Bill as Introduced

2011 SESSION

11-0113
04/09

HOUSE BILL ***147-FN***

AN ACT making the commission of certain offenses punishable under the capital murder statute.

SPONSORS: Rep. O'Brien, Hills 4; Rep. Comerford, Rock 9; Rep. Bettencourt, Rock 4; Rep. Notter, Hills 19; Rep. Hinch, Hills 19; Sen. Barnes, Jr., Dist 17

COMMITTEE: Criminal Justice and Public Safety

ANALYSIS

This bill provides that a person is guilty of capital murder if he or she knowingly causes the death of another, while in another's residence, while attempting to enter another's residence, or as a consequence of having been in another's residence, without invitation or right.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

11-0113
04/09

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Eleven

AN ACT making the commission of certain offenses punishable under the capital murder statute.

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

1 Findings and Purpose. The legislature finds and declares that:

I. The purposes of the criminal justice system include providing an organized means for achieving justice so that individuals do not need or feel compelled to seek justice on their own; and

II. It is in the interest of the community to ensure that all know justice for personal wrongs committed against them may be achieved through the criminal justice system and that the state has criminal sanctions that properly and proportionately respond to the acts being sanctioned; and

III. Protection of law-abiding residents in their homes may be promoted in part by the state imposing sanctions that are commensurate with the wrongs committed by criminals who would invade the homes of others; and

IV. An additional purpose of the criminal justice system is to protect law-abiding residents of the state from the violence of others, particularly in their homes whether they are alone or with family, and deserving of a place of respite and safety; and

V. In order to realize these purposes and address community interest, the legislature has determined that there is a need to increase the sanction for such home invasions which are perpetrated with the intent to commit murder. In doing so, the legislature intends to enhance, and has determined and found that it will enhance, the potential for prevention of such acts by others who may contemplate such acts, while at the same time vindicating the community's belief in justice and the legitimacy of the criminal justice system when adjudicating the worst of crimes; and

VI. In response to recent incidents involving home invasions in which the intent of those committing such invasions is to murder the occupants and in which deaths of occupants have resulted, and in response to the October 4, 2009 murder of Kimberly L. Cates of Mont Vernon, the legislature declares this act to be known as The Kimberly L. Cates Law.

2 Homicide; Capital Murder. Amend RSA 630:1, I(f) to read as follows:

(f) 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)[.]*; or*

(g) Another, while in another's residence, while attempting to enter another's residence, or as a consequence of having been in another's residence, without invitation or right.

3 Effective Date. This act shall take effect July 1, 2011.

LBAO
11-0113
12/27/10

HB 147-FN - FISCAL NOTE

AN ACT making the commission of certain offenses punishable under the capital murder statute.

FISCAL IMPACT:

The Judicial Branch, Department of Justice, Judicial Council and Department of Corrections state this bill may increase state expenditures by an indeterminable amount in FY 2012 and each fiscal year thereafter. There will be no fiscal impact on state revenue or county and local revenue and expenditures.

METHODOLOGY:

The Judicial Branch states this bill will add to RSA 630:1 (the capital murder statute) the additional circumstances which may be prosecuted as a capital murder: murder of a person while in that person's residence, attempting to enter that person's residence, or after having been in that person's residence without invitation or right. The Branch states capital murder is classified as a complex felony. The Branch states the average cost of a complex felony case is $753.36 in FY 2012 and $759.71 in FY 2013. Capital murder cases are more expensive to the criminal justice system due to more hearings, the addition of the penalty phase, the need for increased security and the prospect of multiple appeals. The Branch has no information to predict how many capital murder cases would result due to this bill but states one capital murder case would have a fiscal impact in excess of $10,000.

The Judicial Council states this bill has the possibility to increase the number of capital murder cases. The Council estimates this bill could increase capital prosecutions by two cases per year. The Council states the defense and prosecution of capital murder cases may cost the State in excess of $2.5 million a year per case. The Council does not have the information to determine how many capital murder cases this bill will generate to determine how significantly expenditures will increase.

The Department of Justice is responsible for prosecuting capital murder cases. The Department states the resources required to prosecute a capital murder case vary significantly depending on the nature and complexity of the facts and circumstances, the extent of forensic evidence required to prove the case, the extent to which out-of-state investigation must occur, as well as

other factors. The Department states this bill will result in increased cases being brought as capital murder cases but due to the varying factors associated with capital murder cases the increased costs cannot be determined. The Department states since 2007, 2 to 3 cases a year would have constituted capital murder as defined by this bill.

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, 2010 was $32,492. The Department states this bill may increase expenditures by an indeterminable amount, but is unable to predict the number of individuals that might be impacted.

