

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: 02/11/2025

Check all that apply:

Bill Number: SB 341

Original  Correction   
Amendment  Substitute

Sponsor: Sen. Jay C. Block

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

Person Writing

Short Title: Death Penalty for Certain  
Crimes

Analysis: Eric Orona, ASG

Phone: 505-537-7676

Email: legisfir@nmag.gov

### 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.

SB341 seeks to reinstate the death penalty as a punishment for specific crimes by adding a new section to NMSA 1978, Section 31-20A. This bill would require a death sentence for convictions (1) causing the death of a child pursuant to NMSA 1978, Section 30-6-1, if the neglect or abuse was willful and intentional; (2) causing the death of a child while committing a felony under the Controlled Substances Act; or (3) causing the death of a law enforcement officer while committing a felony or by “any related acts that led to the death of the” officer.

SB341 also enumerates nine (9) aggravating circumstances that may warrant the death penalty; provides for due process rights to a person charged under the new section; provides for a separate hearing to determine whether the death penalty is justified, which must be determined by a unanimous jury; and provides that convictions resulting in the death penalty are automatically appealable to the New Mexico Supreme Court.

This bill would also allow courts to impose a lesser sentence—but not less than life imprisonment without the possibility of parole—where mitigating circumstances exist. The burden would be on the defendant to establish the mitigating circumstances by a preponderance of evidence.

**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.

**SIGNIFICANT ISSUES**

1. SB341 reinstates the death penalty without previous procedural safeguards.

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 procedural 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 an intellectual disability. *Atkins v. Virginia*, 536 U.S. 304 (2002). Because SB341 would reinstate the death penalty without these procedural safeguards, it would likely face Eighth Amendment and due process challenges.

2. SB341 conflicts with the mandatory language of NMSA 1978, Section 31-18-14 (2009).

The bill does not address Section 31-18-14, which states: “When 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.” “Shall” and “must” express a duty, obligation, requirement or condition precedent. NMSA 1978, § 12-2A-4 (1997). SB341 simultaneously mandates that defendants “shall be sentenced to death” for its specific crimes. Thus, in certain scenarios the sentencing court would face two separate conflicting mandates likely spurring immediate litigation.

3. Vague or contradictory language in Section A.

SB341 Section A states 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.” By claiming the “neglect” in child abuse cases be “willful and intentional,” it will likely create a fundamental problem in its interpretation and application. Generally, “neglect” (or negligence) is distinct from “willful and intentional.” This provision would likely cause confusion as it appears to merge two distinct types of mental states. *See, e.g., State v. Consaul*, 2014-NMSC-030, ¶ 23 (recognizing the distinctions between “knowingly, intentionally, negligently, or recklessly” in child abuse cases).

4. Vague language in Section E.

SB341 enumerates nine (9) aggravating circumstances that may warrant the death penalty. It is unclear whether these aggravating circumstances were intended to only apply to the crimes enumerated in Sections A-D, or whether they may apply to all crimes, if such aggravating circumstances are present. If the former, it seems potentially contradictory to consider factors that may warrant the death penalty when the enumerated crimes in Sections A-D require the imposition of the death penalty. If it is intended to serve as a counterpoint to the mitigating circumstances, that is unclear. If the latter, the above constitutional concerns, as well as potentially Eighth Amendment concerns, may be raised.

## **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. No additional appropriations have been made to the NMDOJ.

## **ADMINISTRATIVE IMPLICATIONS**

N/A

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

This bill is related to SB187 “Death Penalty for Murder of a Peace Officer” which also seeks to reinstate the death penalty for the murder of peace officers.

This bill is also related to HB322 “Increase Penalties for Certain Crimes” which also seeks to reinstate the death penalty for certain crimes.

## **TECHNICAL ISSUES**

The language in Section I “to ensure a thorough review of the case” implies that an appeal to the Court of Appeals or other court serving in an appellate capacity does not result in a thorough review of the case.

## **OTHER SUBSTANTIVE ISSUES**

It is unclear why Section F states that a defendant has due process rights and includes 2 specific types of rights when defendants have those rights. It is unclear whether this is unnecessary reiteration or intentional limitation.

It is unclear how a jury must determine whether the death penalty is justified under Section G when Sections A-D make imposition of the death penalty mandatory unless, as perhaps altered by Sections D and E, there are mitigating or aggravating circumstances. It is also unclear whether whatever the jury must determine must be determined beyond a reasonable doubt. If, for example, a jury only need to find mitigating circumstances under a preponderance of evidence standard, is that also true for aggravating circumstances?

Section I states that the appellate court must review the application of the death penalty as well as any procedural errors during the trial. It is unclear whether the intention is to split appeals that may be based on application of the death penalty and/or procedural errors, as well as allegations of legal error. It is unclear why this limiting language is included.

## **ALTERNATIVES**

N/A

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

Status quo.

## **AMENDMENTS**

N/A