

HOUSE BILL 155

**53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018**

INTRODUCED BY

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AN ACT

RELATING TO CAPITAL FELONY SENTENCING; REINSTATING THE DEATH PENALTY; PROVIDING SENTENCING PROCEDURES; PROVIDING MITIGATING CIRCUMSTANCES; REQUIRING AUTOMATIC REVIEW OF CONVICTION AND SENTENCE BY THE SUPREME COURT; PROVIDING PROCEDURES FOR EXECUTION; PROHIBITING EXECUTION OF CERTAIN PERSONS; REQUIRING EXECUTION BY LETHAL INJECTION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**SECTION 1.** Section 31-18-14 NMSA 1978 (being Laws 1979, Chapter 150, Section 1, as amended) is amended to read:

"31-18-14. SENTENCING AUTHORITY--CAPITAL FELONIES.--

A. When a defendant has been convicted of a capital felony, the defendant shall be punished by life imprisonment; life imprisonment without the possibility of release or parole; or death. The punishment shall be imposed after a sentencing

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1 hearing separate from the trial or guilty plea proceeding. If  
2 the defendant has not reached the age of eighteen years at the  
3 time of the commission of the capital felony for which the  
4 defendant was convicted, the defendant may be sentenced to life  
5 imprisonment or life imprisonment without the possibility of  
6 release or parole but shall not be punished by death.

7 B. In the event that the sentence of death in a  
8 capital felony case is held to be unconstitutional or otherwise  
9 invalidated by the supreme court or the United States supreme  
10 court, the person previously sentenced to death for a capital  
11 felony shall be sentenced to [~~life imprisonment or~~] life  
12 imprisonment without possibility of release or parole."

13 SECTION 2. Section 31-18-23 NMSA 1978 (being Laws 1994,  
14 Chapter 24, Section 2, as amended) is amended to read:

15 "31-18-23. THREE VIOLENT FELONY CONVICTIONS--MANDATORY  
16 LIFE IMPRISONMENT--EXCEPTION.--

17 A. When a defendant is convicted of a third violent  
18 felony, and each violent felony conviction is part of a  
19 separate transaction or occurrence, and at least the third  
20 violent felony conviction is in New Mexico, the defendant  
21 shall, in addition to the sentence imposed for the third  
22 violent felony conviction when that sentence does not result in  
23 death, be punished by a sentence of life imprisonment. The  
24 life imprisonment sentence shall be subject to parole pursuant  
25 to the provisions of Section 31-21-10 NMSA 1978.

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1           B. The sentence of life imprisonment shall be  
2 imposed after a sentencing hearing, separate from the trial or  
3 guilty plea proceeding resulting in the third violent felony  
4 conviction, pursuant to the provisions of Section 31-18-24 NMSA  
5 1978.

6           C. For the purpose of this section, a violent  
7 felony conviction incurred by a defendant before the defendant  
8 reaches the age of eighteen shall not count as a violent felony  
9 conviction.

10           D. When a defendant has a felony conviction from  
11 another state, the felony conviction shall be considered a  
12 violent felony for the purposes of the Criminal Sentencing Act  
13 if that crime would be considered a violent felony in New  
14 Mexico.

15           E. As used in the Criminal Sentencing Act:

16                   (1) "great bodily harm" means an injury to the  
17 person that creates a high probability of death or that causes  
18 serious disfigurement or that results in permanent loss or  
19 impairment of the function of any member or organ of the body;  
20 and

21                   (2) "violent felony" means:

22                           (a) murder in the first or second  
23 degree, as provided in Section 30-2-1 NMSA 1978;

24                           (b) shooting at or from a motor vehicle  
25 resulting in great bodily harm, as provided in Subsection B of

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1 Section 30-3-8 NMSA 1978;

2 (c) kidnapping resulting in great bodily  
3 harm inflicted upon the victim by the victim's captor, as  
4 provided in Subsection B of Section 30-4-1 NMSA 1978;

5 (d) criminal sexual penetration, as  
6 provided in Subsection C or D or Paragraph (5) or (6) of  
7 Subsection E of Section 30-9-11 NMSA 1978; and

8 (e) robbery while armed with a deadly  
9 weapon resulting in great bodily harm as provided in Section  
10 30-16-2 NMSA 1978 and Subsection A of Section 30-1-12 NMSA  
11 1978."