Speakers

10:00 AM

SIGN UP SHEET

To Register Opinion If Not Speaking

Bill # HB 147-FN Date Feb 1, 2011

Committee Criminal Justice and Public Safety

** Please Print All Information **

Name	Address	Phone	Representing	(check one) Pro	Con
Kevin Avery	6-8 Bartemus Tr.	521-7657	Nashua	✓	
SENATOR AMANDA MERRILL - District 21					✓
Rep William O'Connor	Strafford 3	944-6015		✓	
REP JAMES SUMMERS	NASHUA		NASHUA	✓	
Rep. Peter Schmidt	Straf. 4				✓
Judith Trimbach				✓	
SAM LANGLEY	237 WATER ST	BOSCAWEN	MYSELF		✓
Fran Wendelboe	238 Lower Bow		New Hampton	✓	
Barbara Carbonneau	35 Shirley PK Rd	Goffstown	Ellis Church		✓
Rep. Jenn Coffey	17 Purrimall Ln			X	
Fred Robinson	17 Portage Rd	Goffstown	603-497-5167		X
John Quinlan	8 Marden Way, Mt. Vernon	672-1413	Mt. Vernon	X	
Kyle Aspinwall	Chief of Police	Mont Vernon	NH	X	
Linda Barrett	9 Levesque Ln, Mont Vernon, NH	672-4664		X	
REP. ROBIN READ	Rock 16				X
Selina Taylor	104 Harrison St	Manchester, NH			X
Rep Frank R Holden	Hills. 4			X	
Rep. HARRY B. HARDWICK	Hills 2			X	
Rep. Laura Jones	9 Jackson St. Rochester	948-2264	self	✓	
Rep D.J. Bettencourt	Salem		Majority Ldr.		
Carolyn A Violette	120 New Boston Rd				✓
Barbara Ryan	86 Wetherfield Dr	Northfield	NH		✓
Rep Paul Leitch	Nashua				✓

10:00 AM

SIGN UP SHEET

To Register Opinion If Not Speaking

Bill # HB 147-FN Date Feb 1, 2011

Committee Criminal Justice & Public Safety

** Please Print All Information **

Name	Address	Phone	Representing	(check one) Pro	Con
Rep. David Watters	Dover		Strafford 4		X
Rev. Alberta C Flanders	175 Hallowell Rd Colebrook NH			X	
Jeffrey K Thresher				4	
Sylvia Cable	4 Clergy Circle Nashua				X
Lindsay Dearborn	503 Poverty Ln, Belmont	448-4172 03246			X
Rep AK Baldasaro	Rock- Dist 3			X	
INGRID BRAUNIUS	10 SOUNDSIDE DRIVE, SPRINGFIELD		ALLIED INTERNATIONAL		X
Peter Valiante	10 Skungside Dr. Springfield NH				X
Laurel Rogden	2 Hall Ave Salem	893-7131			X
Don McGinley	New Boston, NH	—		X	
Shannon Chandley	Amherst, NH				X
Elizabeth Hawthorn	P.O. 94, Philipsburg, MT	59858			X
Melissa Bernardin	20 Fayette St. Concord NH	03301			X
Frank Zito	24 South Hills Drive Bedford			X	
Rep Keith Murphy	Bedford		Hills-18	X	
CHRIS DORNIN	CONCORD	228-9610	CITIZENS FOR CRIM JUSTICE REform		X
PETER BEARSE	Danville POB 70		" " " " "		X
MICHAEL J. HARDY			NHMEDL		X
Rep Pamela Tucker				X	
Jane B. Lemeland					X
Rep. G. Michael Ball				X	
Rep. Jim Comerford				✓	

SIGN UP SHEET

To Register Opinion If Not Speaking

Bill # HB 147-FN Date February, 1, 2011

Committee Criminal Justice & Public Safety

** Please Print All Information **

Name	Address	Phone	Representing	(check one) Pro	Con
Rep Joe Duarte	Candia		Rock 1	X	
Leslie Paul	Henniker NH	6035821424	MacDougall Molly		X
Fr John Allen	Nashua	524-8070			X
Rep David Robbins	102 Cherrywood Drive	Nashua, NH	6034598726		X
Rep Scott Cole	Concord		Merrimack 6		X
Rep. Bruce MacMahon	63 Lyford Ln	Brentwood 7342993	Rock. 10	X	

SIGN UP SHEET

To Register Opinion If Not Speaking

Bill # HB 147-FN Date Feb 1, 2011

Committee Criminal Justice and Public Safety

**** Please Print All Information ****

Name	Address	Phone	Representing	Pro	Con
Rep John A. Burt	7 Bay St Goffstown, NH	624-5084	Goffstown	✓	

Hearing Minutes

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

PUBLIC HEARING ON HB 147-FN

BILL TITLE: making the commission of certain offenses punishable under the capital murder statute.

DATE: February 1, 2011

LOB ROOM: 204 **Time Public Hearing Called to Order:** 10:00 a.m.

Time Adjourned: 12:30 p.m.

(please circle if present)

Committee Members: Reps. Swinford, Gagne, Welch, Fields, Fesh, Charron, Villeneuve, Antosz, Greazzo, Kreis, Parsons, Tasker, Warden, Pantelakos, Berube, Shurtleff and Ginsburg.

Bill Sponsors: Rep. O'Brien, Hills 4; Rep. Comerford, Rock 9; Rep. Bettencourt, Rock 4; Rep. Notter, Hills 19; Rep. Hinch, Hills 19; Sen. Barnes, Jr., Dist 17

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

Rep. William L. O'Brien – Sponsor. Support. No written testimony. Described the events that the Cates were broken into. Kimberly Cates was murdered. Daughter was seriously injured. Bill passage wills a clear message. A horrific act of this type will not be tolerated – mentioned other cases where murders were convicted of murder and released after 10 years served. After released, committed another murder. Using capital punishment should not be decided on the availability of money.

David Cates – Support. Written testimony. Husband of victim read testimony describing the events of that night. Believes that this bill should include home invasion.

Senator John S. "Jack" Barnes, Jr. – Support. No written testimony. Described the Cates Case and comments of Judge Abramson.

Rep. David J. Bettencourt – Majority Leader Sponsor. Support. Written testimony.

Rep. Richard W. Hinch – Support. No written testimony. Read the intent of the bill – supporting the bill.

Governor John H. Lynch – Support. Written testimony.

