

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: 0234-26

SPONSOR: Eugenia Charles-Newton

TITLE: An Act Relating to the Law and Order and Naabik'iyáti' Committees and the Navajo Nation Council; Establishing a Referendum for Diné Voters to Decide Whether to Approve the Navajo Naton Federal Death Penalty Election Act of 2026, Declaring that the Navajo Nation Does Not Consent to the Federal Death Penalty under 18 U.S.C. § 3598 and Requiring a Vote of the Navajo People Before any such Consent; Approving the Referendum Ballot Measure; and Setting the Timelines for the Referendum Election

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LEGISLATIVE SUMMARY SHEET
Tracking No. 0234-26

DATE: October 6, 2026

TITLE OF RESOLUTION: AN ACT RELATING TO LAW AND ORDER AND NAABIK'ÍYÁTI' COMMITTEES AND THE NAVAJO NATION COUNCIL; ESTABLISHING A REFERENDUM FOR DINÉ VOTERS TO DECIDE WHETHER TO APPROVE THE NAVAJO NATION FEDERAL DEATH PENALTY ELECTION ACT OF 2026, DECLARING THAT THE NAVAJO NATION DOES NOT CONSENT TO THE FEDERAL DEATH PENALTY UNDER 18 U.S.C. § 3598 AND REQUIRING A VOTE OF THE NAVAJO PEOPLE BEFORE ANY SUCH CONSENT; APPROVING THE REFERENDUM BALLOT MEASURE; AND SETTING THE TIMELINES FOR THE REFERENDUM ELECTION

PURPOSE: This legislation, if approved, would refer to the Diné voters, by referendum, the question whether to approve the Navajo Nation Federal Death Penalty Election Act of 2026, which would declare in Navajo Nation law that the Navajo Nation does not consent to the federal death penalty under 18 U.S.C. § 3598, require that any future consent first be approved by a vote of the Navajo People, and state the Navajo Nation's opposition to a federal sentence of death for crimes committed within the Navajo Nation, and would approve the ballot language, establish the timelines for the referendum election, and direct that funding be identified and made available to conduct it.

FINAL AUTHORITY: Navajo Nation Council

VOTE REQUIRED: Simple Majority

This written summary does not address recommended amendments as may be provided by the standing committees. The Office of Legislative Counsel requests each Council Delegate to review each proposed resolution in detail.

5-DAY BILL HOLD PERIOD: AMKTH
Website Posting Time/Date: _____
Posting End Date: 10/11/26
Eligible for Action: 10/12/26

Law & Order Committee
Thence
Naabik'iyáti' Committee
Thence
Navajo Nation Council

PROPOSED NAVAJO NATION COUNCIL RESOLUTION
25th NAVAJO NATION COUNCIL – Fourth Year, 2026

Introduced By:

(Prime Sponsor)

Tracking No. 0234-26

AN ACT

RELATING TO LAW AND ORDER AND NAABIK'ÍYÁTI' COMMITTEES AND
THE NAVAJO NATION COUNCIL; ESTABLISHING A REFERENDUM FOR DINÉ
VOTERS TO DECIDE WHETHER TO APPROVE THE NAVAJO NATION
FEDERAL DEATH PENALTY ELECTION ACT OF 2026, DECLARING THAT THE
NAVAJO NATION DOES NOT CONSENT TO THE FEDERAL DEATH PENALTY
UNDER 18 U.S.C. § 3598 AND REQUIRING A VOTE OF THE NAVAJO PEOPLE
BEFORE ANY SUCH CONSENT; APPROVING THE REFERENDUM BALLOT
MEASURE; AND SETTING THE TIMELINES FOR THE REFERENDUM
ELECTION

BE IT ENACTED:

SECTION ONE. AUTHORITIES

- A. The Law and Order Committee is a standing committee of the Navajo Nation Council empowered to review and make recommendations to the Navajo Nation Council on proposed amendments to and enactments in the Navajo Nation Code. 2 N.N.C. §§ 600(A) and 601(B)(14).
- B. The Naabik'iyáti' Committee is a standing committee of the Navajo Nation Council empowered to review proposed legislation which requires final action by the Navajo Nation Council. 2 N.N.C. §§ 700(A) and 164(A)(9).