12 SECTION 3. Section 31-20A-2 NMSA 1978 (being Laws 1979,  
13 Chapter 150, Section 3, as amended) is amended to read:

14 "31-20A-2. CAPITAL FELONY--DETERMINATION OF SENTENCE.--

15 A. If a jury finds, beyond a reasonable doubt, that  
16 one or more aggravating circumstances exist, as enumerated in  
17 Subsection A of Section 31-20A-5 NMSA 1978, the defendant shall  
18 be sentenced to life imprisonment without possibility of  
19 release or parole. If the jury does not ~~[make the finding]~~  
20 find that one or more of the aggravating circumstances  
21 enumerated in that subsection exist, the defendant shall be  
22 sentenced to life imprisonment.

23 B. If a jury finds, beyond a reasonable doubt, that  
24 one or more aggravating circumstances exist, as enumerated in  
25 Subsection B of Section 31-20A-5 NMSA 1978, the jury shall

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1 determine whether the defendant shall be sentenced to death or  
2 life imprisonment without the possibility of release or parole.  
3 The determination pursuant to this subsection shall be guided  
4 by the following considerations:

5 (1) whether aggravating circumstances exist as  
6 enumerated in Subsection B of Section 31-20A-5 NMSA 1978;

7 (2) whether mitigating circumstances exist as  
8 enumerated in Section 8 of this 2018 act; and

9 (3) whether other mitigating circumstances  
10 exist.

11 C. With respect to a defendant who was younger than  
12 eighteen years at the time of commission of the capital felony  
13 for which the defendant was convicted, if a jury finds that an  
14 aggravating circumstance as enumerated in Subsection A or B of  
15 Section 31-20A-5 NMSA 1978 exists, the sentencing court or jury  
16 shall consider the defendant's age at the time of commission of  
17 the capital felony as a mitigating factor and shall determine  
18 whether to sentence the defendant to life imprisonment or life  
19 imprisonment without the possibility of release or parole."

20 SECTION 4. Section 31-20A-5 NMSA 1978 (being Laws 1979,  
21 Chapter 150, Section 6, as amended) is amended to read:

22 "31-20A-5. AGGRAVATING CIRCUMSTANCES.--

23 A. The aggravating circumstances to be considered  
24 by the sentencing court or jury pursuant to the provisions of  
25 Subsection A of Section 31-20A-2 NMSA 1978 are limited to the

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1 following:

2 ~~[A. the victim was a peace officer who was acting~~  
3 ~~in the lawful discharge of an official duty when he was~~  
4 ~~murdered;~~

5 B.] (1) the murder was committed with intent  
6 to kill in the commission of or attempt to commit [~~kidnaping~~  
7 kidnapping, criminal sexual contact of a minor or criminal  
8 sexual penetration;

9 [G.] (2) the murder was committed with the  
10 intent to kill by the defendant while attempting to escape from  
11 a penal institution of New Mexico;

12 [D.] (3) while incarcerated in a penal  
13 institution in New Mexico, the defendant, with the intent to  
14 kill, murdered a person who was at the time incarcerated in or  
15 lawfully on the premises of a penal institution in New Mexico;  
16 ~~[As used in this subsection, "penal institution" includes~~  
17 ~~facilities under the jurisdiction of the corrections and~~  
18 ~~criminal rehabilitation department and county and municipal~~  
19 ~~jails;~~

20 E. ~~while incarcerated in a penal institution in New~~  
21 ~~Mexico, the defendant, with the intent to kill, murdered an~~  
22 ~~employee of the corrections and criminal rehabilitation~~  
23 ~~department;~~

24 F.] (4) the capital felony was committed for  
25 hire; and

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1                   [6-] (5) the capital felony was murder of a  
2 witness to a crime or any person likely to become a witness to  
3 a crime, for the purpose of preventing report of the crime or  
4 testimony in any criminal proceeding or for retaliation for the  
5 victim having testified in any criminal proceeding.

