

LFC Requester:

Scott Sanchez

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO

AgencyAnalysis.nmlegis.gov and email to billanalysis@dfa.nm.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}*

Date Prepared: January 31, 2025 *Check all that apply:*
Bill Number: SB 187 Original Correction
 Amendment Substitute

Sponsor: Crystal Brantley **Agency Name and Code Number:** Administrative Office of the District Attorneys - #264
Short Title: Death Penalty for Murder of a Peace Officer **Person Writing:** M. Anne Kelly
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SECTION II: FISCAL IMPACT**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	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

BILL SUMMARY

Synopsis:

Section 1 amends Section 31-20A-2 entitled “Capital Felony – Determination of Sentence” of the Criminal Procedure Act.

Currently, the statute provides for life imprisonment without the possibility of release or parole (“LWOP”) for capital offenses if certain aggravating circumstances are found to exist beyond a reasonable doubt.

Subsection A is amended to add the language that “provided that the defendant may be sentenced to death if the aggravating circumstance was that the victim was a peace officer who was (1) acting in the lawful discharge of an official duty when . . . murdered; or (2) not acting in the official discharge of an official duty, but the defendant targeted the victim because of the victim’s status as a peace officer.”

Subsection B is amended to clarify that the aggravating circumstances are those “as enumerated in Section 31-20A-5 NMSA 1978.”

Section 2 amends Section 31-20A-5 entitled “Aggravating Circumstances” to change all references to “he” to “peace officer.”

A new subsection B is new material added to include “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” as an aggravating circumstance.

Subsections E and F (re-lettered from D and E) to delete the phrase “and criminal rehabilitation” from “the corrections department.”

FISCAL IMPLICATIONS

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

Death penalty litigation will require additional resources and expertise from both the Law Office of the Public Defender, the district attorneys’ offices, the corrections department, and the district and appellate courts.

SIGNIFICANT ISSUES

The death penalty was repealed in New Mexico in 2009. In *Fry v. Lopez and Allen v. McMaster*, 2019-NMSC-013, 447 P.3d 1086, the New Mexico Supreme Court vacated the death sentences – imposed before the 2009 repeal – of the two petitioners who were the last prisoners on death row

in New Mexico. The Court concluded that the death sentences were disproportionate when compared with similar cases in which the death sentence was not imposed. Since 1979, the New Mexico Legislature has directed the Supreme Court to ensure that “the death penalty shall not be imposed if . . . the sentence of death is excessive or disproportionate to the penalty imposed in similar cases.” NMSA 1978, § 31-20A-4(C)(4) (1979, repealed 2009). The Court modified its approach to comparative proportionality review, expanding the pool of comparison cases to include factually similar crimes where the jury considered the death penalty, even if different aggravating circumstances were present. The decision was influenced by the legislative intent to reserve the death penalty for the most heinous crimes and the recognition that the death penalty had been infrequently imposed in New Mexico.

The Court discussed the landmark United States Supreme Court decisions that address the imposition of the death penalty and when and how it can be constitutionally applied by states. *See Furman v. Georgia*, 408 U.S. 238 (1972) (per curiam) (holding capital sentencing schemes unconstitutional as applied due to lack of procedures guarding against the arbitrary imposition of the death penalty); *Gregg v. Georgia*, 428 U.S. 153 (1976) (upholding a revised capital punishment scheme because it contained procedures to guard against the arbitrary and capricious imposition of the death penalty, including comparative proportionality review). *Fry*, ¶ 13. The Court noted that while the United States Supreme Court clarified in *Pulley v. Harris* that comparative proportionality review is not constitutionally required (465 U.S. 37, 45 (1984)) it did not “undermine the importance of comparative proportionality review for those states that chose to incorporate comparative proportionality review as a mandatory component of the capital sentencing scheme.” *Fry*, ¶ 20.

The New Mexico Capital Felony Sentencing Act was adopted in 1979 and remained largely unchanged until its repeal in 2009. *Fry*, ¶¶ 18-19. Several of these provisions are not addressed in the bill and remained repealed: Section 31-20A-2.1 (prohibition against capital punishment for mentally disabled people); Section 31-20A-3 (court sentencing for death penalty); Section 31-20A-4 (providing mandatory appellate review of the New Mexico Supreme Court to include the proportionality review); and 31-20A-6 (mitigating circumstances). It is possible that some or all of these provisions will need to be revived and/or modified to ensure that any revived death penalty scheme in New Mexico is constitutional.

PERFORMANCE IMPLICATIONS

None noted.

ADMINISTRATIVE IMPLICATIONS

None noted.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None noted.

TECHNICAL ISSUES

None noted.

OTHER SUBSTANTIVE ISSUES

None noted.

ALTERNATIVES

n/a

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo of LWOP sentencing scheme.

AMENDMENTS

n/a