

LFC Requester:

**AGENCY BILL ANALYSIS  
2025 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 2/11/25

Bill No: SB 341-280

Sponsor: Jay Block  
Short Title: DEATH PENALTY FOR CERTAIN CRIMES

Agency Name and Code: LOPD 280  
Number: \_\_\_\_\_  
Person Writing: Toni Amicarella  
Phone: (505) 395-2890 Email: anne.amicarella@lopdm.us

**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 Expenditure Decreases)

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

	<b>FY25</b>	<b>FY26</b>	<b>FY27</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: **SB 187** “Death Penalty for Murder of a Peace Officer”; **SB 95** “Fentanyl dealing with Death as Capital Crime”; **HB 322** “Increase Penalties for Certain Crimes” (imposing death penalty for criminal sexual penetration and human trafficking crimes against children)

Duplicates/Relates to Appropriation in the General Appropriation Act

**SECTION III: NARRATIVE**

**BILL SUMMARY**

Synopsis:

SB 341 would reintroduce the death penalty to New Mexico and substantially expand its impact from the prior incarnation of Sections 30-20A-1 through 30-20A-6 NMSA by introducing mandatory imposition of the penalty in certain situations except where undefined “mitigating circumstances” exist. Specifically, the new death penalty statute would provide that imposition of the death penalty shall be imposed (1) when a person has been convicted under Section 30-6-1 NMSA of the death of a child and the neglect or abuse was willful and intentional, (2) when a person has been convicted of “causing the death of a child while committing a felony pursuant to the Controlled Substances Act,” and (3) when a person has been convicting of “causing the death of a law enforcement officer” and, similarly, if a person has been convicted of “any related acts that led to the death of a law enforcement officer.”

Beyond that, another subsection would provide that the following factors “may be considered aggravating circumstances” warranting the death penalty: (1) the person has a prior conviction for child neglect or abuse, (2) when there has been “prior intervention by the children, youth and families department and plans or commitments required by the department that the defendant failed to follow, (3) the degree of “suffering inflicted upon a child,” (4) the age of a child, (5) “any premeditation or planning involved in an act,” (6) prior criminal history “involving” a serious violent offense, (7) killing multiple victims, (8) “endangering” the lives of “others in the community,” and (9) “membership in a gang or cartel.”

Finally, additional subsections provide that persons charged under the section “shall be afforded full due process rights, including the right legal representation and a fair trial,” there shall be a separate hearing to determine whether the death penalty is justified and any jury must be unanimous as to this determination, defendants are required to establish mitigating circumstances by a preponderance of the evidence, and convictions resulting in the death penalty shall be automatically appealed to the state supreme court to “ensure a thorough review of the case,” including “any application of the death penalty and any procedural errors during the trial.”

The proposed act, as currently drafted, does not address its relationship to apparently conflicting

sentencing statutes, namely Section 31-18-14 NMSA (Sentencing Authority – Capital Felonies, providing for life imprisonment without the possibility of parole) and Section 31-18-23 NMSA (Three Violent Felony Conviction – mandatory life imprisonment – exception).

## FISCAL IMPLICATIONS

If the death penalty in New Mexico were reintroduced, particularly under such a sweeping statute where the death penalty is mandatory under a variety of circumstances (except where there are undefined – and therefore disagreed upon – “mitigating circumstances”), it would require the expenditure by LOPD of enormous resources in terms of both finances and personnel. Death penalty litigation is expensive, it is time-consuming, it requires experienced attorneys, it requires expert witnesses, and it requires mitigation specialists.

Capital defense is extremely expensive. A capital defense team should have at least two capable, effectively death penalty-qualified, attorneys, with specialized training, one investigator, a mitigation specialist, and someone who can screen for mental and psychological issues. ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases (2003), Guideline 4.1(A). Additionally, defending death penalty cases is generally impossible without experts, such as “pathologists, serologists, microanalysts, DNA analysts, ballistics specialists, translators,” and particularly neurological and psychiatric experts and testing. Hofstra L. Rev. 913, 955-956 (2004)

Notably, prior to repeal of the death penalty by the New Mexico legislature in 2009, the New Mexico Supreme Court held that if attorneys in death penalty cases are inadequately compensated, their clients are deprived of their constitutional right to counsel, and the state may not seek the death penalty until the defense is adequately funded. *See State v. Young*, 2007-NMSC-058, ¶ 1, 143 N.M. 1. “Flat fees, caps on compensation, and lump-sum contracts are improper in death penalty cases.” ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases (2003), Guideline 9.1(B)(1).