6                   B. The aggravating circumstances to be considered  
7 by the sentencing court or jury pursuant to the provisions of  
8 Subsection B of Section 31-20A-2 NMSA 1978 are limited to the  
9 following:

10                   (1) the victim was a peace officer who was  
11 acting in the lawful discharge of an official duty when the  
12 peace officer was murdered;

13                   (2) the victim was a child under the age of  
14 eighteen years; and

15                   (3) while incarcerated in a penal institution  
16 in New Mexico, the defendant, with the intent to kill, murdered  
17 an employee or a contractor of the penal institution.

18                   C. For the purpose of this section, "penal  
19 institution" includes facilities under the jurisdiction of the  
20 corrections department and county and municipal jails."

21                   SECTION 5. A new section of Chapter 31 NMSA 1978 is  
22 enacted to read:

23                   "[NEW MATERIAL] CAPITAL FELONY--SENTENCING PROCEDURE.--

24                   A. At the conclusion of all capital felony cases  
25 heard by a jury, and after proper charge from the court and

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1 argument of counsel, the jury shall retire to consider a  
2 verdict of guilty or not guilty without any consideration of  
3 punishment. In nonjury capital felony cases, the judge shall  
4 first consider a finding of guilty or not guilty without any  
5 consideration of punishment.

6 B. Upon a verdict by the jury or judge that the  
7 defendant is guilty of a capital felony, or upon a plea of  
8 guilty to a capital felony, the court shall conduct a separate  
9 sentencing proceeding to determine whether the defendant should  
10 be sentenced to life imprisonment, life imprisonment without  
11 the possibility of release or parole, or, if applicable, death.  
12 In a jury trial, the sentencing proceeding shall be conducted  
13 as soon as practicable by the original trial judge before  
14 either the original trial jury or a jury empaneled for the  
15 purpose of sentencing. In a nonjury trial, the sentencing  
16 proceeding shall be conducted as soon as practicable by the  
17 original trial judge or jury. In the case of a plea of guilty  
18 to a capital felony, the sentencing proceeding shall be  
19 conducted as soon as practicable by the original trial judge or  
20 by a jury upon demand of a party.

21 C. In the sentencing proceeding, all evidence  
22 admitted at the trial shall be considered and additional  
23 evidence may be presented as to the circumstances of the crime  
24 and as to any aggravating or mitigating circumstances, pursuant  
25 to Section 31-20A-5 NMSA 1978 and Section 8 of this 2018 act.

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1           D. In a jury sentencing proceeding, the judge shall  
2 give appropriate instructions and allow arguments and the jury  
3 shall retire to determine the punishment to be imposed. In a  
4 nonjury sentencing proceeding, or upon a plea of guilty where  
5 no jury has been demanded, the judge shall allow argument and  
6 determine the punishment to be imposed."

7           **SECTION 6.** A new section of Chapter 31 NMSA 1978 is  
8 enacted to read:

9           "[NEW MATERIAL] CAPITAL FELONY CASE HEARD BY JURY--  
10 SENTENCING HEARING--EXPLANATION BY COURT TO JURY.--At the  
11 beginning of a sentencing hearing for a capital felony case,  
12 subsequent to a verdict by the jury that the defendant is  
13 guilty of a capital felony, the court shall explain to the jury  
14 that a sentence of life imprisonment means that the defendant  
15 shall serve thirty years of the sentence before the defendant  
16 becomes eligible for a parole hearing, as provided in Section  
17 31-21-10 NMSA 1978."

