@nmag.gov

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
Total						

(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:

House Bill 77 seeks to amend the sentencing authority to allow the authority to sentence a defendant convicted of a capital felony to life imprisonment, life imprisonment without the possibility of release or parole, or death. Specifically, a jury would need to make a finding of one or more aggravating circumstances and a jury would determine whether the defendant shall be sentenced to death or life imprisonment without the possibility of release or parole. HB77 includes new material outlining the process by which a death penalty or life without parole sentence would be imposed.

FISCAL IMPLICATIONS

None.

SIGNIFICANT ISSUES

In Section 7, using language from repealed § 31-20A-3, HB77 provides, “Where a sentence of death is not unanimously specified or the jury does not make the required finding or is unable to reach a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 defendant must be sentenced to LWOP. This language did not pose a problem under the repealed statute because the only other alternative to the death penalty was life (with the possibility of parole). But LWOP is a more severe punishment than life and requires a finding, beyond a reasonable doubt, of at least one aggravating circumstance. Without such a finding, imposition of LWOP would be unconstitutional. To achieve the apparent goal of making LWOP the default sentence when the jury finds the aggravating circumstance but does not specify the death penalty, the language “or the jury does not make the required finding” should be removed. This would result in LWOP being the mandatory sentence when the jury, having found at least one aggravating circumstance, nevertheless does not choose to impose the death penalty.

In Section 9, HB77 replaces the provisions of repealed § 31-20A-4 providing for automatic appeal of the judgment of conviction and sentence of death. Subsection C lists the bases for reversing a death sentence and includes when “the sentence of death is excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the

defendant.” This type of proportionality review - comparing one case to another case to determine that the sentences are proportionate to each other given the facts of the crime and the character of the defendant - is not constitutionally required and, therefore is not required to be included in any death penalty statute.

The New Mexico Supreme Court has overturned a death sentence for violating the proportionality provision of § 31-20A-4(C). *See Fry v. Lopez*, 2019-NMSC-013, 447 P.3d 1086. It is unclear how the Court’s decision in those cases would affect review of a death sentence imposed under a new statute that also includes the proportionality provision of § 31-20A-4(C).

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None as of 1/16/24

TECHNICAL ISSUES

None known.

OTHER SUBSTANTIVE ISSUES

Renewing the death penalty would likely result in an increase in costs throughout the system. *State v. Young*, 2007-NMSC-058, 143 N.M. 1, 172 P.3d 138 (noting that “it is indisputable that the prosecution and defense of capital murder cases are substantially more expensive than in non-capital cases.”).

Section 18 places a burden on the prosecution to bring the issue of a defendant’s pregnancy to the court’s attention. There is no apparent reason why the prison authorities could not be required to notify counsel for both parties and the trial court, not just the district attorney. Technically, either party should be able to file notice with the court as to the potential pregnancy of the defendant.

Utilizing a jury to determine sentencing may open up challenges to a jury delving into the consequences of their verdict. The text of the new material in section (5)(B) states, “In a jury trial, the sentencing proceeding shall be conducted as soon as practicable by the original trial judge before either the original trial jury or a jury impaneled for the purpose of sentencing.” Issues may arise when the original trial jury is also able to be the sentencing jury. This can be avoided by ensuring that a sentencing jury is distinct from a trial jury.

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The status quo.

AMENDMENTS