Renny Cushing – Oppose. No written testimony. Described the loss of his father due to murder. Two shotgun blasts when his Dad opened the front door. His Dad died in front of his Mom. Described the events after the event. The house was now a crime scene and the memories and the scene in their home could no longer be tolerated. They moved. Twenty-two years have passed.

States that to him the death penalty does not work. Government should not have the authority to kill another person. Will provide written testimony later.

Robert Curley – Oppose. No written testimony. His son was murdered by Pedophiles. Does not support capital punishment. His son's body was placed in a container and dumped in a salt marsh.

Rep. Jeanine M. Notter – Co-Sponsor. Support. Written testimony. Talked about other children affected by the Cates murder.

Rep. Robert Kingsbury – Support. Written testimony.

William Delker – Sr. Assistant, Attorney General's Office. Written testimony. Can not talk about specific case. No public comment because of pending cases. Proposing alternative language. Discussed a few paragraphs in the bill. The bill may be too broad. New Hampshire has no home invasion law. There law would tax the department. Recommended language.

Rep. Frances D. Potter – Oppose. No written testimony. Doesn't feel that young people need the death penalty – should be rehabbed. Concerned as to the cost of a "Death Chamber."

Martha Hunt, Anne Lyczak – Oppose. Written testimony of Anne Lyczak, W. Lebanon, NH. Hunt does not feel expansion of law is good policy. Hunt read the letter from Lyczak.

John Quinlon – Support. No written testimony. Selectman in Mont Vernon responded to the scene. He followed the daughter to the hospital in Boston. He was shocked when he was told that the reason for the killings was for a thrill. He related his emotions when he was in Afghanistan. Was on a detail. He relates his emotions with the Cates' Case. There has to be an expectation for justice. There was no reason for this crime. It was heinous. They should be punished.

Brother Paul Crawford for the Bishop of the Diocese of Manchester – Oppose. Written testimony. Read the letter of John McCormack, Bishop of Manchester.

Frank Zito – Support. No written testimony. No one has a right to take another's life. Referenced Officer Briggs. Mentioned the benefits of being incarcerated, meals, TV and other amenities, should expand the death penalty to anyone who takes a life.

Rev. Gordon Crouch – Oppose. Written testimony. Opposes death penalty. Speaking for NH Religious Leaders Against the Death Penalty.

Jeffrey Flanders and Alberta Flanders – Support. Written testimony. November 2, 2010 their son was murdered. Has a signed petition. Re-write the law. Husband responded to the scene of his son. He is an EMT. Son was murdered and his body was burned.

Rep. David S. Robbins – Oppose. No written testimony. Read from a computer referencing some cases.

Margaret Hawthorn – Oppose. Written testimony. NH Coalition Against Death Penalty. The Death Penalty is wrong. Lost a daughter by murder. Revenge is self-destructive. A murderer should not be murdered.

Former Rep. Timothy Robertson – Oppose. No written testimony. His cousin had murdered her two sons. Then, hung herself. Referenced a few cases that have occurred in the State.

Rev. Thomas Chininis – Oppose. Written testimony, NH Council of Churches.

Chris Dornin – Oppose. No written testimony. Citizens for Criminal Justice Reform. Implores the Committee for a reason.

Arnie Apert – Oppose. No written testimony. American Friends Service Committee. Had a family member murdered. The passing of this bill will not change anything. Will this bill make a difference? The bill creates an illusion of safety. He urges the Committee.

Michael J. Iacopino – Oppose. Written testimony.

Respectfully Submitted:

Gene P. Charron

Rep. Gene P. Charron, Clerk

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

PUBLIC HEARING ON HB 147-FN

BILL TITLE: making the commission of certain offenses punishable under the capital murder statute.

DATE:

LOB ROOM: 204 **Time Public Hearing Called to Order:** 10:00

Time Adjourned: 12:30

(please circle if present)

Committee Members: Reps. Swinford, Gagne, Welch, Fields, Fesh, Charron, Villeneuve, Antosz, Greazzo, Kreis, Parsons, Tasker, Warden, Pantelakos, Berube, Shurtleff and Ginsburg.

Bill Sponsors: Rep. O'Brien, Hills 4; Rep. Comerford, Rock 9; Rep. Bettencourt, Rock 4; Rep. Notter, Hills 19; Rep. Hinch, Hills 19; Sen. Barnes, Jr., Dist 17

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

HB-147 10:00

1. making the Commission of certain punish

1. Sponsor: William O'Brien - Sponsor Described the events of the night that the Cates were broken into - Kimberly Cates Was murdered, daughter was seriously injured. Bill passage Will a clear message that a horrific act of this type will not be tolerated, mentioned other cases where murders were convicted, & Murder and released after 10 years served after released Committed another murder. Using ~~Capt~~ Capital punishment should not be decided on the availability of money.

2. David Cates husband & victim. read testimony describing the events of that night. Believes that this bill should include home invasion

3. Senator Barnes supports Bill - Described the Cates case - and Comments of judge abramson - no written testimony

(4) DJ Bettencourt - Majority Leader sponsor & testimony - Written testimony.

5. Rep. Dick Hinch - read the intent of the bill - supporting the bill. no written.

6. Governor Lynch. Supports the bill - written testimony.

7 Renny Cushing - opposes the Bill - Described the loss of his father due to Murder. 2 Shotgun blasts. When his dad opened the front door. His dad died in front of his Mom. Described the events after the event. The house was now a Crime scene and the memories and the scene in their home could no longer be tolerated. They moved. 22 years have passed. States that to him the death penalty does not work, Government should not have the authority to kill another person. no written testimony but will provide written later.