18           **SECTION 7.** A new section of Chapter 31 NMSA 1978 is  
19 enacted to read:

20           "[NEW MATERIAL] COURT SENTENCING.--In a jury sentencing  
21 proceeding in which the jury unanimously finds beyond a  
22 reasonable doubt and specifies at least one of the aggravating  
23 circumstances enumerated in Subsection B of Section 31-20A-5  
24 NMSA 1978 and unanimously specifies the sentence of death  
25 pursuant to Subsection B of Section 31-20A-2 NMSA 1978, the

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1 court shall sentence the defendant to death. Where a sentence  
2 of death is not unanimously specified or the jury does not make  
3 the required finding or is unable to reach a unanimous verdict,  
4 the court shall sentence the defendant to life imprisonment  
5 without the possibility of release or parole in accordance with  
6 Section 31-20A-2 NMSA 1978. In a nonjury sentencing proceeding  
7 and in cases involving a plea of guilty, where no jury has been  
8 demanded, the judge shall determine and impose the sentence;  
9 provided that the judge shall not impose the sentence of death  
10 except upon a finding beyond a reasonable doubt and  
11 specification of at least one of the aggravating circumstances  
12 enumerated in Subsection B of Section 31-20A-5 NMSA 1978."

13 SECTION 8. A new section of Chapter 31 NMSA 1978 is  
14 enacted to read:

15 "[NEW MATERIAL] MITIGATING CIRCUMSTANCES.--The mitigating  
16 circumstances to be considered by the sentencing court or the  
17 jury pursuant to the provisions of Subsection B of Section  
18 31-20A-2 NMSA 1978 shall include but not be limited to the  
19 following:

- 20 A. the defendant has no significant history of  
21 prior criminal activity;
- 22 B. the defendant acted under duress or under the  
23 domination of another person;
- 24 C. the defendant's capacity to appreciate the  
25 criminality of the defendant's own conduct or to conform the

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1 defendant's own conduct to the requirements of the law was  
2 impaired;

3 D. the defendant was under the influence of mental  
4 or emotional disturbance;

5 E. the victim was a willing participant in the  
6 defendant's conduct;

7 F. the defendant acted under circumstances that  
8 tended to justify, excuse or reduce the crime;

9 G. the defendant is likely to be rehabilitated;

10 H. the defendant cooperated with authorities; and

11 I. the defendant's age."

12 SECTION 9. A new section of Chapter 31 NMSA 1978 is  
13 enacted to read:

14 "[NEW MATERIAL] REVIEW OF JUDGMENT AND SENTENCE.--

15 A. A judgment of conviction and sentence of death  
16 shall be automatically reviewed by the supreme court.

17 B. In addition to other matters on appeal, the  
18 supreme court shall rule on the validity of the sentence of  
19 death.

20 C. A sentence of death shall not be imposed if:

21 (1) the evidence does not support the finding  
22 of a statutory aggravating circumstance;

23 (2) the evidence supports a finding that the  
24 mitigating circumstances outweigh the aggravating  
25 circumstances;

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1 (3) the sentence of death was imposed under  
2 the influence of passion, prejudice or any other arbitrary  
3 factor; or

4 (4) the sentence of death is excessive or  
5 disproportionate to the penalty imposed in similar cases,  
6 considering both the crime and the defendant.

7 D. No error in the sentencing proceeding shall  
8 result in the reversal of the conviction for a capital felony.  
9 If the trial court is reversed on appeal because of error only  
10 in the sentencing proceeding, the supreme court shall remand  
11 solely for a new sentencing proceeding. The new sentencing  
12 proceeding ordered and mandated shall apply only to the issue  
13 of punishment.

14 E. In cases of remand for a new sentencing  
15 proceeding, all exhibits and a transcript of all testimony and  
16 other evidence admitted in the prior trial and sentencing  
17 proceeding shall be admissible in the new sentencing  
18 proceeding, and:

19 (1) if the sentencing proceeding was before a  
20 jury, a new jury shall be impaneled for the new sentencing  
21 proceeding;

22 (2) if the sentencing proceeding was before a  
23 judge, the original trial judge shall conduct the new  
24 sentencing proceeding; or

25 (3) if the sentencing proceeding was before a

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1 judge and the original trial judge is unable or unavailable to  
2 conduct a new sentencing proceeding, another judge shall be  
3 designated to conduct the new sentencing proceeding and the  
4 parties are entitled to disqualify the new judge on the grounds  
5 set forth in Section 38-3-9 NMSA 1978 before the newly  
6 designated judge exercises any discretion."

