

## HB 556-FN – AS INTRODUCED

2009 SESSION

09-0760

04/03

### HOUSE BILL **556-FN**

AN ACT repealing the death penalty.

SPONSORS: Rep. Lindsey, Ches 3

COMMITTEE: Criminal Justice and Public Safety

#### ANALYSIS

This bill repeals the death penalty.

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Explanation: Matter added to current law appears in ***bold italics***.

Matter removed from current law appears [~~in brackets and struckthrough~~.]

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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### STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Nine*

AN ACT repealing the death penalty.

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

1 First Degree Murder. Amend RSA 630:1-a to read as follows:

630:1-a First Degree Murder.

I. A person is guilty of murder in the first degree if [he] ***such person***:

(a) Purposely causes the death of another; or

(b) Knowingly causes the death of:

(1) Another before, after, while engaged in the commission of, or while attempting to commit felonious sexual assault as defined in RSA 632-A:3;

(2) Another before, after, while engaged in the commission of, or while attempting to commit robbery or burglary while armed with a deadly weapon, the death being caused by the use of such weapon;

(3) Another in perpetrating or attempting to perpetrate arson as defined in RSA 634:1, I, II, or III;

(4) The president or president-elect or vice-president or vice-president-elect of the United States, the governor or governor-elect of New Hampshire or any state or any

member or member-elect of the congress of the United States, or any candidate for such office after such candidate has been nominated at his **or her** other party's primary, when such killing is motivated by knowledge of the foregoing capacity of the victim[-];

**(5) A law enforcement officer or a judicial officer acting in the line of duty or when the death is caused as a consequence of or in retaliation for such person's actions in the line of duty;**

**(6) Another before, after, while engaged in the commission of, or while attempting to commit kidnapping as that offense is defined in RSA 633:1;**

**(7) Another by criminally soliciting a person to cause said death or after having been criminally solicited by another for his or her personal pecuniary gain;**

**(8) Another before, after, while engaged in the commission of, or while attempting to commit aggravated felonious sexual assault as defined in RSA 632-A:2;**

**(9) Another before, after, while engaged in the commission of, or while attempting to commit an offense punishable under RSA 318-B:26, I(a) or (b).**

II. [For the purpose of RSA 630:1-a, I(a),] **In this section:**

**(a) "Purposely" [shall mean] **means** that the actor's conscious object is the death of another, and that his **or her** act or acts in furtherance of that object were deliberate and premeditated.**

**(b) "Law enforcement officer" means 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.**

**(c) "Judicial officer" means a judge of a district, probate, superior or supreme court; an attorney employed by the department of justice or a municipal prosecutor's office; a county attorney; or an attorney employed by the county attorney.**

**III. As used in this section and RSA 630:1-b, 630:2, 630:3, and 630:4, the meaning of "another" does not include a fetus.**

**IV.** A person convicted of a murder in the first degree shall be sentenced to life imprisonment and shall not be eligible for parole at any time.

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

XI. "Sexually violent offense" means:

**(a) [Capital murder in violation of RSA 630:1, I(e);**

**(b)] First degree murder in violation of RSA 630:1-a, I(b)(1) **or (8);****

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

**(d)] (c) Kidnapping in violation of RSA 633:1, I(d), where the offender confined the**

victim with the purpose to commit sexual assault against the victim;

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

[{(f)] (e) An attempt, criminal solicitation, or conspiracy, to commit any of the offenses listed above; or

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

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

V. Any person who has been convicted of any violation or 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; 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 any attempted violation of RSA 650:2 where the act involves a child in material deemed obscene; in this state, or under any statute prohibiting the same conduct in another state, territory, or possession of the United States, shall not be hired by a school administrative unit, school district, or chartered public school. By decision of the appropriate governing body, a school administrative unit, school district, or chartered public school may deny a selected 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)] (b) First degree murder under RSA 630:1-a.

[{(c)] (c) Second degree murder under RSA 630:1-b.

[{(d)] (d) Manslaughter under RSA 630:2.

[{(e)] (e) Negligent homicide under RSA 630:3.

[{(f)] (f) First degree assault under RSA 631:1.

[{(g)] (g) Second degree assault under RSA 631:2.

[{(h)] (h) Aggravated felonious sexual assault under RSA 632-A:2.

[{(i)] (i) Felonious sexual assault under RSA 632-A:3.

[{(j)] (j) Kidnapping under RSA 633:1.

[{(k)] (k) Arson under RSA 634:1, I-III.

[{(l)] (l) Robbery under RSA 636:1.

5 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.

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

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

- I. [20 jurors for capital murder.]
- II.] 15 jurors for murder in the first degree.
- [III.] **II.** 3 jurors in any other case.

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

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

- I. [Upon the trial for capital murder, 10 challenges.]
- II.] Upon the trial for murder in the first degree, 15 challenges.
- [III.] **II.** Upon the trial for any other case, 3 challenges.

8 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;

9 Stalking. Amend RSA 633:3-a, III to read as follows:

III. For purposes of this section, a person who engages in acts which would  
constitute stalking after having been advised by a law enforcement officer as  
defined in RSA [630:1, II] **630:1-a, II(b)** that the person's acts were in violation of  
this chapter, or a person who has been served with a protective order issued  
pursuant to paragraph III-a of this section, shall be presumed to have acted  
knowingly.