8. Robert Curley. his son was murdered by Pedophiles — does not support Capeld punishment opposes His sons Body was placed in a Container and dumped in a salt marsh. no written Testimony

9 Rep. jayne Weber. sponsor talked about supports Other Children affected by the Cates Murder 10:45

10 Rep Robert Kingsbury - Testimon, provided 1150- in writing - attached - supports the support. Bill.

11

10:55 William Walker Jr. Asst. Attorney General. Can not talk about specific Case. No public comment. because of pending Cases. proposing Alternative Language. Discussed a few paragraphs in the bill. The bill maybe too broad. New Hampshire has no home envasion law. There law would tax the department provided written testimony and recommended Language.

12 Rep. Frances Potter – opposes the bill doesn't ~~feel~~ feel that young people need the death penalty – should be rehabbed. Concerned as to cost & a "Death Chamber"

13 oppose Martha Hunt – opposes. Also provided a letter from Ann Lysak w. Lebanon NH. Hunt does not feel expansion of law is good policy.
Hunt now reads the letter from Lysak, attached –

11:20 14 support. John Quinlan Selectman in Mount Vernon responded to the scene He followed the daughter to the Hospital in Boston. He was shocked when he was told that the reason for the killings was for a thrill. He related his emotions when he was in Afganistan. was on a detail. He relates his emotions with the Cates case. There has to be an expectation for justice. There was no reason for this crime. It was heinous. They should be punished. No written:

15 Brother Paul Crawford, for the Bishop of the Diocese of Manchester. Bishop McCormack- testimony provided.

16 Frank Z. ITO supports bill. no one supports. has a right to take another's life. referenced. Officer Briggs. mentioned the benefits of being incarcerated. Meals, TV and other amenities. should expand the death penalty to anyone who takes a life- no written testimony.

17 Rev. GORDON CROUCH - opposes death penalty. 12:40. speaking for N.H. Religious Leaders Against the death penalty. Written testimony - provided.

18 Jeffrey & Alberta NOV 2. 2010 their son was Murdered. Has a signed petitioned 11:55. rewrite law. Husband responded to scene. he is an EMT, of his son. Son was Murdered and his body was burned. Written testimony. provided -

19 Rep. David Robbins read from a
opposed Computer- referencing some cases:

20 Margaret Hawthorn. opposes bill-
12:00 N-H- Coalition. against death penalty-
opposed. the death penalty is wrong. Lost a
daughter by Murder. Revenge is self
destructive. a murderer should not be
murdered.

21 Former Rep. Timothy Robertson
12:05 opposes the bill. His cousin had murdered
opposed. her two sons- and then hanged herself
referenced a few cases that have
occurred in the State. no written testimony

22. Rev. Thomas Cheminis N.H. Council
opposed. of Churches- opposes the bill.

23 Chris Wennin- Citizens for Criminal
12:15 Justice Reform. Implores the Committee
opposed. for reason. no testimony written

HB 147

24

ARNIE APERT = AMERICAN FRIENDS SERVICE COMMITTEE - Had a family member murdered
12:20 The passing of this bill will not change anything. Will this bill make a difference - The Bill creates an illusion of safety. He URGES Committee no written testimony.

25 MICHAEL ICORINO not here but have Written Testimony.

Closed

12:30

Testimony

JOHN H. LYNCH
Governor

State of New Hampshire
OFFICE OF THE GOVERNOR
107 North Main Street, State House - Rm 208
Concord, New Hampshire 03301
Telephone (603) 271-2121
www.nh.gov/governor
governorlynch@nh.gov

February 1, 2011

The Honorable Elaine Swinford, Chairman
Criminal Justice and Public Safety Committee
Room 204, Legislative Office Building
Concord, NH 03301

Dear Chairman Swinford and Members of the Committee:

New Hampshire's low crime rate includes one of the lowest homicide rates in the nation. We have worked together to keep New Hampshire safe in a number of ways, including putting in place tough sentences for those who commit murder. Our current laws allow for a sentence of death in some of the most heinous crimes.

Our state has used the death penalty statute judiciously and cautiously, as is appropriate, and changes to the law should be carefully considered. I believe that murder committed during home invasion fits the category of crimes that should be included in New Hampshire's death penalty statute.

My office will work with members of the Committee, House and Senate leadership, the Attorney General and law enforcement to help ensure passage of a bill with language tailored to accomplish this goal.

I thank you, and the members of this Committee, for your full consideration. Please do not hesitate to contact me if you have any questions.

Sincerely,

John H. Lynch
Governor

(4)

BULLET POINTS FOR HB 147 • D.J. BETTENCOURT

- This legislation sends a clear message about New Hampshire's commitment to protecting our citizens in their homes.

- We all consider our home to be a sanctuary, a place where we, and our families, can be safe.

- Clearly, a home invasion is a violation of these principles, and shocks any of us who has had his or her home broken into.

- However, the idea that someone would break into someone else's home and then commit murder is such an extraordinary and egregious breach of our values that it deserves the harshest punishment.

- That's why I am here today in support of HB 147 – we need to send an unambiguous message that we, as a state, will not tolerate these types of actions.

- I believe that this bill will act as a deterrent to future criminals that we won't accept this type of flagrant behavior, while at the same time send a message to the public about our values.

- In the end, the goal of this legislation is to give our citizens more peace of mind to know that they can live safely in their homes and also to let anyone who would even consider the possibility of committing an atrocious violation such as home invasion murder that they will receive the most severe penalty.

- This bill is not something that we take lightly. We certainly understand the deep moral and societal opinions on this issue.

- However, after weighing all the facts, we believe that this law is good policy that will make our state safer.