7 SECTION 10. A new section of Chapter 31 NMSA 1978 is  
8 enacted to read:

9 "[NEW MATERIAL] PROHIBITION AGAINST CAPITAL PUNISHMENT OF  
10 PERSONS WITH AN INTELLECTUAL DISABILITY--PRESENTENCING  
11 HEARING.--

12 A. As used in this section, "intellectual  
13 disability" means significantly below average general  
14 intellectual functioning existing concurrently with deficits in  
15 adaptive behavior. An intelligence quotient of seventy or  
16 below on a reliably administered intelligence quotient test  
17 shall be presumptive evidence of intellectual disability.

18 B. A sentence of death shall not be imposed on any  
19 person with an intellectual disability.

20 C. Upon a motion of the defense requesting a ruling  
21 that a sentence of death be precluded pursuant to this section,  
22 the court shall hold a hearing, prior to conducting the  
23 sentencing proceeding pursuant to Section 7 of this 2018 act.

24 If the court finds, by a preponderance of the evidence, that  
25 the defendant has an intellectual disability, it shall sentence

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1 the defendant to life imprisonment without the possibility of  
2 release or parole. A ruling by the court that evidence of  
3 diminished intelligence introduced by the defendant does not  
4 preclude a sentence of death pursuant to this section shall not  
5 restrict the defendant's opportunity to introduce the evidence  
6 at the sentencing proceeding or to argue that the evidence  
7 should be given mitigating significance. If the sentencing  
8 proceeding is conducted before a jury, the jury shall not be  
9 informed of any ruling denying a defendant's motion pursuant to  
10 this section."

11 SECTION 11. A new section of Chapter 31 NMSA 1978 is  
12 enacted to read:

13 "[NEW MATERIAL] WARRANT OF EXECUTION UPON JUDGMENT OF  
14 DEATH--TIME OF EXECUTION.--When a judgment of death is rendered  
15 by any court of competent jurisdiction, a warrant signed by the  
16 judge and attested by the court clerk under the seal of the  
17 court shall be drawn and delivered to the sheriff. The warrant  
18 shall state the conviction and judgment and appoint a day on  
19 which the judgment is to be executed, which shall not be less  
20 than sixty nor more than ninety days from the date of judgment,  
21 and shall direct the sheriff to deliver the defendant, at a  
22 time specified in the warrant but not more than ten days from  
23 the date of judgment, to the warden of the penitentiary of New  
24 Mexico for execution."

25 SECTION 12. A new section of Chapter 31 NMSA 1978 is

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1 enacted to read:

2 "[NEW MATERIAL] JUDGE TO TRANSMIT STATEMENT OF  
3 CONVICTION.--The judge of a court in which a defendant was  
4 convicted and sentenced to death shall, immediately after the  
5 conviction, transmit to the governor, by mail or otherwise, a  
6 statement of the conviction and judgment."

7 SECTION 13. A new section of Chapter 31 NMSA 1978 is  
8 enacted to read:

9 "[NEW MATERIAL] GOVERNOR MAY SUSPEND EXECUTION.--Only the  
10 governor may suspend the execution of a judgment of death,  
11 except that the warden of the penitentiary of New Mexico to  
12 whom a defendant is delivered for execution may suspend the  
13 execution of a judgment of death in accordance with the  
14 provisions of Sections 14 through 18 of this 2018 act."

15 SECTION 14. A new section of Chapter 31 NMSA 1978 is  
16 enacted to read:

17 "[NEW MATERIAL] INSANITY OF DEFENDANT--HOW DETERMINED.--  
18 If, after a defendant is delivered to the warden for execution,  
19 there is good reason to believe that the defendant, under  
20 judgment of death, has become insane, the warden shall call  
21 that fact to the attention of the district attorney of the  
22 county in which the state penitentiary is situated. The  
23 district attorney shall immediately file in the district court  
24 of the county a petition, stating the conviction and judgment  
25 and the fact that the defendant is believed to be insane and

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1 asking that the court inquire into the question of the  
2 defendant's sanity. It shall be the duty of the district court  
3 to inquire into the question and render a judgment."