1 C. The Navajo Nation Council is the governing body of the Navajo Nation. 2 N.N.C. §
2 102(A).

3 D. The Navajo Nation Council may, by resolution, refer a referendum measure to the Navajo
4 People for a vote when the Council determines that the people should decide the measure,
5 and the Council shall establish the election timeline and direct that funding be identified
6 and made available to conduct the election. A referendum measure is approved by a
7 majority of the votes cast on the measure, and the result of the referendum election is
8 binding and has the effect of law. 11 N.N.C. §§ 402(A), 403(A), 406(A), and 409(A).

9
10 **SECTION TWO. FINDINGS**

11 A. The Violent Crime Control and Law Enforcement Act of 1994, enacted September 13,
12 1994, added to the federal death penalty chapter a special provision for Indian country,
13 codified at 18 U.S.C. § 3598, which provides:

14 Notwithstanding sections 1152 and 1153, no person subject to the criminal
15 jurisdiction of an Indian tribal government shall be subject to a capital
16 sentence under this chapter for any offense the Federal jurisdiction for which
17 is predicated solely on Indian country (as defined in section 1151 of this title)
18 and which has occurred within the boundaries of Indian country, unless the
19 governing body of the tribe has elected that this chapter have effect over land
20 and persons subject to its criminal jurisdiction.

21 B. An election under 18 U.S.C. § 3598 is a determination that the federal death penalty
22 chapter have effect over the land and persons subject to the criminal jurisdiction of the
23 tribe. It is a general and prospective election, and it is not made case by case. An election
24 under 18 U.S.C. § 3598 does not govern prosecutions under federal statutes of general
25 applicability, for which federal jurisdiction does not depend solely on Indian country.

26 C. The Navajo Nation has never made an election under 18 U.S.C. § 3598.

27 D. On January 22, 2002, at the request of the United States Attorney for the District of
28 Arizona, the Attorney General of the Navajo Nation informed the United States that the
29 Navajo Nation would not support a sentence of death in two pending federal prosecutions
30 of Navajo citizens, and stated the historic position of the Navajo Nation opposing the

1 sentencing option of capital punishment for crimes committed on the Navajo Nation
2 under any section of the United States criminal code, attached as **Exhibit A**.

3 E. From September through November 2003, the Public Safety Committee of the Navajo
4 Nation Council held seven public hearings, at Shiprock, Crownpoint, Fort Defiance,
5 Chinle, Tuba City, Tohajiilee, and Kayenta, on whether the Navajo Nation should make
6 an election under 18 U.S.C. § 3598. Of the 106 persons who testified, 75 recommended
7 that the Navajo Nation not make the election and 31 recommended that it do so, and
8 approximately 200 additional persons submitted written comments. In its 2004 report to
9 the 20th Navajo Nation Council, attached as **Exhibit B**, the Public Safety Committee
10 recommended that the Navajo Nation adopt legislation stating that it chooses not to make
11 the election, and that it establish grief counseling and direct services for the families of
12 homicide victims.

13 F. Notwithstanding the objection of the Navajo Nation, the United States prosecuted a
14 Navajo citizen for the 2001 killing of two Navajo citizens, a grandmother and her nine-
15 year-old granddaughter, within the Navajo Nation, charging carjacking resulting in death
16 under 18 U.S.C. § 2119, an offense of general federal jurisdiction for which no election
17 under 18 U.S.C. § 3598 was required. A family member of both victims asked the United
18 States to seek life imprisonment rather than death as seen in **Exhibit B**. A federal jury in
19 Phoenix, Arizona returned a sentence of death in September 2003 as seen in **Exhibit C**.

