

1 SENATE BILL 221

2 **54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020**

3 INTRODUCED BY

4 Stuart Ingle

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9  
10 AN ACT

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

17  
18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

21 "31-18-14. SENTENCING AUTHORITY--CAPITAL FELONIES.--

22 A. When a defendant has been convicted of a capital  
23 felony, the defendant shall be punished by life imprisonment,  
24 life imprisonment without the possibility of release or parole  
25 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 at the time  
3 of the commission of the capital felony for which the defendant  
4 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 2020 act; and

9 (3) whether other mitigating circumstances  
10 exist."

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

13 "31-20A-5. AGGRAVATING CIRCUMSTANCES.--

14 A. The aggravating circumstances to be considered  
15 by the sentencing court or jury pursuant to the provisions of  
16 Subsection A of Section 31-20A-2 NMSA 1978 are limited to the  
17 following:

18 [~~A.~~] (1) the victim was a peace officer who  
19 was acting in the lawful discharge of an official duty when  
20 [~~he~~] the peace officer was murdered;

21 [~~B.~~] (2) the murder was committed with intent  
22 to kill in the commission of or attempt to commit [~~kidnaping~~]  
23 kidnapping, criminal sexual contact of a minor or criminal  
24 sexual penetration;

25 [~~C.~~] (3) the murder was committed with the

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1 intent to kill by the defendant while attempting to escape from  
2 a penal institution of New Mexico;

3 ~~[D-]~~ (4) while incarcerated in a penal  
4 institution in New Mexico, the defendant, with the intent to  
5 kill, murdered a person who was at the time incarcerated in or  
6 lawfully on the premises of a penal institution in New Mexico.  
7 As used in this subsection, "penal institution" includes  
8 facilities under the jurisdiction of the corrections ~~[and~~  
9 ~~criminal rehabilitation]~~ department and county and municipal  
10 jails;

11 ~~[E-]~~ (5) while incarcerated in a penal  
12 institution in New Mexico, the defendant, with the intent to  
13 kill, murdered an employee of the corrections ~~[and criminal~~  
14 ~~rehabilitation]~~ department;

15 ~~[F-]~~ (6) the capital felony was committed for  
16 hire; and

17 ~~[G-]~~ (7) the capital felony was murder of a  
18 witness to a crime or any person likely to become a witness to  
19 a crime, for the purpose of preventing report of the crime or  
20 testimony in any criminal proceeding or for retaliation for the  
21 victim having testified in any criminal proceeding.

22 B. The aggravating circumstances to be considered  
23 by the sentencing court or jury pursuant to the provisions of  
24 Subsection B of Section 31-20A-2 NMSA 1978 are limited to the  
25 murder of a federal or state military member or a veteran.

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1                   C. For the purpose of this section, "penal  
2 institution" includes facilities under the jurisdiction of the  
3 corrections department and county and municipal jails."

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

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

7                   A. At the conclusion of all capital felony cases  
8 heard by a jury, and after proper charge from the court and  
9 argument of counsel, the jury shall retire to consider a  
10 verdict of guilty or not guilty without any consideration of  
11 punishment. In nonjury capital felony cases, the judge shall  
12 first consider a finding of guilty or not guilty without any  
13 consideration of punishment.

14                   B. Upon a verdict by the jury or judge that the  
15 defendant is guilty of a capital felony, or upon a plea of  
16 guilty to a capital felony, the court shall conduct a separate  
17 sentencing proceeding to determine whether the defendant should  
18 be sentenced to life imprisonment, life imprisonment without  
19 the possibility of release or parole or death. In a jury  
20 trial, the sentencing proceeding shall be conducted as soon as  
21 practicable by the original trial judge before either the  
22 original trial jury or a jury impaneled for the purpose of  
23 sentencing. In a nonjury trial, the sentencing proceeding  
24 shall be conducted as soon as practicable by the original trial  
25 judge or a jury. In the case of a plea of guilty to a capital

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1 felony, the sentencing proceeding shall be conducted as soon as  
2 practicable by the original trial judge or by a jury upon  
3 demand of a party.

4 C. In the sentencing proceeding, all evidence  
5 admitted at the trial shall be considered and additional  
6 evidence may be presented as to the circumstances of the crime  
7 and as to any aggravating or mitigating circumstances, pursuant  
8 to Section 31-20A-5 NMSA 1978 and Section 8 of this 2020 act.