4 SECTION 15. A new section of Chapter 31 NMSA 1978 is  
5 enacted to read:

6 "[NEW MATERIAL] DUTY OF DISTRICT ATTORNEY UPON INQUIRY AND  
7 HEARING.--The district attorney shall attend a hearing provided  
8 for in Sections 14 and 18 of this 2018 act, and may produce  
9 witnesses before the court, for which purpose the district  
10 attorney may issue process in the same manner as process is  
11 issued for witnesses to testify before the grand jury. Failure  
12 to comply with process issued may be punished in a like manner  
13 as failure to comply with process issued by the court."

14 SECTION 16. A new section of Chapter 31 NMSA 1978 is  
15 enacted to read:

16 "[NEW MATERIAL] ORDER OF COURT COMMITTING INSANE PERSON TO  
17 HOSPITAL.--The court shall make and cause to be entered an  
18 order reciting the fact of the inquiry made pursuant to Section  
19 14 of this 2018 act and its result. If it is found that the  
20 defendant is insane, the order shall direct that the defendant  
21 be taken to the New Mexico behavioral health institute at Las  
22 Vegas and kept there in safe confinement until the defendant's  
23 sanity is restored."

24 SECTION 17. A new section of Chapter 31 NMSA 1978 is  
25 enacted to read:

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1           "[NEW MATERIAL] FINDINGS OF INQUIRY--DUTIES OF WARDEN--  
2   PROCEDURE WHEN SANITY IS RESTORED.--If it is found that the  
3   defendant is sane, the warden shall proceed to execute the  
4   judgment as specified in the warrant. If it is found that the  
5   defendant is insane, the warden shall suspend the execution and  
6   transmit a certified copy of the order provided for in Section  
7   16 of this 2018 act to the governor and deliver the defendant,  
8   together with a certified copy of the order, to the  
9   superintendent of the New Mexico behavioral health institute at  
10   Las Vegas. When the defendant's sanity is restored, the  
11   superintendent of the institute shall certify that fact to the  
12   governor, who shall then issue to the warden the governor's  
13   warrant appointing a day for the execution of the judgment."

14           **SECTION 18.** A new section of Chapter 31 NMSA 1978 is  
15   enacted to read:

16           "[NEW MATERIAL] PROCEEDINGS WHEN FEMALE DEFENDANT MAY BE  
17   PREGNANT--DUTY OF DISTRICT ATTORNEY.--

18           A. If there is good reason to believe that a female  
19   defendant who was sentenced to death is pregnant, the warden  
20   shall call that fact to the attention of the district attorney  
21   of the county in which the state penitentiary is situated. The  
22   district attorney shall immediately file in the district court  
23   of the county a petition, stating the conviction and judgment  
24   and the fact that the defendant may be pregnant and asking that  
25   the court inquire into the question of the defendant's

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1 pregnancy. It shall be the duty of the district court to  
2 inquire into the question and render a judgment. The court may  
3 summon three disinterested physicians of good standing in their  
4 profession to inquire into the alleged pregnancy. The  
5 physicians shall examine the defendant, hear any evidence that  
6 may be produced and make a written finding and certificate of  
7 their conclusion, to be approved by the court. The provisions  
8 of Section 15 of this 2018 act apply to the proceedings  
9 provided in this subsection.

10 B. If it is found that the female defendant is not  
11 pregnant, the warden shall execute the judgment. If it is  
12 found that the female defendant is pregnant, the warden shall  
13 suspend the execution of the judgment and transmit a certified  
14 copy of the finding and certificate to the governor. When the  
15 governor receives from the warden a certificate that the female  
16 defendant is no longer pregnant, the governor shall issue to  
17 the warden a warrant appointing a day for the execution of the  
18 judgment."

