

LFC Requester:

Scott Sanchez

## AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

### SECTION I: GENERAL INFORMATION

*{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}*

Date Prepared: 1/30/25

Check all that apply:

Bill Number: SB187

Original  Correction   
Amendment  Substitute

Sponsor: Sen. Crystal Brantley

Agency Name and Code Number: 305 – New Mexico Department of Justice

Person Writing

Short Title: Death Penalty for Murder of a Peace Officer

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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
<b>Total</b>						

(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:

New Mexico abolished the death penalty in 2009. The remaining capital crime of first degree murder is now punished by either life in prison or life in prison without the possibility of parole. SB187 would reinstate the death penalty as a punishment for committing first-degree murder when the victim is a peace officer.

Section 1 would amend NMSA 1978, Section 31-20A-2 to permit juries to sentence defendants convicted of first-degree murder to death in two circumstances. First, a defendant could be put to death for murdering a peace officer who was acting in the lawful discharge of official duty. Second, a defendant could be executed for murdering a peace officer who, although not acting in the lawful discharge of official duties, was nonetheless targeted because of his or her status as a peace officer.

Section 2 would add conforming language to NMSA 1978, Section 31-20A-2, correct an existing misspelling, and update the name of the corrections department.

**FISCAL IMPLICATIONS**

N/A

**SIGNIFICANT ISSUES**

SB187 would not require the sentencing jury to find that the defendant knew that the victim was a peace officer acting in the lawful discharge of his or her duties. This would likely lead New Mexico Courts to read in such a knowledge requirement. *See State v. Consaul*, 2014-NMSC-030, ¶ 40 (reading recklessness requirement into child abuse statute); *State v. Ortega*, 1991-NMSC-084, ¶ 23, 112 N.M. 554 (noting the “general presumption in our Anglo–American jurisprudence that . . . serious, non-regulatory crimes are generally attended by moral culpability arising from or manifested in a mental state generally characterized as “an evil mind”).

As written, SB187 would conflict with NMSA 1978, Section 31-18-14 (2009), which provides that, “[w]hen a defendant has been convicted of a capital felony, the defendant shall be sentenced to life imprisonment or life imprisonment without possibility of release or parole.”

When the Legislature abolished the death penalty, it also repealed the detailed procedural safeguards that accompanied it, found at NMSA 1978, Sections 31-20A-1, -2.1, -3, -4, and -6. Some of these protections reflected requirements of constitutional law. For example, Section 31-20A-2.1 prohibited the execution of defendants with “mental retardation” (now called “intellectual disability”) and provided a mechanism to resolve such claims. It is unconstitutional to execute an individual with intellectual disability. *Atkins v. Virginia*, 536 U.S. 304 (2002). Similarly, Section 31-20A-1 provided for bifurcated sentencing in death penalty cases, which may be required under the Eighth Amendment. *See Roberts v. Louisiana*, 428 U.S. 325, 356 (1976) (“The plurality holds the Louisiana statute unconstitutional for want of a separate sentencing proceeding in which the sentencing authority may focus on the sentence and consider some or all of the aggravating and mitigating circumstances.”). Because SB187 would reinstate the death penalty without these procedural safeguards, it would likely face Eighth Amendment and due process challenges.

### **PERFORMANCE IMPLICATIONS**

Because death-penalty appeals are lengthy and resource-intensive, the Criminal Appeals Division of the NMDOJ would have to expend more resources handling such appeals.

### **ADMINISTRATIVE IMPLICATIONS**

None.

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

See above.

### **TECHNICAL ISSUES**

None.

### **OTHER SUBSTANTIVE ISSUES**

None.

### **ALTERNATIVES**

None.

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

Status quo.

### **AMENDMENTS**

None.