9 D. In a jury sentencing proceeding, the judge shall  
10 give appropriate instructions and allow arguments and the jury  
11 shall retire to determine the punishment to be imposed. In a  
12 nonjury sentencing proceeding, or upon a plea of guilty where  
13 no jury has been demanded, the judge shall allow argument and  
14 determine the punishment to be imposed."

15 SECTION 6. A new section of Chapter 31 NMSA 1978 is  
16 enacted to read:

17 "[NEW MATERIAL] CAPITAL FELONY CASE HEARD BY JURY--  
18 SENTENCING HEARING--EXPLANATION BY COURT TO JURY.--At the  
19 beginning of a sentencing hearing for a capital felony case,  
20 subsequent to a verdict by the jury that the defendant is  
21 guilty of a capital felony, the court shall explain to the jury  
22 that a sentence of life imprisonment means that the defendant  
23 shall serve thirty years of the sentence before the defendant  
24 becomes eligible for a parole hearing, as provided in Section  
25 31-21-10 NMSA 1978."

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

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

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

23           "[NEW MATERIAL] MITIGATING CIRCUMSTANCES.--The mitigating  
24 circumstances to be considered by the sentencing court or the  
25 jury pursuant to the provisions of Subsection B of Section

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1 31-20A-2 NMSA 1978 shall include the following:

- 2 A. the defendant has no significant history of
- 3 prior criminal activity;
- 4 B. the defendant acted under duress or under the
- 5 domination of another person;
- 6 C. the defendant's capacity to appreciate the
- 7 criminality of the defendant's own conduct or to conform the
- 8 defendant's own conduct to the requirements of the law was
- 9 impaired;
- 10 D. the defendant was under the influence of mental
- 11 or emotional disturbance;
- 12 E. the victim was a willing participant in the
- 13 defendant's conduct;
- 14 F. the defendant acted under circumstances that
- 15 tended to justify, excuse or reduce the crime;
- 16 G. the defendant is likely to be rehabilitated;
- 17 H. the defendant cooperated with authorities; and
- 18 I. the defendant's age."

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

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

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

24 B. In addition to other matters on appeal, the  
25 supreme court shall rule on the validity of the sentence of

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1 death.

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

3 (1) the evidence does not support the finding  
4 of a statutory aggravating circumstance;

5 (2) the evidence supports a finding that the  
6 mitigating circumstances outweigh the aggravating  
7 circumstances;

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

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

14 D. No error in the sentencing proceeding shall  
15 result in the reversal of the conviction for a capital felony.  
16 If the trial court is reversed on appeal because of error only  
17 in the sentencing proceeding, the supreme court shall remand  
18 solely for a new sentencing proceeding. The new sentencing  
19 proceeding ordered and mandated shall apply only to the issue  
20 of punishment.

21 E. In cases of remand for a new sentencing  
22 proceeding, all exhibits and a transcript of all testimony and  
23 other evidence admitted in the prior trial and sentencing  
24 proceeding shall be admissible in the new sentencing  
25 proceeding, and:

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1 (1) if the sentencing proceeding was before a  
2 jury, a new jury shall be impaneled for the new sentencing  
3 proceeding;

4 (2) if the sentencing proceeding was before a  
5 judge, the original trial judge shall conduct the new  
6 sentencing proceeding; or

7 (3) if the sentencing proceeding was before a  
8 judge and the original trial judge is unable or unavailable to  
9 conduct a new sentencing proceeding, another judge shall be  
10 designated to conduct the new sentencing proceeding and the  
11 parties are entitled to disqualify the new judge on the grounds  
12 set forth in Section 38-3-9 NMSA 1978 before the newly  
13 designated judge exercises any discretion."

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

16 "[NEW MATERIAL] PROHIBITION AGAINST CAPITAL PUNISHMENT OF  
17 PERSONS WITH AN INTELLECTUAL DISABILITY--PRESENTENCING  
18 HEARING.--

19 A. As used in this section, "intellectual  
20 disability" means significantly below average general  
21 intellectual functioning existing concurrently with deficits in  
22 adaptive behavior. An intelligence quotient of seventy or  
23 below on a reliably administered intelligence quotient test  
24 shall be presumptive evidence of intellectual disability.

25 B. A sentence of death shall not be imposed on any

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1 person with an intellectual disability.

