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FISCAL IMPACT REPORT

LAST UPDATED _____

SPONSOR Block, J.C. **ORIGINAL DATE** 2/13/2025

BILL

SHORT TITLE Death Penalty for Certain Crimes **NUMBER** Senate Bill 341

ANALYST Dinces

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
AOC	No fiscal impact	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Recurring	General Fund
NMCD	Indeterminate but minimal	At least \$22.5	At least \$45.0	At least \$67.5	Recurring	General Fund
LOPD	Indeterminate but minimal	At least \$1,900.0	At least \$3,800.0	At least \$5,700.0	Recurring	General Fund
AODA	Indeterminate but minimal	At least \$1,900.0	At least \$3,800.0	At least \$5,700.0	Recurring	General Fund
CVRC	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal		
Total	Indeterminate but minimal	At least \$3,800.0	At least \$7,600.0	At least \$11,467.5	Recurring	General Fund

Parentheses () indicate expenditure decreases.
 *Amounts reflect most recent analysis of this legislation.

Relates to Senate Bills 95 and 178 and House Bill 322

Sources of Information

LFC Files

Agency Analysis Received From

Administrative Office of the Courts (AOC)
 Administrative Office of the District Attorneys (AODA)
 Law Office of the Public Defender (LOPD)
 New Mexico Sentencing Commission (NMSC)
 New Mexico Corrections Department (NMCD)
 Crime Victims Reparation Commission (CVRC)
 Department of Health (DOH)

Agency Analysis was Solicited but Not Received From

New Mexico Attorney General (NMAG)
 Children, Youth, and Families Department (CYFD)
 Health Care Authority (HCA)

SUMMARY

Synopsis of Senate Bill 341

Senate Bill 341 (SB341) enacts a new section of Chapter 31, Article 20A NMSA 1978, governing capital felony sentencing, to provide for a sentence of death under the following circumstances:

- For a person convicted of causing the death of a child pursuant to Section 30-6-1 NMSA 1978, governing the crime of abandonment or abuse of a child, if the neglect or abuse was willful and intentional.
- For a person convicted of causing the death of a child while committing a felony pursuant to the Controlled Substances Act.
- For a person convicted of causing the death of a law enforcement officer while committing a felony shall be sentenced to death, and a person convicted for any related acts that led to the death of the law enforcement officer shall be sentenced to death.

SB341 allows for the lesser sentence of life imprisonment without the possibility of parole if mitigating circumstances exist. The bill requires that the defendant establish mitigating circumstances by a preponderance of the evidence.

SB341 also specifies that a person charged with the death penalty under this section shall be afforded due process, that a separate hearing shall be held to apply the death penalty, and that a jury must be unanimous to sentence a person to death.

Finally, SB341 gives the New Mexico Supreme Court jurisdiction over the appeal of any conviction in which the death penalty has been applied.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns if enacted, or June 20, 2025.

FISCAL IMPLICATIONS

The Administrative Office of the Courts (AOC) highlights there are likely to be higher court costs due to reinstating capital punishment but does not provide specific estimates. Further, AOC states that 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. Furthermore, 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. Lastly, studies have indicated a 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, the New Mexico 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.”

The Law Office of the Public Defender (LOPD) asserts that providing capital defense requires a team with at least two attorneys with specialized training, one investigator, and someone trained in screening for mental and psychological issues. In addition, LOPD points out that in *State v. Young*, referenced above, the New Mexico Supreme Court held that defense attorneys must be adequately compensated otherwise their clients will be deprived of their right to counsel. In that

same case, attorneys testified that death penalty trial defense would cost \$1 million in 1999—the equivalent of about \$1.9 million today. This analysis assumes the district attorney would face costs of approximately \$1.9 million for each case prosecuted. However, costs could be even higher. For instance, in 2022, the Louisiana Public Defender’s Office spent \$7.7 million on death penalty defense alone.¹

Additionally, LOPD points out that additional resources would be required to ensure adequate training and supports were established and maintained for counsel, investigators, mitigation specialists, and others defending death penalty cases. LOPD does not currently have a structure in place for capital defense.

LFC staff assumed costs for LOPD and the Administrative Office of the District Attorneys (AODA) were equivalent.