20 G. On July 21, 2014, the Chief Justice of the Navajo Nation wrote to the United States
21 Attorney for the District of Arizona, letter attached as **Exhibit C**, to restate that the
22 Navajo Nation opposes capital punishment in all circumstances, that it has never made
23 an election under 18 U.S.C. § 3598, and that the laws of the Navajo Nation have never
24 allowed for the death penalty, and to request that the United States agree to a sentence
25 less than death.

26 H. On August 13, 2020, the Naabik'iyáti' Committee directed the Office of the Speaker,
27 with the Office of the President and Vice-President, to inform the President of the United
28 States that the Navajo Nation opposes the death penalty in that case, has never made an
29 election under the Federal Death Penalty Act, and requests commutation to life
30 imprisonment without the possibility of release. Legislation No. 0166-20, which would

1 have reaffirmed the position of the Navajo Nation opposing the death penalty, was tabled
2 for public hearings and expired on August 30, 2020. The United States carried out the
3 sentence of death on August 26, 2020, attached as **Exhibit D**.

4 I. In May 2016, the abduction and killing of an eleven-year-old Navajo girl near Shiprock,
5 New Mexico renewed discussion of the federal death penalty within the Navajo Nation.
6 The mother of the child urged the Navajo Nation to make an election under 18 U.S.C. §
7 3598, particularly for crimes against children. Leaders of the Navajo Nation met with
8 medicine people and maintained the position of the Navajo Nation opposing the death
9 penalty.

10 J. On January 20, 2025, the President of the United States issued Executive Order 14164,
11 directing the Attorney General of the United States to pursue the death penalty for all
12 crimes of a severity demanding its use, and on February 5, 2025, the Attorney General
13 of the United States lifted the moratorium on federal executions that had been in place
14 since July 1, 2021. Exec. Order No. 14164, 90 Fed. Reg. 8463 (Jan. 30, 2025).

15 K. The Declaration of the Foundation of Diné Law provides, in part:

16 Air and variegated vegetation embody life, . . . Life is the foundation of
17 wisdom. Upon our creation, these were instituted within us and we embody
18 them. 1 N.N.C. § 201.

19 L. The Diné bi beenahaz'áanii provides the foundation of Diné sovereignty and preserves
20 the right of self governance, 1 N.N.C. § 202, and Diné Traditional Law teaches that the
21 elders and medicine people, the teachers of the traditional laws, values and principles,
22 must always be respected and honored, 1 N.N.C. § 203(F). In testimony to the Public
23 Safety Committee in 2003, the Diné Medicine Association stated that nothing in the
24 traditional laws of the Diné gives direction or procedure for taking the life of a person as
25 a punishment, as seen in **Exhibit B**.

26 M. Navajo Nation law has never provided for a sentence of death. The Navajo Nation Bill
27 of Rights prohibits cruel and unusual punishment, 1 N.N.C. § 9, and the courts of the
28 Navajo Nation recognize traditional peacemaking, through which harmony is restored
29 among the victim, the offender, and the community.

30 N. The Navajo Nation Supreme Court has recognized that participatory democracy does not

1 come from the non-Navajo or from the Council, but from the Navajo People's traditional
2 communal governance, rooted in the Diné Life Way. *Judy v. White*, 8 Nav. R. 510, 531
3 (Nav. Sup. Ct. 2004).

4 O. The Navajo Nation Council finds that whether the Navajo Nation should consent to the
5 federal death penalty is a question of the most serious kind, touching the sacred teachings
6 of the Diné, the sovereignty of the Navajo Nation, and the grief of families who have lost
7 loved ones to violence, and upon which the families of victims have spoken on both sides.
8 The Navajo Nation Council determines that the Navajo People should decide this
9 question. 11 N.N.C. § 402(A).