- That's why the Majority Office strongly supports HB 147 with an OTP recommendation.

Thank you for letting me address this committee. While it is not my intent to become the poster child for capital punishment, I do feel very strongly that ~~committing~~ capital punishment should be an option to the people of NH murder while participating in a home invasion ~~should be an option to the people of New Hampshire~~ for those that commit 5. In my case it was not.

On October 4th 2009 between ~~3~~ 2 and ~~4~~ 3 am, four criminals broke into our home in Mont Vernon. They broke in while my wife and daughter peacefully slept. They broke in wielding knives and a machete with the premeditated intent of murdering anyone and everyone they found. They broke in with excitement; anticipating the heinous act they were about to commit. My wife and daughter wakened to the sound of these useless criminals towering over them, shining an I-pod screen in their faces. In the blink of an eye, my family's lives changed forever. Close your eyes for a moment and imagine just how scared they were as dozens of stabs and slashes were delivered with razor sharp knives to their helpless bodies. I live with this image every day of my life. Picture yourself or the ones you love in that same horrifying situation. Imagine how terrified and frightened you and they would feel. Both my wife and daughter weighed less then 100 lbs each at the time of this savage attack. They were no match for the bloody onslaught of these soulless murderers. These murderers showed no hesitation or remorse then or now. The first murderer to go to trial last year

did not show any remorse or empathy to any of the most heart wrenching, cold-blooded testimony anyone could imagine. If you need a reason to support this Bill, close your eyes and remember the last moments of my wife's life. Imagine her not knowing if her daughter and best friend was alive or dead. I can only imagine that Kim assumed Jaimie was dead. My wife was very strong and a fighter, but I'm sure in the last moments of her life; the thought of her daughter lying dead next to her was more then she could bear, so she drifted off with the hopes of seeing her on the other side. The events that took place during those early morning hours in the sanctity of our home is the perfect, clear cut example of why this bill should be added to NH Law. This bill should have been available to our judicial system and thereby the people of New Hampshire; another tool in their tool belt of justice. It is a travesty that the legislature several years ago did not add murder while conducting a home invasion to the law when it last happened in New Hampshire. If they had, I would like to think that it might have been enough to deter these soulless murderers from breaking into our home and savagely murdering my wife and maiming my daughter forever.

I'm sure there are those that came today to debate the moral and ethical issues surrounding the death penalty. I do not think you should let those

arguments into your decision making process at all. The people of New Hampshire, through you, their elected officials, have already ruled on the moral and ethical issue of Capital Punishment. You have already ruled that there are a small number of acts that are so heinous that death is the only penalty that truly fits the crime committed. The committing of premeditated murder while invading the sanctity of our homes must be added to that list of acts. ~~The moral and ethical issues surrounding the death penalty are a separate issue that should be addressed at another time~~. Until the bigger moral & ethical issue comes into question, I feel very strongly that it should not influence your decision on this bill. The true issue is: do we feel that the heinous crimes that occurred on October 4th of 2009 warrant the most serious punishment? I certainly do. I am not here seeking vengeance; this bill has no bearing on the sentencing in my case. I am here seeking justice for the next family whose lives could be changed forever, God forbid, if another act similar to the one that changed my family's lives were to ever happen again. I hope this bill, after it is made into law, never has to be applied. Because I hope that another home invasion similar to the one that occurred in my home, to my family, never happens again in our great State. Thanks again for your time.

- Lindsey
Johnson

jmf.x

Testimony in favor of HB147 Representative Jeanine Notter

Town of Merrimack

~~I'd like to start off my by stating that~~ I'm thankful and honored to be a co-sponsor of House Bill 147, "The Kim Cates Bill."

One of the issues I ran on, for the office of State Representative, was "Justice for Victims of Heinous Crimes."

When Professors Haph and Susanne Zantop were murdered in 2001, we were shocked. Home invasion murders don't happen in NH. I bet no thought it would happen again. Perhaps if the death penalty was expanded after the Zantop murders, in 2001, it wouldn't have happened again.

Fast forward to Oct. 2009, and an even more tragic home invasion murder took place, this time in Mont Vernon. We all know about the tragedy that happened in the Cates home, ~~so I'm not going to repeat the details.~~ To avoid redundancy instead ~~What~~ I am going to stress today ~~is~~ how unsafe so many of felt after this murder. It seemed that everyone, everywhere was choking up at the mention of what happed to Kim and Jamie Cates. When it comes to Jamie, many of us marveled her bravery. I would even venture to say that she may be the Bravest girl this state has ever known.

I want to tell you about another 11- year-old girl who was affected by this murder. Her name is Elizabeth. She never met the Cates family, but somehow feels a strong connection to Jamie. Knowing how much she loves her own mommy, she couldn't bear the thought of another girl her age growing up without one. Elizabeth read that Jamie was a black belt, so went to a Clay Café, bought a karate girl plague, painted it, and though a friend of a friend, got it to Jamie Cates. She attached a note that read simply, "I think you're awesome." (She didn't know what to say.)

The story doesn't end here. For months and months, Elizabeth couldn't sleep in her own room. It's located at the top of the stairs. If thugs broke into her house too, she might be the first to go. Elizabeth slept in her parent's room until her mom brought her to a doctor. He put her on anti-depressants.

People have a right to feel safe in their beds in their own homes at night. Little girls like Elizabeth shouldn't have to take prescription drugs to calm ~~her~~ anxieties because another girl her age was brutally attacked and now has no mommy to kiss her goodnight.