2 C. Upon a motion of the defense requesting a ruling  
3 that a sentence of death be precluded pursuant to this section,  
4 the court shall hold a hearing, prior to conducting the  
5 sentencing proceeding pursuant to Section 7 of this 2020 act.  
6 If the court finds, by a preponderance of the evidence, that  
7 the defendant has an intellectual disability, it shall sentence  
8 the defendant to life imprisonment without the possibility of  
9 release or parole. A ruling by the court that evidence of  
10 diminished intelligence introduced by the defendant does not  
11 preclude a sentence of death pursuant to this section shall not  
12 restrict the defendant's opportunity to introduce the evidence  
13 at the sentencing proceeding or to argue that the evidence  
14 should be given mitigating significance. If the sentencing  
15 proceeding is conducted before a jury, the jury shall not be  
16 informed of any ruling denying a defendant's motion pursuant to  
17 this section."

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

20 "[NEW MATERIAL] WARRANT OF EXECUTION UPON JUDGMENT OF  
21 DEATH--TIME OF EXECUTION.--When a judgment of death is rendered  
22 by any court of competent jurisdiction, a warrant signed by the  
23 judge and attested by the court clerk under the seal of the  
24 court shall be drawn and delivered to the sheriff. The warrant  
25 shall state the conviction and judgment and appoint a day on

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1 which the judgment is to be executed, which shall not be less  
2 than sixty nor more than ninety days from the date of judgment,  
3 and shall direct the sheriff to deliver the defendant, at a  
4 time specified in the warrant but not more than ten days from  
5 the date of judgment, to the warden of the penitentiary of New  
6 Mexico for execution."

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

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

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

16 "[NEW MATERIAL] GOVERNOR MAY SUSPEND EXECUTION.--Only the  
17 governor may suspend the execution of a judgment of death,  
18 except that the warden of the penitentiary of New Mexico to  
19 whom a defendant is delivered for execution may suspend the  
20 execution of a judgment of death in accordance with the  
21 provisions of Sections 14 through 18 of this 2020 act."

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

24 "[NEW MATERIAL] INSANITY OF DEFENDANT--HOW DETERMINED.--  
25 If, after a defendant is delivered to the warden for execution,

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1 there is good reason to believe that the defendant, under  
2 judgment of death, has become insane, the warden shall call  
3 that fact to the attention of the district attorney of the  
4 county in which the state penitentiary is situated. The  
5 district attorney shall immediately file in the district court  
6 of the county a petition, stating the conviction and judgment  
7 and the fact that the defendant is believed to be insane and  
8 asking that the court inquire into the question of the  
9 defendant's sanity. It shall be the duty of the district court  
10 to inquire into the question and render a judgment."

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

13 "[NEW MATERIAL] DUTY OF DISTRICT ATTORNEY UPON INQUIRY AND  
14 HEARING.--The district attorney shall attend a hearing provided  
15 for in Sections 14 and 18 of this 2020 act and may produce  
16 witnesses before the court, for which purpose the district  
17 attorney may issue process in the same manner as process is  
18 issued for witnesses to testify before the grand jury. Failure  
19 to comply with process issued may be punished in a like manner  
20 as failure to comply with process issued by the court."

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

23 "[NEW MATERIAL] ORDER OF COURT COMMITTING INSANE PERSON TO  
24 HOSPITAL.--The court shall make and cause to be entered an  
25 order reciting the fact of the inquiry made pursuant to Section

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1 14 of this 2020 act and its result. If it is found that the  
2 defendant is insane, the order shall direct that the defendant  
3 be taken to the New Mexico behavioral health institute at Las  
4 Vegas and kept there in safe confinement until the defendant's  
5 sanity is restored."

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

8 "[NEW MATERIAL] FINDINGS OF INQUIRY--DUTIES OF WARDEN--  
9 PROCEDURE WHEN SANITY IS RESTORED.--If it is found that the  
10 defendant is sane, the warden shall proceed to execute the  
11 judgment as specified in the warrant. If it is found that the  
12 defendant is insane, the warden shall suspend the execution and  
13 transmit a certified copy of the order provided for in Section  
14 16 of this 2020 act to the governor and deliver the defendant,  
15 together with a certified copy of the order, to the  
16 superintendent of the New Mexico behavioral health institute at  
17 Las Vegas. When the defendant's sanity is restored, the  
18 superintendent of the institute shall certify that fact to the  
19 governor, who shall then issue to the warden the governor's  
20 warrant appointing a day for the execution of the judgment."