10 P. The Navajo Nation Council finds that the measure referred herein is strictly legislative
11 within the meaning of 11 N.N.C. § 401(A); is not administrative or executive; has not
12 been determined and declared by the Navajo Nation Council to be of an emergency
13 nature; and is not a yearly appropriation for a fiscal year budget. The Navajo Nation
14 Council further finds that the measure is not a law preserving peace, public health or
15 safety, because it does not define or punish any offense, does not alter any penalty
16 available under Navajo Nation law or federal law, and does not direct or limit any law
17 enforcement function, but addresses only the sovereign decision of the Navajo Nation
18 whether to consent to the application of a federal sentencing chapter and the manner in
19 which that decision may be made. The measure is therefore a proper subject of a
20 referendum.

21 Q. The Navajo Nation Council finds that the decision of the Navajo People on this question
22 should endure, and that any future consent of the Navajo Nation to the federal death
23 penalty should be given only by the Navajo People themselves.

24 25 **SECTION THREE. REFERENDUM MEASURE**

26 Pursuant to 11 N.N.C. § 402(A), the Navajo Nation Council hereby determines that the Diné
27 voters should decide, and hereby refers to the Diné voters, the question of whether the Navajo
28 Nation Federal Death Penalty Election Act of 2026 should be approved. If approved by the
29 Diné voters, the Act shall read as follows and shall be codified in Title 17 of the Navajo Nation
30 Code:

1
2 **NAVAJO NATION FEDERAL DEATH PENALTY ELECTION ACT OF 2026**
3

4 **Section 1. Title.**

5 This Act may be cited as the Navajo Nation Federal Death Penalty Election Act of 2026.
6

7 **Section 2. Definitions.**

8 For purposes of this Act:

- 9 A. "Federal death penalty chapter" means chapter 228 of title 18 of the United States
10 Code, 18 U.S.C. §§ 3591 through 3599, as amended.
11 B. "Election under 18 U.S.C. § 3598" means an election by the governing body of the
12 Navajo Nation that the federal death penalty chapter have effect over land and
13 persons subject to the criminal jurisdiction of the Navajo Nation.
14

15 **Section 3. Declaration of the Navajo Nation.**

16 The Navajo Nation does not elect that the federal death penalty chapter have effect over
17 land and persons subject to the criminal jurisdiction of the Navajo Nation, and the Navajo
18 Nation does not consent to the imposition of a sentence of death upon any person under
19 18 U.S.C. § 3598.
20

21 **Section 4. Election only by vote of the Navajo People.**

- 22 A. The Navajo Nation Council shall not make an election under 18 U.S.C. § 3598
23 unless the election has first been approved by the Navajo People at a referendum or
24 initiative election concerning that subject matter, and then only in the form
25 approved by the Navajo People.
26 B. No standing committee of the Navajo Nation Council, no officer of the Navajo
27 Nation, and no other office or entity of the Navajo Nation shall make, or represent
28 to the United States that the Navajo Nation has made, an election under 18 U.S.C.
29 § 3598.
30

1 **Section 5. Opposition to a sentence of death under other federal statutes.**

2 A. The Navajo Nation opposes the imposition of a sentence of death upon any person
3 for an offense committed within the Navajo Nation, including an offense under a
4 federal statute of general applicability for which an election under 18 U.S.C. § 3598
5 is not required.

6 B. Whenever the Navajo Nation learns that the United States is considering whether
7 to seek a sentence of death for an offense committed within the Navajo Nation, the
8 President of the Navajo Nation and the Speaker of the Navajo Nation Council, with
9 the assistance of the Navajo Nation Department of Justice, shall promptly
10 communicate to the United States Attorney for the district in which the offense
11 occurred and to the Attorney General of the United States, in writing, the opposition
12 of the Navajo Nation stated in this Act, and shall request government-to-
13 government consultation.

14
15 **Section 6. Other penalties and the rights of victims not affected.**

16 Nothing in this Act limits the prosecution or punishment of any offense under Navajo
17 Nation law or federal law, including a sentence of life imprisonment without the
18 possibility of release, and nothing in this Act limits the right of a victim or the family of
19 a victim to be heard.