SIGNIFICANT ISSUES

Research shows the certainty of being caught is a more powerful deterrent to crime than severity of punishment. As a result, increasing penalties for crimes is unlikely to produce a significant impact on crimes committed. Prioritizing solving crimes and securing convictions, particularly for serious offenses, could be much more impactful. In New Mexico, however, punishment has grown less certain as crime has increased, with fewer violent crimes solved and more violent felony cases dismissed. LFC’s evaluation team has found in the 2nd Judicial District (Bernalillo County) specifically, neither arrests, convictions, nor prison admissions have tracked fluctuations in felony crime, and in 2020, when felonies began to rise, accountability for those crimes fell. Improving policing and increasing cooperation and coordination among criminal justice partners could help increase the certainty of punishment for the most violent offenses and provide a stronger deterrent to serious crime. Incarceration (and length of incarceration) has also been shown to have a criminogenic effect, meaning time in jail or prison may make people more likely to commit crimes in the future.

According to the Centers for Disease Control and Prevention (CDC), homicide is a leading cause of death among children aged 0 to 17 years in the U.S.² Homicide disproportionately affects boys, older children, infants, and children of color. The overall child homicide rate (per 100 thousand children) has increased annually, on average 4.3 percent since 2013, with a precipitous rise from 2019 to 2020 (2019 rate, 2.2; 2020 rate, 2.8; overall increase of 27.7 percent). In 2020, New Mexico had the 11th highest age-adjusted homicide rate in the nation according to CDC’s online database.³ New Mexico had the 13th highest homicide rate in the nation during 2020 according to the same data source.

The public health upstream, prevention-oriented approach brings a strong emphasis and commitment to identifying policies and programs aimed at preventing violent behavior, injuries, and deaths. The nation’s predominant response to violence has been a reactive one—to pour resources into deterring and incapacitating violent offenders by apprehending, arresting,

¹ <https://lailluminator.com/2023/03/21/louisiana-spent-7-7-million-on-death-penalty-defense-it-hasn't-executed-anyone-in-13-years/>

² <https://www.cdc.gov/injury/wisqars/LeadingCauses.html>

³ <https://wonder.cdc.gov/ucd-icd10.html>

adjudicating, and incarcerating them through the criminal justice system. This approach, however, has not made an appreciable difference.⁴

AOC articulates several issues with the bill's provisions:

1) The death penalty was abolished in New Mexico in 2009, when NM became the 15th state to abandon capital punishment. As of 2023, 23 states and the District of Columbia had abolished the death penalty. The repeal in New Mexico, 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 to be resentenced to life in prison.

2) 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 8th amendment of the U.S. Constitution. In *Kennedy v. Louisiana*, 554 U.S. 407 (2008), Justice Kennedy, writing for the majority, opined that, "As it relates to crimes against individuals, though, the death penalty should not be expanded to instances where the victim's life was not taken."

Justice Kennedy further noted, "Consistent with evolving standards of decency and the teachings of our precedents we conclude that, in determining whether the death penalty is excessive, there is a distinction between intentional first-degree murder on the one hand and nonhomicide crimes against individual persons, even including child rape, on the other. The latter crimes may be devastating in their harm, as here, but 'in terms of moral depravity and of the injury to the person and to the public,' *Coker*, 433 U. S., at 598 (plurality opinion), they cannot be compared to murder in their 'severity and irrevocability.'"

3) SB341 does not amend the underlying statutes containing the crimes conviction for which will cause a sentence of death to be imposed, potentially causing confusion. For example, SB341, Section 1(A) provides that a person convicted of causing the death of a child pursuant to Section 30-6-1 NMSA 1978 shall be sentenced to death if the neglect or abuse was willful and intentional. Section 30-6-1(B) NMSA 1978 provides that a person who commits abandonment resulting in the child's death is guilty of a second-degree felony. There is no distinction between whether the abandonment was willful or intentional or not. Does that second degree felony crime result in a sentence of death?

LOPD has numerous concerns about the bill:

The proposed statute provides some guidance as to burden of proof for defendants regarding mitigating circumstances but does not concomitantly address prosecutorial burdens for everything else, although it does state the jury must be unanimous. While one might presume the standard is beyond a reasonable doubt, which would be consistent with federal and state law (*see Sullivan v. Louisiana*, 379 U.S. 64 (1964); *Apprendi v. New Jersey*, 530 U.S. 466 (2000)), the statute nonetheless does not leave other aspects of constitutional rights (which seem plainly obvious) such as "full due process" and "the right to legal representation and a fair trial" unaddressed. Addressing some things and not others poses statutory interpretation issues. See *State v. Martinez*, 1978-NMCA-095, 92

⁴ <https://www.healthaffairs.org/doi/10.1377/hlthaff.12.4.7>

N.M. 291 (discussing the maxim “expression unius est exclusion alterius”). Lawyers cannot rely on assumptions that all constitutional rights will be agreed upon or observed.

Moreover, defense counsel would likely challenge the statute under the New Mexico Constitution. In the plurality opinion of *Fry v. Lopez*, 2019-NMSC-013, ¶ 8, after the 2009 repeal of the death penalty, two defendants remaining on death row challenged their sentences on a variety of constitutional grounds, including cruel and unusual punishment and equal protection. The New Mexico Supreme Court avoided the question of the death penalty’s constitutionality, but the court suggested that it harbored significant doubts about whether any death penalty scheme was constitutionally workable. From a policy standpoint, *Fry* stated that the 2009 repeal of the death penalty “represents a profound change in the legislative attitude toward the death penalty and a shift in the standards of decency” and quoted a case that held that “capital punishment no longer comports with contemporary standard of decency. *Id.* ¶ 27. Justice Daniels, concurring in the judgment in *Fry*, wrote that he would find the whole scheme unconstitutional, stating “It is difficult to imagine a justification that would have find constitutional the disproportional manner in which New Mexico has administered the death penalty under the 1979 Act.” *Id.* ¶ 137. Presumably, the defense counsel would argue that SB341 poses similar constitutional concerns.

AODA points out causal issues with the bill:

Subsections B and C raise potential causation concerns as it is not clear what actions could be considered to “cause” the death of a child while committing a felony under the Controlled Substances Act or committing a felony or “any related acts” that lead to the death of a law enforcement officer. The concern would be that an unrelated, tangential, or non-dangerous felony could subject a person to the death penalty without a clear causal connection to the resulting death.

The New Mexico Corrections Department (NMCD) highlights that the reinstatement of the death penalty would require significant changes in legal and operational procedures. Reintroducing the death penalty would likely require updated facilities, specialized staff, and additional resources to manage death row inmates and the execution process. Further analysis would be necessary to determine the fiscal implications.

PERFORMANCE IMPLICATIONS

AOC mentions the courts are participating in performance-based budgeting and that this bill may have an impact on the measures of the district courts in the following areas:

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

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to SB95, SB187, and HB322 which all relate to reintroducing the death penalty for certain crimes.

TECHNICAL ISSUES

According to the Crime Victims Reparation Commission (CVRC):

The bill is procedurally confusing in its use of the word “shall” for sentencing to the death penalty. Past statutes of this type laid out the procedure sequentially to clarify that eligibility for the death penalty was established first by a separate hearing with the need for a unanimous finding by a jury.

The bill is substantively confusing by stating a person “convicted for any related acts that led to the death of the law enforcement officer shall be sentenced to death.” This seems to be wide-reaching phrasing for capital punishment.

LOPD states there is uncertain language in the bill which could lead to legal issues:

in the section of the bill that would make the death penalty mandatory, broad, undefined language such as “causing the death of a law enforcement officer” while “committing a felony” and “convicted for related acts that led to the death of the law enforcement officer” raise vagueness and notice issues grounded in the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution. The meaning of that language is uncertain and subject to abuse. Statutes are unconstitutionally vague when their prohibitions are not clearly defined and when they do not provide explicit standards for those who apply them to prevent arbitrary and discriminatory enforcement. *See State v. Chavez*, 2019-NMCA-068, ¶ 9 (citing, among others, *Grayned v. City of Rockford*, 408 U.S. 104 (1972)).

Additionally, the more permissive portion of the statute that discusses when the death penalty would be “warranted,” also includes vague phrases such as “intervention” by CYFD as well as “plans or commitments required by [CYFD] that the defendant failed to follow.” What those phrases mean is entirely unclear. Beyond that, there are no parameters to “degree of suffering” or age of a child, there is no definition of “premeditation or planning” or what is necessary to be “involved in an act,” there is no definition of “gang” or “cartel” or what is required to be a “member” of such an organization, and there is no indication whatsoever of what it means to “endanger” the lives of “others in the community.”

AODA points out potential redundancies with current law:

Subsections F and I appear to be unnecessary. The federal and state constitutions already guarantee due process, right to counsel, and a fair trial to all criminal defendants and those guarantees do not need to be explicitly repeated in a criminal statute. As to jurisdiction of the New Mexico Supreme Court, that is also already guaranteed by the state constitution. *See N.M. Const. art. VI, § 2* (“Appeals from a judgment of the district court imposing a sentence of death or life imprisonment shall be taken directly to the supreme court.”).

The New Mexico Supreme Court highlights that the bill lists aggravating circumstances but is unclear if the aggravating circumstances must be present for the death penalty to apply. The bill presents the aggravating circumstances as “warranting the death penalty,” but also states that the death penalty “shall” apply to the convictions listed in the bill, without mention of a requirement that aggravating circumstances be present.

SD/hj/SR