Right after the Spader trial, I was talking with Elizabeth's mom at the gym. I told her that Kim was my inspiration that day. I heard Dave Cates say at the trial that Kim was the best gym buddy.

Then we talked about the tragedy. I said, "Jamie was crumpled by the sliding glass door. When the thugs finally left, how did she.....so grievously wounded.....crawl across that room, down the hall, past the bathroom, past two bedrooms, past the living room, to the kitchen, to make that 911 call?

I think that it was Kim who protected her daughter and helped her down the hall."

Before I could say another word, I kid you not, the lights in the gym suddenly got MUCH brighter. Elizabeth's mom looked up and said, "She heard you."

I do believe that Kim Cates is watching from somewhere up above. What happened to her should have concluded with justice commensurate to the crime.

It would be a tribute to her memory to expand the death penalty to include home invasion murders. Maybe thugs like the ones who broke into the Cates home will think twice about committing such a terrible crime. And people, like the child, Elizabeth can feel safe in their beds.

It's been over a year since the tragedy. Elizabeth is still on medication and thinks of Jamie often. When she saw this picture (hold up) of Jamie and her Daddy in the paper she said, "Jamie's smiling! I'm so glad she smiling. I want her to come over and see my bunny cause my bunny (rabbit) makes me happy." Yesterday Elizabeth's mom told me that her daughter worries constantly about Jamie's happiness.

The thugs who broke into the Cates home are not human beings - they're monsters

I hope that the Representatives in Criminal Justice will vote in favor of the HB147. and that this bill will pass ~~on~~ the House ~~floor~~ and become the Kimberly L. Cates Law.

and Senate

May HER memory Be Eternal.

Thank you,

Rep. Jeanine Notter

Rep. Jeanine Notter

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Today's coupons add up to $148 | **Inside**



Millennium mile

More than 1,000 start off year with road race | **C1**

"There is nothing so powerful as truth" DANIEL WEBSTER

NEW HAMPSHIRE SUNDAY NEWS

FINAL EDITION ☆

UnionLeader.com · January 2, 2011 · Vol. 65, No. 9 · 10 Sections, 118 Pages · $2.00

Panel to judge: Avoid politics

◆No endorsements: Judge Gerard Boyle himself told JCC of his interview during campaign, and his report was dismissed.

By NANCY WEST
New Hampshire Sunday News

A judicial discipline panel recently dismissed a judge's report about his own potential misconduct, but cautioned him to avoid any appearance of a political endorsement in the future.

Concord District Court Judge Gerard Boyle wrote to the Judicial Conduct Committee on Nov. 2, election day, after having been quoted in a Concord Monitor article Oct. 29 speaking highly of Concord municipal prosecutor Scott Murray. Murray, a Republican, was running for



GERARD BOYLE

MONT VERNON'S DAVID AND JAIMIE CATES

UNION LEADER CITIZENS OF THE YEAR

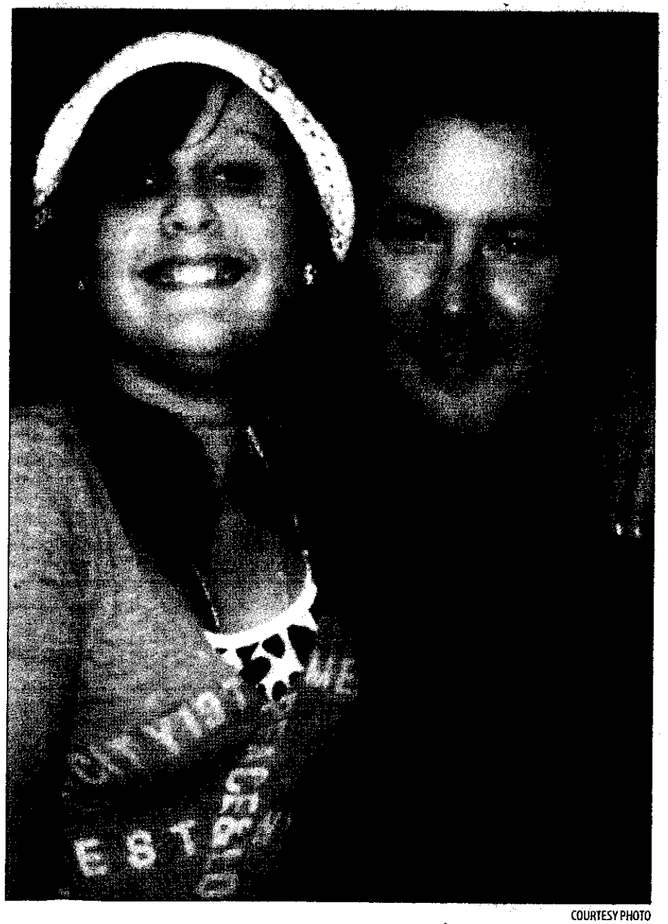
Dignity, strength, courage

◆"Bravery in the worst of times": Mr. Cates credits his daughter with helping them both embrace life after the murder of Kimberly Cates.

By NANCY BEAN FOSTER
Sunday News Correspondent

MONT VERNON

A FATHER AND daughter, whose courage and indomitable spirits served to comfort the rest of New Hampshire during their own grueling ordeal, are the New Hampshire Union Leader's 2010 Citizens of the Year.



COURTESY PHOTO

Jaimie and David J. Cates rely on the memory of Kimberly Cates, who was killed when the mother and daughter were attacked in their Mont Vernon home, to give them the

Poll: Youth pot use on rise

◆N.H. concern: The Granite State is "No. 1 in having lowest perception of harm" from marijuana.