21 SECTION 18. A new section of Chapter 31 NMSA 1978 is  
22 enacted to read:

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

25 A. If there is good reason to believe that a female

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1 defendant who was sentenced to death is pregnant, the warden  
2 shall call that fact to the attention of the district attorney  
3 of the county in which the state penitentiary is situated. The  
4 district attorney shall immediately file in the district court  
5 of the county a petition, stating the conviction and judgment  
6 and the fact that the defendant may be pregnant and asking that  
7 the court inquire into the question of the defendant's  
8 pregnancy. It shall be the duty of the district court to  
9 inquire into the question and render a judgment. The court may  
10 summon three disinterested physicians of good standing in their  
11 profession to inquire into the alleged pregnancy. The  
12 physicians shall examine the defendant, hear any evidence that  
13 may be produced and make a written finding and certificate of  
14 their conclusion, to be approved by the court. The provisions  
15 of Section 15 of this 2020 act apply to the proceedings  
16 provided in this subsection.

17 B. If it is found that the female defendant is not  
18 pregnant, the warden shall execute the judgment. If it is  
19 found that the female defendant is pregnant, the warden shall  
20 suspend the execution of the judgment and transmit a certified  
21 copy of the finding and certificate to the governor. When the  
22 governor receives from the warden a certificate that the female  
23 defendant is no longer pregnant, the governor shall issue to  
24 the warden a warrant appointing a day for the execution of the  
25 judgment."

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

3           "[NEW MATERIAL] JUDGMENT OF DEATH REMAINING IN FORCE BUT  
4 NOT EXECUTED--NO APPEAL FROM ORDER OF COURT.--If for any reason  
5 a judgment of death has not been executed and remains in force,  
6 the court in which the conviction is had, on the application of  
7 the district attorney of the county in which the conviction is  
8 had, shall order the defendant to be brought before it, or if  
9 the defendant is at large, a warrant for the defendant's  
10 apprehension may be issued. When the defendant is brought  
11 before the court, the court shall inquire into the facts and,  
12 if no legal reason exists against the execution of the  
13 judgment, shall issue an order that the warden of the  
14 penitentiary of New Mexico, to whom the sheriff is directed to  
15 deliver the defendant, execute the judgment at a specified  
16 time. The warden shall execute the judgment accordingly.  
17 There is no appeal from an order, as provided herein, directing  
18 and fixing the time for the execution of a judgment."

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

21           "[NEW MATERIAL] PUNISHMENT OF DEATH--HOW INFLICTED.--The  
22 manner of inflicting punishment of death shall be by  
23 administration of an intravenous injection of a lethal  
24 substance into the convicted person in a quantity sufficient to  
25 cause death. Any reference in the statutes relating to the

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1 means of execution shall be construed to mean execution by  
2 lethal injection as provided in this section."

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

5 "[NEW MATERIAL] PLACE OF EXECUTION--DIRECTION OF WARDEN.--  
6 The warden of the penitentiary of New Mexico shall provide a  
7 suitable and efficient room or place, closed from public view,  
8 within the walls of the penitentiary of New Mexico and therein  
9 provide all necessary appliances requisite for carrying into  
10 execution the sentence of death. In each individual case of a  
11 sentence of death pronounced in this state, the sentence of  
12 death shall be executed under the direction of the warden in  
13 the room or place provided for that purpose."

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

16 "[NEW MATERIAL] WHERE JUDGMENT IS EXECUTED--WHO MAY BE  
17 PRESENT.--A sentence of death shall be executed within the  
18 walls of the penitentiary of New Mexico, and the execution  
19 shall be under the supervision and direction of the warden of  
20 the penitentiary. The warden of the penitentiary of New Mexico  
21 shall be present at the execution and shall invite the presence  
22 of a physician, the attorney general and at least twelve  
23 reputable citizens to be selected by the warden. The warden  
24 shall, at the request of the defendant, permit such religious  
25 leaders or teachers, not exceeding two, as the defendant may

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1 name, and any person, relative or friend, not to exceed five,  
2 to be present at the execution, together with such peace  
3 officers as the warden may think expedient, to witness the  
4 execution. No persons, other than those mentioned in this  
5 section, shall be present at the execution, nor shall any  
6 person under the age of eighteen be allowed to witness the  
7 execution. The identities of the persons designated to conduct  
8 the execution are confidential and not subject to public  
9 disclosure."

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

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

16 SECTION 24. APPLICABILITY.--The provisions of this act  
17 apply only to capital felonies committed on or after the  
18 effective date of this act. Nothing contained in the  
19 provisions of this act shall be construed to alter in any way  
20 the execution of a sentence of death imposed for a crime  
21 committed before the effective date of this act.