20
21 **Section 7. Amendment and repeal.**

22 This Act was enacted by the vote of the Navajo People and may be amended or repealed
23 only by the outcome of a vote of the Navajo People at a referendum or initiative election
24 concerning the same subject matter.

25
26 **Section 8. Severability.**

27 If any provision of this Act is held invalid, the remaining provisions remain in full force
28 and effect.

29
30 **SECTION FOUR. TIMELINES FOR THE REFERENDUM ELECTION;**

1 **APPROVING THE REFERENDUM BALLOT MEASURE**

2 A. Pursuant to 11 N.N.C. § 403(A), the Navajo Nation Council establishes the following
3 timelines for the referendum election:

- 4 1. The referendum measure referred herein shall be placed on the ballot of the next
5 regularly scheduled Navajo Nation election, whether a primary, general, or Navajo
6 Nation-wide chapter election, that is scheduled to be held no sooner than sixty (60)
7 days following the date this resolution becomes effective.
- 8 2. If no regularly scheduled Navajo Nation election is scheduled to be held on a date
9 that is no sooner than sixty (60) days following the date this resolution becomes
10 effective, the referendum measure shall be placed on the ballot of a special election
11 to be held no sooner than sixty (60) days and no later than ninety (90) days from
12 the date this resolution becomes effective.
- 13 3. For purposes of this Section and of 11 N.N.C. § 403(A), the date of passage of the
14 resolution referring the enactment is the date this resolution becomes effective
15 under Section Nine of this resolution.

16 B. Subject to the final approval authority of the Navajo Board of Election Supervisors under
17 11 N.N.C. § 407(A)(5), the Navajo Nation Council provides and recommends the
18 following ballot language:

19
20 Official Title: Referendum on the Navajo Nation Federal Death Penalty Election Act
21 of 2026.

22
23 Descriptive Summary: Federal law provides that the federal death penalty does not
24 apply to a crime over which the United States has jurisdiction only because the
25 crime occurred in Indian country, unless the governing body of the tribe elects to
26 have it apply. The Navajo Nation has never made that election. The Navajo Nation
27 Federal Death Penalty Election Act of 2026 would state in Navajo Nation law that
28 the Navajo Nation does not consent to the federal death penalty for those crimes,
29 and would require that any future consent first be approved by a vote of the Navajo
30 People. The Act would also state the opposition of the Navajo Nation to a federal

1 death sentence for crimes committed within the Navajo Nation under federal laws
2 that do not require the consent of the Navajo Nation, and would direct Navajo
3 Nation leaders to communicate that opposition to the United States. The Act would
4 not change any criminal penalty, including life imprisonment without release,
5 available under federal or Navajo Nation law.

6
7 Ballot Question: "Shall Navajo Nation law state that the Navajo Nation does not consent
8 to the federal death penalty for crimes committed within the Navajo Nation, and
9 require a vote of the Navajo People before the Navajo Nation may ever consent?"

10
11 **Brief Statement of Legal Effect:**

12 A "YES" vote shall have the effect of enacting into Navajo Nation law that
13 the Navajo Nation does not consent to the federal death penalty under 18
14 U.S.C. § 3598, and that the Navajo Nation may consent only after approval
15 by a vote of the Navajo People.

16
17 A "NO" vote shall have the effect of leaving unchanged the present status
18 of the Navajo Nation, which has not consented to the federal death penalty,
19 with no Navajo Nation law on the subject and with the Navajo Nation
20 Council retaining its authority as the governing body to consent by
21 resolution.

- 22
23 C. Pursuant to 11 N.N.C. § 407(B), a minimum of four copies of the complete text of the
24 Navajo Nation Federal Death Penalty Election Act of 2026 shall be made available in
25 each polling place for the voters to review, and each voter shall be informed by the poll
26 judges and clerks at each polling place that copies of the complete text are available to
27 review in the polling place.

28
29 **SECTION FIVE. FUNDING FOR THE REFERENDUM ELECTION; DIRECTIVE**

30 Section 403(A) of the Navajo Election Code, in part, provides: "The Council shall direct that

1 funding be identified and made available to conduct the election.” Accordingly, the Navajo
2 Nation Council hereby directs the following:

- 3 A. The Navajo Election Administration shall, within thirty (30) days following the
4 effective date of this Resolution, provide to the Speaker of the Navajo Nation Council,
5 the Budget and Finance Committee, the Office of Management and Budget, and the
6 Office of the Controller a written cost estimate for conducting the referendum election.
7 The cost estimate shall separately state the estimated cost of placing the referendum
8 measure on the ballot of the next regularly scheduled Navajo Nation election and the
9 estimated cost of conducting a special election, together with the time required in each
10 instance to place the referendum measure on the ballot.
- 11 B. Upon receipt of the cost estimate required under Subsection (A), the Budget and
12 Finance Committee, in consultation with the Office of Management and Budget and
13 the Office of the Controller, shall identify and recommend to the Navajo Nation
14 Council a funding source and an amount sufficient to conduct the referendum election.
- 15 C. The funding source and amount recommended by the Budget and Finance Committee
16 pursuant to Subsection (B) shall be submitted to the Navajo Nation Council for
17 consideration and approval. Upon approval by the Navajo Nation Council, the Office
18 of Management and Budget and the Office of the Controller shall make the approved
19 funds available to the Navajo Election Administration solely for the purpose of
20 conducting the referendum election.

21 22 **SECTION SIX. CONDUCT OF THE REFERENDUM ELECTION**

23 The Navajo Board of Election Supervisors and the Navajo Election Administration shall
24 conduct the referendum election in accordance with the Navajo Election Code, including 11
25 N.N.C. §§ 401, 402, 403, 406, 407, 408 and 409.

26 27 **SECTION SEVEN. VOTE REQUIRED FOR APPROVAL**

28 Pursuant to 11 N.N.C. § 406(B), the referendum measure referred herein must be passed by a
29 majority of the eligible registered voters who cast a vote upon the measure.

1 **SECTION EIGHT. CODIFICATION; NOTICE TO THE UNITED STATES**

- 2 A. If the referendum is approved, the Navajo Nation Federal Death Penalty Election Act of
3 2026 shall be codified in Title 17 of the Navajo Nation Code by the Office of Legislative
4 Counsel, which shall assign section numbering and may correct internal lettering and
5 cross-references as necessary, provided that no correction under this Subsection shall
6 alter the substance of the Act approved by the Diné voters. 11 N.N.C. § 409(B).
- 7 B. If the referendum is approved, the President of the Navajo Nation and the Speaker of the
8 Navajo Nation Council shall, within thirty (30) days following certification of the
9 referendum election results, transmit a certified copy of the Act and of the certified results
10 to the Attorney General of the United States and to the United States Attorneys for the
11 Districts of Arizona, New Mexico, and Utah.

12
13 **SECTION NINE. EFFECTIVE DATE**

- 14 A. This resolution refers a question to the Diné voters and does not itself enact new Navajo
15 law or amend existing Navajo law. This resolution shall become effective upon
16 certification by the Speaker of the Navajo Nation Council pursuant to 2 N.N.C. § 221(C).
- 17 B. If the referendum is approved, the Navajo Nation Federal Death Penalty Election Act of
18 2026 shall become effective upon certification of the referendum election results by the
19 Navajo Board of Election Supervisors pursuant to 11 N.N.C. § 408(E).

20
21 **SECTION TEN. SAVING CLAUSE**

22 If any portion of this Legislation, or of the Navajo Nation Federal Death Penalty Election Act
23 of 2026 approved by the referendum, is determined invalid by the Navajo Nation Supreme
24 Court or the District Courts of the Navajo Nation, without reaching the merits of the underlying
25 case, those portions that are not invalid shall continue in full force and effect.