By TED SIEFER
New Hampshire Union Leader

In a recent national survey, more teenagers reported having used marijuana in the 30 days prior to the poll than reported having smoked cigarettes.

It was the first time in 30 years that pot outpaced cigarettes.

In New Hampshire, recent rates of marijuana use among youth have been among the highest in the country, according to the 2009 New Hampshire Youth Risk Behavior Survey. In that survey, conducted every two years, high school students were asked whether they had smoked pot within the previous 30 days. Since 2003, about 25 to 30 percent have said they had.

Bob Kingsbury 10
PO Box 1099
Laconia, NH 03247
603-528-5541

January 30, 2011

Capital Murder
HB 147-FN, and
HB 162-FN

Dear Committee Members:

My name is Robert Kingsbury. I am a Representative from Laconia, Belknap District 4. At age 18, I was drafted. I served in WW II and became a Rifleman for General Patton.

When we Veterans came home we were frequently, repeatedly, and savagely attacked in the press for having violated the (Exodus Chapter 20) "Thou shalt not kill." Commandment. Church leaders of one church or another authored most of the attacks against we veterans back in 1947 and 1948.

It took me years of searching to find out in what way those attacks were not true. A key scripture is in Matthew 19:18 when Jesus changed the wording of the Sixth Commandment from "kill" to "murder", showing that the translators of the original documents had missed the correct translation.

(Matthew 19: 18, "Jesus said, Thou shalt do no murder.")

Exodus Chapter 21, verse 12 says, "He that smiteth a man, so that he die, shall surely be put to death." So even in Exodus, the information exists that the translator made a wrong translation when he selected the word "kill" for the Sixth Commandment. Even Exodus shows that the correct translation is "murder" rather than "kill".

In his "Last Sermon" Jesus told his Disciples to be armed (Luke 22:36 "Then he said unto them, But now, he that hath a purse, let him take it, and likewise his script; and he that hath no sword, let him sell his garment, and buy one." Jesus Disciples were armed, in part, because Jesus instructed all who are his disciples could be armed. When Peter cut the ear off the servant of the High Priests who came to arrest Jesus, Peter was carrying a sword because Jesus had earlier instructed his Disciples to carry swords.

Jesus also taught, "But whoso shall offend one of these little one which believe in me, it were better for him that a millstone be hanged around his neck and that he were drowned in the depth of the sea." (Than what Jesus will do to him when he goes to his final reward.) Therefore, the scriptures do not prohibit capital punishment.

I recommend that both HB 147-FN and HB 162-FN ought to pass.

Very truly yours

Robert Kingsbury
Representative, Belknap District 4

11.
Proposed Language

MEMORANDUM

To: N.H. House of Representatives, Criminal Justice and Public Safety Committee

From: N.H. Attorney General's Office

Date: February 1, 2011

Re: Suggested Language For Capital Murder In The Course Of A "Home Invasion"

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2 Homicide; Capital Murder. Amend RSA 630:1, I(f) to read as follows:

(f) 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)***/.]; or***

(g) ~~Another, while in another's residence, while attempting to enter another's residence, or as a consequence of having been in another's residence, without invitation or right.an~~ ***a resident of a dwelling, or his or her guest, before, after, while engaged in the commission of, or while attempting to commit burglary of the dwelling as that offense is defined in RSA 635:1, I or II.***

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TESTIMONY ON HB 147

Senior Assistant Attorney General N. William Delker

Good morning Madam Chair and members of the committee. I introduced myself when I appeared before you last week. But for the record, my name is Will Delker and I am a Senior Assistant Attorney General. I have been a prosecutor with the Attorney General's Office for more than 12 years. Although I am currently assigned to the Cold Case Unit prosecuting unsolved homicides, I have been involved in prosecuting active homicide cases for most of my career. Most relevant to this bill, together with Attorney General Kelly Ayotte and Sr. Assist. AG Jeff Strelzin, I prosecuted Michael Addison for the Capital Murder of Manchester Police Officer Michael Briggs. As I am sure you are all aware, that case ended with a conviction for capital murder and the defendant was sentenced to death. More than 10 years ago, I also assigned as the junior attorney to the capital murder prosecution of Gordon Perry who killed Epsom police officer Jeremy Charron. I have also been involved in most, if not all, of the

discussions about potential capital murder cases since I joined the Attorney General's Office.

Before I begin my testimony here today I need to provide a disclaimer. I cannot talk about the specific facts of any cases currently in litigation, including the Michael Addison case, the John Brooks case, or the Mont Vernon homicide of Kimberly Cates. As a prosecutor, Rule 3.6 of the Rules of Professional Conduct prohibit me from making public comment that could have a substantially likelihood of materially prejudicing a pending criminal case. In other words, the ethics rules provide special limitations on me as a prosecutor to avoid unfair publicity that might harm a defendant's chance to receive a fair trial. My comments today on behalf of the Attorney General's Office are intended as general observations about the bill before the General Court. I can also answer general questions about the impact of the bill. I cannot answer questions about how this

bill or any amendments to it would apply to specific cases currently being litigated either at trial or on appeal.

The Attorney General's Office does not take a position on the public policy decision of whether to expand the death penalty to include this type of capital murder. We defer to the General Court for that policy decision. My comments today are intended to address the impact of this bill on prosecutions generally in this State and to propose alternative language that is consistent with the stated purpose in this bill and consistent with the approach taken by other states which have this type of capital murder.

At least three of the introductory paragraphs of this bill mention the concept of "home invasions." Most specifically, Paragraph IV states that the purpose of the criminal justice system is to protect "law abiding" residents in their homes. Paragraph V of the bill states: "In order to realize these purposes and address the community interest, the

legislature has determined that there is a need to increase the sanction for such home invasions which are perpetrated with the intent to commit murder."