19 SECTION 19. A new section of Chapter 31 NMSA 1978 is  
20 enacted to read:

21 "[NEW MATERIAL] JUDGMENT OF DEATH REMAINING IN FORCE BUT  
22 NOT EXECUTED--NO APPEAL FROM ORDER OF COURT.--If for any reason  
23 a judgment of death has not been executed and remains in force,  
24 the court in which the conviction is had, on the application of  
25 the district attorney of the county in which the conviction is

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1 had, shall order the defendant to be brought before it, or if  
2 the defendant is at large, a warrant for the defendant's  
3 apprehension may be issued. When the defendant is brought  
4 before the court, the court shall inquire into the facts and,  
5 if no legal reason exists against the execution of the  
6 judgment, shall issue an order that the warden of the  
7 penitentiary of New Mexico, to whom the sheriff is directed to  
8 deliver the defendant, execute the judgment at a specified  
9 time. The warden shall execute the judgment accordingly.  
10 There is no appeal from an order, as provided herein, directing  
11 and fixing the time for the execution of a judgment."

12 SECTION 20. A new section of Chapter 31 NMSA 1978 is  
13 enacted to read:

14 "[NEW MATERIAL] PUNISHMENT OF DEATH--HOW INFLICTED.--The  
15 manner of inflicting punishment of death shall be by  
16 administration of an intravenous injection of a lethal  
17 substance into the convicted person in a quantity sufficient to  
18 cause death. Any reference in the statutes relating to the  
19 means of execution shall be construed to mean execution by  
20 lethal injection as provided in this section."

21 SECTION 21. A new section of Chapter 31 NMSA 1978 is  
22 enacted to read:

23 "[NEW MATERIAL] PLACE OF EXECUTION--DIRECTION OF WARDEN.--  
24 The warden of the penitentiary of New Mexico shall provide a  
25 suitable and efficient room or place, closed from public view,

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1 within the walls of the penitentiary of New Mexico and therein  
2 provide all necessary appliances requisite for carrying into  
3 execution the sentence of death. In each individual case of a  
4 sentence of death pronounced in this state, the sentence of  
5 death shall be executed under the direction of the warden in  
6 the room or place provided for that purpose."

7 SECTION 22. A new section of Chapter 31 NMSA 1978 is  
8 enacted to read:

9 "[NEW MATERIAL] WHERE JUDGMENT IS EXECUTED--WHO MAY BE  
10 PRESENT.--A sentence of death shall be executed within the  
11 walls of the penitentiary of New Mexico, and the execution  
12 shall be under the supervision and direction of the warden of  
13 the penitentiary. The warden of the penitentiary of New Mexico  
14 shall be present at the execution and shall invite the presence  
15 of a physician, the attorney general and at least twelve  
16 reputable citizens to be selected by the warden. The warden  
17 shall, at the request of the defendant, permit such religious  
18 leaders or teachers, not exceeding two, as the defendant may  
19 name, and any person, relative or friend, not to exceed five,  
20 to be present at the execution, together with such peace  
21 officers as the warden may think expedient, to witness the  
22 execution. No persons, other than those mentioned in this  
23 section, shall be present at the execution, nor shall any  
24 person under the age of eighteen be allowed to witness the  
25 execution. The identities of the persons designated to conduct

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1 the execution are confidential and not subject to public  
2 disclosure."

3 SECTION 23. A new section of Chapter 31 NMSA 1978 is  
4 enacted to read:

5 "[NEW MATERIAL] RETURN BY WARDEN.--After the execution,  
6 the warden shall make a return upon the death warrant to the  
7 court that rendered the judgment, showing the time, mode and  
8 manner in which the warrant was executed."

9 SECTION 24. APPLICABILITY.--The provisions of this act  
10 apply only to capital felonies committed on or after the  
11 effective date of this act. Nothing contained in the  
12 provisions of this act shall be construed to alter in any way  
13 the execution of a sentence of death imposed for a crime  
14 committed before the effective date of this act.