10 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, II] **630:1-a, II(b)**.

11 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) **or**  
**(8)**; aggravated felonious sexual assault, RSA 632-A:2; felonious sexual assault,

632-A:3; sexual assault, 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; second or subsequent offense within a 5-year period for indecent exposure and lewdness, RSA 645:1, I(a).

12 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) **or (8)**; 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(a); indecent exposure and lewdness, RSA 645:1, I(b), RSA 645:1, II, and RSA 645:1, III; or prostitution, RSA 645:2.

13 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) **or (8)**, RSA 632-A:2, RSA 632-A:3, III, or RSA 633:1.

14 Repeal. The following are repealed:

- I. RSA 630:1, relative to capital murder.
- II. RSA 630:5, relative to sentencing procedures and the death penalty.
- III. RSA 630:6, relative to places of and witnesses to executions.

15 Effective Date. This act shall take effect January 1, 2010.

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#### **HB 556-FN - FISCAL NOTE**

AN ACT repealing the death penalty.

#### **FISCAL IMPACT:**

The Judicial Branch, the Department of Justice, and the Judicial Council state this bill may decrease state expenditures by an indeterminable amount in FY 2010 and each year thereafter. The New Hampshire Association of Counties states this bill will have an indeterminable fiscal impact on county expenditures in FY 2010 and each year thereafter. The Department of Corrections state this bill may increase state expenditures by an indeterminable amount in FY 2010 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 and

incorporates the current definition of capital murder into a definition of first degree murder. 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; therefore the Branch cannot estimate the number of cases which may be impacted by the bill to determine the fiscal impact on expenditures. However, if a single future case were to be tried as first degree murder rather than capital murder, state expenditures would be reduced, with a fiscal impact in excess of \$10,000. Also, if the proposed bill were interpreted to apply to existing cases, it would eliminate pending appeals. The Branch states this would result in a savings to the Judicial Branch of an indeterminable amount in FY 2010 and each year thereafter.

The Department of Justice states this bill will reduce state expenditures by an indeterminable amount in FY 2010 and each year thereafter. The Department states by eliminating the possibility of a death sentence for crimes currently defined as a capital offense, this bill would significantly alter the nature of the pre-trial and trial process. Because no death penalty case has been litigated through to appeal in recent history, the Department can only estimate the reduction in state expenditures based on the reduction in personnel: from four attorneys and two full-time paralegals to two attorneys and one part-time paralegal. The length of time during which the attorneys would be involved full-time in pre-trial preparation and litigation

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would be reduced from approximately one year to two months. The length of time attorneys would be involved in trial would be reduced from approximately 12 weeks to approximately three weeks. The number of required expert witnesses is also likely to be reduced. Data from other states prosecuting death penalty cases indicates post-conviction death penalty appeals require 25 percent of one attorney's time for ten years. Post-conviction litigation in a non-death penalty case requires an average of 120 hours of attorney time for a state appeal and an additional 120 hours for federal litigation. In addition, it is anticipated the post-conviction process in a death penalty case requires civil counsel to defend actions filed against the Department of Corrections. This bill would negate the need to defend those actions, reducing the Department's workload and state expenditures. In sum, this bill will reduce state expenditures by an indeterminable amount in FY 2010 and each year thereafter. However, because it is impossible to ascertain in advance the number of capital murder cases which may be prosecuted, the fiscal impact cannot be determined at this time.

The Judicial Council states if capital murder cases are redefined as first degree murder, this bill would reduce state expenditures in FY 2010 and each year thereafter. From other states data, the Council assumes costs for capital

murder cases range between \$750,000 and several million dollars. The Council estimates potential savings for each capital murder case would fall within this range. If the Public Defender program did not handle a case, assigned counsel would be paid on the assigned counsel scale of \$60 per hour with a fee cap of \$20,000 per attorney (co-counsel is permitted in first and second degree murder cases). This cap may be waived upon motion approved in advance by the court. The Council notes pre-trial litigation, appeal, and expert witness costs in capital murder cases require availability of significant resources, which would not be required or would not be as great for a first degree murder case. The Council states the Public Defender program budget now includes funding for a capital murder defense unit, which is expected to work on future appeals of the Addison death penalty case. If there were no pending cases, this unit would handle first degree murder cases. The Council states there would be significant cost savings for each case tried as first degree murder rather than capital murder, however, as the Council cannot predict how many cases will be tried in the coming years, the fiscal impact cannot be determined at this time.

The New Hampshire Association of Counties states the average cost to detain an individual in a county correctional facility before, during, and after trial prior to sentencing is \$30,165 per year. The Association states the fiscal impact on county expenditures is indeterminable.

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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, 2008 was \$32,753. The cost to supervise an individual by the Department's division of field services for the fiscal year ending June 30, 2008 was \$779. The Department states this bill may increase the number of individuals sentenced to life imprisonment without the possibility of parole and therefore may increase state expenditures. However, as the Department is unable to predict the number of individuals that might be impacted, the fiscal impact cannot be determined at this time.