In one high-profile death penalty case, attorneys testified in 1999 that the trial defense would require at least \$1 million per defendant. *See State v. Young*, 2007-NMSC-058, ¶ 11. That was 25 years ago; \$1 million in 1999 is roughly \$1.9 million today. *See* U.S. Bureau of Labor Statistics, CPI Inflation Calculator, <https://www.bls.gov/data/inflation-calculator.htm>. One federal report found that the median cost of defending a death penalty case was eight times the cost of defending a death-eligible case in which prosecutors did not seek the death penalty. *See* Jon B. Gould & Lisa Greenman, *Report to the Committee on Defender Services: Judicial Conference of the United States: Update on the Cost and Quality of Defense Representation in Federal Death Penalty Cases* (2010), available at <https://www.uscourts.gov/sservices-forms/defender-services/publications/update-cost-and-quality-defense-representation-federal>. In 2022, the Louisiana Public Defender’s Office spent \$7.7 million on death penalty defense alone. Julie O’Donoghue, *Louisiana spent \$7.7 million on death penalty defense. It hasn’t executed anyone in 13 years*, La. Illuminator (Mar. 21, 2023), <https://lailluminator.com/2023/03/21/louisiana-spent-7-7-million-on-death-penalty-defense-it-hasn-t-executed-anyone-in-13-years/>.

Capital defense requires defense resources not only for trial, but also, if the defendant is convicted, for the sentencing phase (which can be equivalent in time and resources of a second trial), direct appeal to the New Mexico Supreme Court, certiorari review to the United States Supreme Court, habeas proceedings in state and federal courts (so, more than one), and appellate

review of habeas proceedings. If the conviction is overturned on appeal or habeas review, the process begins anew. Each step of a capital case would require extraordinary time commitments from LOPD's most experienced attorneys and contractors as well as huge financial expenditures.

It is impossible to anticipate how many death penalty cases prosecutors would bring if this bill were enacted, although the number of cases that seemingly would require the death penalty suggests the number would be higher than ever before. Accordingly, LOPD cannot provide an exact estimate of how much additional funding would be necessary to defend such cases. In any event, any increase in LOPD expenditures would bring a concomitant need for an increase in indigent defense funding to maintain compliance with constitutional mandates for effective representation. The midpoint of an upper-level, non-supervising public defender salary including benefits is \$149,063.16 in Albuquerque/Santa Fe and \$157,522.44 in other parts of the state (due to necessary salary differential to maintain qualified employees). Support staff for attorneys costs \$126,722.33, on average. Additionally, investigators are crucial to death penalty defense; salary and benefits for an investigator averages \$95,718.51 annually. Because capital cases require highly experienced attorneys and would likely involve supervising attorneys, these salaries understate the cost of salaries for capital defense.

In addition to more attorney FTE, significant 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. In sum, zealous representation, a tenet of professional responsibility, of those facing the death penalty requires dramatically more and different resources, time, and skills than any other type of case. LOPD does not currently have a structure in place for capital defense.

Finally, it is critical to consider that public defense of the accused facing the death penalty is one small part of likely total state expenditures. The respective budgets of courts, DAs, law enforcement, laboratory analysts, and the Department of Corrections would be significantly impacted as well.

## **SIGNIFICANT ISSUES**

Even beyond the constitutional quandaries that have plagued death penalty statutes throughout the country for years (*see e.g., Trop v. Dulles*, 356 U.S. 86 (1958) (discussing evolving standard of decency under Eighth Amendment); *Furman v. Georgia*, 498 U.S. 238 (1972) (standard for extreme cruelty and notion that applicability changes as social mores change) and *Coker v. Georgia*, 433 U.S. 584 (1977) (Eighth Amendment)), the constitutional legal issues this bill poses are even more plentiful. It is not just conceivable, but expected, that pushback from defense attorneys to prosecutions under the statute would be swift and strong. Namely, 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 in order 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.”

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 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 ad 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, defense counsel would argue that SB 341 poses similar constitutional concerns.

## **PERFORMANCE IMPLICATIONS**

## **ADMINISTRATIVE IMPLICATIONS**

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

## **TECHNICAL ISSUES**

See above

## **OTHER SUBSTANTIVE ISSUES**

New Mexico previously used lethal injection to carry out the death penalty. Not only have lethal injection protocols been challenged as cruel and unusual punishment, the United States has previously experienced shortages in execution drugs. *See* Anna Meisel & Melanie Stewart-Smith, Death Row: The Secret Hunt for Lethal Drugs Used in US Executions, BBC News (Oct. 21, 2023), <https://www.bbc.com/news/world-us-canada-67150566>.

## **ALTERNATIVES**

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

Status quo.

## **AMENDMENTS**