

LFC Requester:	Sanchez, Scott
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AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO

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(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: 2/11/25 *Check all that apply:*
Bill Number: SB 341 Original Correction
 Amendment Substitute

Sponsor: Sen. Jay C. Block **Agency Name and Code:** AOC
Short Title: Death Penalty for Certain Crimes **Number:** 218
Person Writing: Kathleen Sabo
Phone: 505-470-3214 **Email:** aoccaj@nmcourts.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		
None	None	Rec.	General

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		
Unknown	Unknown	Unknown	Rec.	General

(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	Unknown	Unknown	Unknown	Unknown	Rec.	General

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: Relates to SB 187, allowing for the death penalty for murdering a peace officer.

Duplicates/Relates to Appropriation in the General Appropriation Act: None.

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: SB 341 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.

SB 341 permits the court, in cases pursuant to this section where mitigating circumstances exist, to impose a lesser sentence, but not less than life imprisonment without the possibility of parole.

SB 341 specifies the following factors that may be considered as aggravating circumstances warranting the death penalty:

- (1) prior convictions for child neglect or abuse;
- (2) 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; or
- (9) membership in a gang or cartel.

SB 341, Section 1(F) provides that a person charged under this section shall be afforded full due process rights, including the right to legal representation and a fair trial.

Subsection G requires a separate hearing be held to determine whether the death penalty is justified and that a jury must be unanimous to sentence a person to death.

Subsection H requires a defendant to establish mitigating circumstances by a preponderance of evidence.

Subsection I requires convictions resulting in the death penalty be automatically appealed to the supreme court, which is required to review the application of the death penalty and any procedural errors during the trial.

FISCAL IMPLICATIONS

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced prosecutions, and appeals from convictions, as well as challenges to the constitutionality of the law. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

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.

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.

Past studies have indicated a significant 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, arising out of the Santa Rosa prison riot cases, the NM 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.”

SIGNIFICANT ISSUES

- 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. (See the Death Penalty Information Center’s state by state guide to the death penalty at <https://deathpenaltyinfo.org/states-landing> .) The repeal in NM, 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 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.” *Ibid*.

In reaching our conclusion we find significant the number of executions that would be allowed under respondent’s approach. The crime of child rape, considering its reported incidents, occurs more often than first-degree murder. Approximately 5,702 incidents of vaginal, anal, or oral rape of a child under the age of 12 were reported nationwide in 2005; this is almost twice the total incidents of intentional murder for victims of all ages (3,405) reported during the same period. See Inter-University Consortium for Political and Social Research, National Incident-Based Reporting System, 2005, Study No. 4720, <http://www.icpsr.umich.edu> (as visited June 12, 2008, and available in Clerk of Court’s case file). Although we have no reliable statistics on convictions for child rape, we can surmise that, each year, there are hundreds, or more, of these convictions just in jurisdictions that permit capital punishment. Cf. Brief for Louisiana Association of Criminal Defense Lawyers et al. as *Amici Curiae* 1–2, and n. 2 (noting that there are now at least 70 capital rape indictments pending in Louisiana and estimating the actual number to be over 100). As a result of existing rules, see generally *Godfrey*, 446 U. S., at 428–433 (plurality opinion), only 2.2% of convicted first-degree murderers are sentenced to death, see Blume, Eisenberg, & Wells, Explaining Death Row’s Population and Racial Composition, 1 J. of Empirical Legal Studies 165, 171 (2004). But under respondent’s approach, the 36 States that permit the death penalty could sentence to death all persons convicted of raping a child less than 12 years of age. This could not be reconciled with our evolving standards of decency and the necessity to constrain the use of the death penalty.

- 3) HB 109 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, SB 341, 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?

As another example, Section 30-6-1(H) NMSA 1978 provides that a person who commits intentional abuse of a child less than 12 that results in the death of the child is guilty of a first degree felony resulting in the death of a child.

Section 31-18-15(A) NMSA 1978 lists the basic sentence of imprisonment for a first degree felony resulting in the death of a child as life imprisonment. SB 341 does not amend Section 31-18-15(A) NMSA 1978 to provide a basic sentence of death for a first degree felony resulting in the death of a child, nor does SB 341 amend Section 30-6-1 NMSA 1978 to clarify which crimes resulting in the death of a child will lead to a death sentence.

PERFORMANCE IMPLICATIONS

The courts are participating in performance-based budgeting. This bill may have an impact on the measures of the district courts in the following areas:

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

ADMINISTRATIVE IMPLICATIONS

See “Fiscal Implications,” above.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to SB 187, allowing for the death penalty for murdering a peace officer.

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS