

HB 1170-FN – AS INTRODUCED

2014 SESSION

14-2001
04/10

HOUSE BILL ***1170-FN***

AN ACT repealing the death penalty in New Hampshire.

SPONSORS: Rep. Cushing, Rock 21; Rep. Cebrowski, Hills 7; Rep. Rowe, Hills 22; Rep. Levesque, Hills 26; Rep. C. Williams, Hills 14; Rep. Vaillancourt, Hills 15; Rep. Warden, Hills 39; Rep. Souza, Hills 43; Rep. Wallner, Merr 10; Rep. A. White, Graf 13; Sen. Cataldo, Dist 6; Sen. Lasky, Dist 13

COMMITTEE: Criminal Justice and Public Safety

ANALYSIS

This bill repeals the death penalty in New Hampshire.

Explanation: Matter added to current law appears in ***bold italics***.
 Matter removed from current law appears ~~[in brackets and struck through]~~.
 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Fourteen

AN ACT repealing the death penalty in New Hampshire.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 Involuntary Commitment of Sexually Violent Predators; Definitions. Amend RSA 135-E:2, XI
2 to read as follows:

3 XI. “Sexually violent offense” means:

4 (a) ~~[Capital murder in violation of RSA 630:1, I(c);~~

5 ~~(b)]~~ First degree murder in violation of RSA 630:1-a, I(b)(1);

6 ~~(c)]~~ (b) Aggravated felonious sexual assault in violation of RSA 632-A:2;

7 ~~(d)]~~ (c) Felonious sexual assault in violation of RSA 632-A:3, III;

8 ~~(e)]~~ (d) Kidnapping in violation of RSA 633:1, I(d), where the offender confined the
9 victim with the purpose to commit sexual assault against the victim;

10 ~~(f)]~~ (e) Burglary in violation of RSA 635:1, I, where the offender entered a building or
11 occupied structure with the purpose to commit sexual assault;

12 ~~(g)]~~ (f) An attempt, criminal solicitation, or conspiracy, to commit any of the offenses
13 listed above; or

14 ~~(h)]~~ (g) A violation of any other statute prohibiting the same conduct as the offenses
15 listed above in another state, territory, or possession of the United States.

16 2 Access to Information by Victims of Violent Crime. Amend RSA 169-B:35-a, I(c) to read as
17 follows:

18 (c) “Violent crime” shall mean ~~[capital]~~ first-degree or second-degree murder, attempted
19 murder, manslaughter, aggravated felonious sexual assault, felonious sexual assault, first-degree
20 assault, or negligent homicide committed in consequence of being under the influence of intoxicating
21 liquor or controlled drugs, as these crimes are defined by statute.

22 3 School Employee and Volunteer Background Investigations. Amend RSA 189:13-a, V to read
23 as follows:

24 V. Any person who has been charged pending disposition for or convicted of any violation or
25 attempted violation of RSA ~~[630:1]~~ 630:1-a; 630:1-b; 630:2; 632-A:2; 632-A:3; 632-A:4; 633:1; 639:2;
26 639:3; 645:1, II or III; 645:2; 649-A:3; 649-A:3-a; 649-A:3-b; 649-B:3; or 649-B:4; or any violation or
27 any attempted violation of RSA 650:2 where the act involves a child in material deemed obscene; in
28 this state, or under any statute prohibiting the same conduct in another state, territory, or
29 possession of the United States, shall not be hired by a school administrative unit, school district,
30 chartered public school, or public academy. By decision of the appropriate governing body, a school
31 administrative unit, school district, chartered public school, or public academy may deny a selected

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applicant a final offer of employment if such person has been convicted of any felony in addition to those listed above. The governing body may adopt a policy stating that any person who has been convicted of any felony, or any of a list of felonies, shall not be hired.

4 Jurisdiction; Complaints. Amend RSA 592-A:7, II to read as follows:

II. The description of the accused may include an identifiable ridge skin impression or a DNA profile. A complaint that contains only an identifiable ridge skin impression or DNA profile, and that alleges one or more of the following offenses shall, upon its filing, toll the applicable statute of limitations under RSA 625:8:

- (a) ~~[Capital murder under RSA 630:1-~~
- ~~(b)]~~ First degree murder under RSA 630:1-a.
- ~~(c)]~~ **(b)** Second degree murder under RSA 630:1-b.
- ~~(d)]~~ **(c)** Manslaughter under RSA 630:2.
- ~~(e)]~~ **(d)** Negligent homicide under RSA 630:3.
- ~~(f)]~~ **(e)** First degree assault under RSA 631:1.
- ~~(g)]~~ **(f)** Second degree assault under RSA 631:2.
- ~~(h)]~~ **(g)** Aggravated felonious sexual assault under RSA 632-A:2.
- ~~(i)]~~ **(h)** Felonious sexual assault under RSA 632-A:3.
- ~~(j)]~~ **(i)** Kidnapping under RSA 633:1.
- ~~(k)]~~ **(j)** Arson under RSA 634:1, I-III.
- ~~(l)]~~ **(k)** Robbery under RSA 636:1.

5 Bail and Recognizances. Amend RSA 597:1-a, I to read as follows:

I. After conviction for an offense punishable ~~[by death or,]~~ by a term of life imprisonment without possibility of parole, or for aggravated felonious sexual assault or felonious sexual assault, a defendant shall not be allowed bail.

6 Charging Manner of Death. Amend RSA 601:6 to read as follows:

601:6 Charging Manner of Death. In indictments charging any degree of murder~~[, including capital murder,]~~ it is not necessary to set forth the manner in which or the means by which the death of the deceased was caused, but it is sufficient in an indictment for murder to charge the culpable mental state applicable and, where appropriate, the particular circumstances set forth in ~~[RSA 630:1, I,]~~ RSA 630:1-a, I~~[-]~~ or RSA 630:1-b, I, constituting an element of the offense charged, and in an indictment for manslaughter to charge the culpable mental state applicable and, where appropriate, the particular circumstances set forth in RSA 630:2 constituting an element of the offense charged.

7 Rights of Accused. Amend RSA 604:1 to read as follows:

604:1 ~~[Capital Cases and]~~ First Degree Murder. Every person indicted ~~[for an offense punishable by death or]~~ for murder in the first degree shall be entitled to a copy of the indictment before he **or she** is arraigned thereon; to a list of the witnesses to be used and of the jurors returned to serve on

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1 the trial, with the place of abode of each, to be delivered to him **or her** 24 hours before the trial; and
2 to process from court to compel witnesses to appear and testify at the trial; provided, however, the
3 justice presiding at the trial may admit the testimony of any witness whose name and place of abode
4 is not on the list hereinbefore provided for upon such notice to the respondent as ~~[he,]~~ the presiding
5 justice~~[-]~~ shall direct, whenever, in his **or her** discretion, ~~[he]~~ **the presiding justice** deems such
6 action will promote justice.

7 8 Adequate Representation for Indigent Defendants; Appointment of Counsel. Amend RSA 604-
8 A:2, I to read as follows:

9 I. In every criminal case in which the defendant is charged with a felony or a class A
10 misdemeanor and appears without counsel, the court before which ~~[he]~~ **the defendant** appears shall
11 advise the defendant that he **or she** has a right to be represented by counsel and that counsel will be
12 appointed to represent him **or her** if ~~[he]~~ **the defendant** is financially unable to obtain counsel.
13 Unless the defendant waives the appointment of counsel, if the defendant indicates to the court that
14 he **or she** is financially unable to obtain counsel, the court shall instruct the defendant to complete a
15 financial affidavit in such form as designated by the unit of cost containment. If after review of the
16 financial affidavit and application of the rules established pursuant to RSA 604-A:10, IV the
17 commissioner of administrative services, is satisfied that the defendant is financially unable to
18 obtain counsel, the court shall appoint counsel to represent him **or her**~~[- provided, however, that in~~
19 ~~any case in which the defendant is charged with a capital offense, the court may appoint 2 counsel to~~
20 ~~represent him]~~. Whenever defendants have such conflicting interests that they cannot be properly
21 represented by the same counsel, or when other good cause is shown, the court shall appoint
22 separate counsel for each of them.

23 9 Adequate Representation for Indigent Defendants; Compensation Limited. Amend RSA 604-
24 A:5 to read as follows:

25 604-A:5 Compensation Limited. For representation of a defendant in any criminal case in which
26 one or more felonies are charged, the total compensation paid counsel shall not exceed \$500~~[-~~
27 ~~provided that in cases alleging a capital offense in which 2 counsel are appointed to represent a~~
28 ~~defendant, each may be paid not exceeding \$500]~~. For representation of a defendant in any criminal
29 case in which only misdemeanors are charged, the total compensation to be paid counsel shall not
30 exceed \$200. For representation of any juvenile charged with being delinquent or for representation
31 of a neglected or abused child, the total compensation to be paid counsel shall not exceed \$100.
32 Provided, that of the above specified amounts, the proportion allowed by a justice of a district ~~[or~~
33 ~~municipal]~~ court for services rendered by counsel while representing the defendant in proceedings
34 before said court shall not be in excess of \$175 for a preliminary examination in the case of a felony;
35 \$100 for the trial of a misdemeanor or \$50 for a juvenile case or a case involving a neglected or
36 abused child. Each clerk of a district ~~[or municipal]~~ court shall certify to the clerk of the superior
37 court the amount approved by the district ~~[or municipal]~~ court. In cases where homicides are

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1 charged or the penalty exceeds 25 years and there are extraordinary circumstances, payment in
2 excess of these limits may be made if the court finds that the nature of the case is such as to require
3 intensive and protracted representation.

4 10 Challenges; Defendant. Amend RSA 606:3 to read as follows:

5 606:3 Challenges; Defendant. Every person arraigned and put on trial for an offense may, in
6 addition to challenges for cause or unless he **or she** stands wilfully mute, peremptorily challenge:

7 I. ~~[20 jurors for capital murder.~~

8 ~~H.]~~ 15 jurors for murder in the first degree.

9 ~~[H.]~~ **II.** 3 jurors in any other case.

10 11 Challenges; State. Amend RSA 606:4 to read as follows:

11 606:4 Challenges; State. The state shall be entitled to the following number of peremptory
12 challenges, in addition to challenges for cause, in the following cases:

13 I. ~~[Upon the trial for capital murder, 10 challenges.~~

14 ~~H.]~~ Upon the trial for murder in the first degree, 15 challenges.

15 ~~[H.]~~ **II.** Upon the trial for any other case, 3 challenges.

16 12 Waiver of Jury Trial in Certain Cases. Amend RSA 606:7 to read as follows:

17 606:7 Waiver of Jury Trial in Certain Cases. Any defendant in the superior court in a criminal
18 case ~~[other than a capital case]~~ may, if ~~[he]~~ **the defendant** shall so elect, when called upon to plead,
19 or later and before a jury has been impaneled to try ~~[him]~~ **the defendant**, waive ~~[his]~~ **the**
20 **defendant's** right to trial by jury by signing a written waiver thereof and filing the same with the
21 clerk of the court, whereupon ~~[he]~~ **the defendant** shall be tried by the court instead of by a jury, but
22 not, however, unless all the defendants, if there are 2 or more to be tried together for the same
23 offense, shall have exercised such election before a jury has been impaneled to try any of the
24 defendants. In every such case the court shall have jurisdiction to hear and try the case and render
25 judgment and sentence thereon.

26 13 Offer of Reward. Amend RSA 610:1 to read as follows:

27 610:1 Offer of Reward. The county commissioners of any county, the city council of a city and
28 the selectmen of a town are authorized, whenever in their opinion the public good requires it, to offer
29 and pay from the treasury of such county, city or town a suitable reward, not exceeding \$300 in any
30 one case, to any person who shall, in consequence of such offer, apprehend and secure any person or
31 persons charged with having committed a ~~[capital or other]~~ high crime.

32 14 Uniform Criminal Extradition Law; Bail. Amend RSA 612:16 to read as follows:

33 612:16 Bail; In What Cases; Conditions of Bond. Unless the offense with which the prisoner is
34 charged is shown to be an offense punishable by ~~[death or]~~ life imprisonment under the laws of the
35 state in which it was committed, a judge or magistrate in this state may admit the person arrested to
36 bail by bond, with sufficient sureties in such sum as he **or she** deems proper, conditioned for his **or**
37 **her** appearance before the judge or magistrate at a time specified in such bond, and for his **or her**

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surrender, to be arrested upon the warrant of the governor of this state.

15 Taking a Firearm from a Law Enforcement Officer. Amend RSA 642:3-a, V(b) to read as follows:

(b) “Law enforcement officer” means ~~[law enforcement officer as defined in RSA 630:1, H]~~ ***a sheriff or deputy sheriff of any county, a state police officer, a constable or police officer of any city or town, an official or employee of any prison, jail or corrections institution, a probation-parole officer, or a conservation officer.***

16 Obstructing Governmental Operations; Bail Jumping. Amend RSA 642:8, III(a)(1) to read as follows:

(1) An offense punishable by ~~[death,]~~ life imprisonment~~[-]~~ or imprisonment of a maximum term of 15 years or more, he ***or she*** shall be fined not more than \$10,000 or imprisoned for not more than 15 years, or both;

17 Annulment of Criminal Records. Amend RSA 651:5, XIII(a) to read as follows:

(a) ~~[Capital murder,]~~ First or second degree murder, manslaughter, or class A felony negligent homicide under RSA 630;

18 Victims of Certain Violent Crimes Permitted to Speak. Amend RSA 651:4-a to read as follows:

651:4-a Victims of Certain Violent Crimes Against a Person Permitted to Speak Before Sentencing and at Sentence Reduction or Suspension Hearings. Before a judge sentences or suspends or reduces the sentence of any person for ~~[capital,]~~ first degree or second degree murder, attempted murder, manslaughter, aggravated felonious sexual assault, felonious sexual assault, first degree assault, or negligent homicide committed in consequence of being under the influence of intoxicating liquor or controlled drugs, the victim of the offense, or the victim’s next of kin if the victim has died, shall have the opportunity to address the judge. The victim or victim’s next of kin may appear personally or by counsel and may reasonably express his views concerning the offense, the person responsible, and the need for restitution. The prosecutor, the person to be sentenced, and the attorney for the person to be sentenced shall have the right to be present when the victim or victim’s next of kin so addresses the judge. The judge may consider the statements of the victim or next of kin made pursuant to this section when imposing sentence or making a decision regarding sentence reduction or sentence suspension.

19 Release From State Prison. Amend RSA 651:25, VI(a) to read as follows:

(a) The prisoner has been sentenced to the state prison for an offense other than ~~[capital,]~~ first degree or second degree murder, attempted murder, manslaughter, aggravated felonious sexual assault, felonious sexual assault or first degree assault;

20 Registration of Criminal Offenders; Definitions. Amend RSA 651-B:1, V(a) to read as follows:

(a) ~~[Capital murder, RSA 630:1, I(e);]~~ First degree murder, RSA 630:1-a, I(b)(1); aggravated felonious sexual assault, RSA 632-A:2; felonious sexual assault, 632-A:3; sexual assault,

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632-A:4, I(a) or RSA 632-A:4, III; violation of privacy, RSA 644:9, I(a) or RSA 644:9, III-a; or a second or subsequent offense within a 5-year period for indecent exposure and lewdness, RSA 645:1, I.

21 Registration of Criminal Offenders; Definitions. Amend RSA 651-B:1, VII(a) to read as follows:

(a) Any of the following offenses, where the victim was under the age of 18 at the time of the offense: ~~[capital murder, RSA 630:1, I(e);]~~ First degree murder, RSA 630:1-a, 1(b)(1); aggravated felonious sexual assault, RSA 632-A:2; felonious sexual assault, RSA 632-A:3; sexual assault, RSA 632-A:4, I(a) or RSA 632-A:4, III; kidnapping, RSA 633:1; criminal restraint, RSA 633:2; false imprisonment, RSA 633:3; incest, RSA 639:2; violation of privacy, RSA 644:9, I(a) or RSA 644:9, III-a; a second or subsequent offense within a 5-year period for indecent exposure and lewdness, RSA 645:1, I; indecent exposure and lewdness, RSA 645:1, II and RSA 645:1, III; or prostitution, RSA 645:2.

22 Registration of Criminal Offenders; Definitions. Amend RSA 651-B:1, X(a) to read as follows:

(a) ~~[RSA 630:1, I(e);]~~ RSA 630:1-a, I(b)(1), RSA 632-A:2, RSA 632-A:3, III, RSA 632-A:3, IV if the victim was under the age of 13, RSA 633:1; or RSA 639:2.

23 Repeal. The following are repealed:

I. RSA 606:6, relative to rebutting evidence in capital cases.

II. RSA 630:1, relative to capital murder.

III. RSA 630:5, relative to sentencing procedures and the death penalty.

IV. RSA 630:6, relative to places of and witnesses to executions.

24 Effective Date. This act shall take effect upon its passage.

HB 1170-FN - FISCAL NOTE

AN ACT repealing the death penalty in New Hampshire.

FISCAL IMPACT:

The Judicial Branch, Judicial Council, Department of Justice, Department of Corrections, and New Hampshire Association of Counties state this bill, as introduced, will have an indeterminable fiscal impact on state and county expenditures in FY 2014 and each year thereafter. There will be no fiscal impact on local expenditures, or state, county, and local revenue.

METHODOLOGY:

The Judicial Branch states this bill repeals the offense of capital murder. As such, what currently constitutes capital murder would likely be charged as first degree murder which would carry a mandatory sentence of life in prison without the possibility of parole. The Branch states this bill would generally result in shorter trials and will remove the requirement for the penalty phase of a capital murder prosecution. The Branch states capital murder indictments have been historically unusual in New Hampshire (with only two in the past few years); therefore the Branch cannot estimate the number of cases which may be impacted by the bill. The Branch states this bill may decrease state expenditures.

The Judicial Council states if capital murder cases are redefined as first degree murder, this bill would reduce state expenditures in FY 2014 and each year thereafter. The Council states approximately \$2.6 million has been expended since FY 2006 to provide defense representation and non-counsel services in the Addison case. The Council anticipates additional costs with the Addison case as it is an ongoing case.

The Department of Justice states this bill will result in a decrease in state expenditures for cases that would have been charged as capital murder and now would be prosecuted as first or second degree murder cases. The Department states it has spent \$4,575,744 for the two capital murder cases it has prosecuted. The Department anticipates the Addison case will continue for several more years resulting in additional but indeterminable costs. The Department states the cost to prosecute a first or second degree murder case ranges from \$81,374 to \$322,626.

The Department of Corrections states it is not able to determine the fiscal impact of this bill because it does not have sufficient detail to predict the number of individuals who would be subject to this legislation. The Department of Corrections states the average annual cost of incarcerating an individual in the general prison population for the fiscal year ending June 30, 2013 was \$32,872. The cost to supervise an individual by the Department's division of field services for the fiscal year ending June 30, 2013 was \$570.

The New Hampshire Association of Counties states the fiscal impact of this bill is indeterminable. The Association states the average annual cost to incarcerate an individual in a county correctional facility is approximately \$35,000. There is no impact on county revenue.