The current proposal to amend the capital murder statute by adding paragraph (g) is not consistent with this stated purpose. Specifically, paragraph (g) as written in HB-147 would make it a capital offense in a wide array of circumstances where someone committed murder even if the killer did not commit a home invasion, even if the killer's intent in entering the home was not to kill the occupant of the home, and even if the killer does not kill an occupant of the home but rather one of his accomplices.

As currently written, Paragraph (g) is not limited to the stated goal of protecting the "law-abiding" homeowner. For example, ¶(g) would make it a capital offense if two burglars broke into an unoccupied home and stole property from the home, the two thieves

then got into an argument after the break-in about dividing the spoils of the theft, and one of the burglars killed the other in order to avoid sharing the stolen property with his accomplice. This murder of one criminal by another would qualify as capital murder under the proposed amendment.

Paragraph (g) would also make it a capital offense even if there was not a "home invasion" as that term is commonly understood. In other words, Paragraph (g) would make it a capital offense under some circumstances even when a person initially entered a home lawfully and on the invitation of the home owner. Let me give you an example of how this might apply that is not uncommon in our experience. Two siblings might be visiting each other and then get into a fight. One brother tells the other to leave the home but the other brother refuses. If that argument escalates into the death of the brother who is the homeowner, the brother who had been a guest in the home could be charged with capital murder.

The Attorney General's Office believes that there is a way to redraft the language of this bill to come closer to accomplishing the stated purposes outlined in HB-147. In New Hampshire, there is no specific crime called "home invasion." The closest analog in our statutes to the concept of home invasion is the burglary statute which is codified as RSA 635:1. Based on our research only two other states with the death penalty that made "home invasions" a capital offense. One state has a separate crime called "home invasion." If a murder occurs during the course of a "home invasion" as that crime is defined, the murder can be a capital offense. Florida has something close to a home invasion variant of capital murder. In that state it is a capital offense if a murder is committed during a "home invasion robbery," as that term is defined in Florida law.

Most states with the death penalty made the crime of murder committed in connection with a burglary a capital offense.

With these observations in mind, the Attorney General's Office has submitted proposed language that would make it a capital offense to kill a resident of a dwelling or his or her guest before, during, after or while attempting to commit burglary of the dwelling. Burglary is defined in NH law as entering a building with the intent to commit a crime therein. This proposed amendment would bring the language of the capital murder statute more in line with the stated purposes of HB-147. This proposed amendment also tracks language that is currently in the other variants of the NH capital murder statute. This proposed amendment would also has the benefit of allowing the prosecution to draw on a body of established case law from other states that have similar versions of capital murder. That provides a significant advantage in litigating capital murder cases because it provides a greater level of guidance to prosecutors and the courts in interpreting the statute in order to avoid the risk of a conviction getting reversed on appeal.

IMPACT OF CAPITAL MURDER PROSECUTIONS ON THE PROSECUTION, DEFENSE AND COURTS

The last point I wanted to make is about the impact of the expansion of the capital murder statute on prosecutions, defense, and the court system in NH. If this bill passed either in its current version or as we propose there would be potentially 1-3 additional death penalty cases a year in NH. While in absolute terms those numbers do not seem dramatic, the nature of death penalty cases makes this increase significant. With the exception of 2006, in the 12 years I have been with the office there has only been the potential of a capital case approximately every other year. That is because we have a low homicide rate and a narrow capital murder statute that covers six types of murder. Even the process of investigating a capital case in order to determine whether to seek the death penalty is a significantly different undertaking than any other type of murder case. Potential death penalty cases require a complete investigation about every aspect of the defendant's life and background both good and bad. The State is

required to identify aggravating factors that support the death penalty. The defense is entitled to raise a wide-range of issues about the defendant's background and character as mitigation evidence. Thus, even before the State decides to seek the death penalty, the prosecution must understand every aspect of the defendant's life in order to evaluate the likelihood that the jury would sentence a defendant to death. This increases the resources, not just for the prosecution, but also for State Police or the city police departments which are obligated to conduct this type of in depth investigation.

The scope of this investigation differs significantly from even First Degree Murder cases. In First Degree Murder cases, typically little or no investigation into the defendant's background or character is necessary except to the extent it might have bearing on whether the defendant committed the crime. The reason for this is because in a First Degree Murder case the sentence of life without parole is mandatory for all defendants regardless of their background or

character. Thus, sentencing in First Degree Murder cases could not be more different than in death penalty cases.

Once a prosecution for capital murder commences and the State seeks the death penalty, the defense raises a significant number of legal challenges to block the death penalty. The defense often hires experts to aid in the defense. The State in turn must meet these challenges by hiring its own experts. The litigation consumes vastly greater resources for the prosecution, law enforcement agencies, defense, and the court system. Just by way of example, it would not be unusual for the process of picking a jury which is fair and impartial to both sides to take 3-4 weeks compared to approximately 4 days for a typical First Degree Murder case. The reason for this is that many jurors have strong feelings both in favor and opposed to the death penalty. Therefore, the lawyers and the court must question jurors at length to ensure that a fair and open-minded jury is selected. The trial itself can take 3-4 months to complete compared to 2-4 weeks for a

typical First Degree Murder case. The reason for this difference in a capital murder case is because by constitutional law the death penalty trial must occur in two stages—the guilt phase and the sentencing phase—and both the prosecution and defense are entitled to put on a broad array of evidence on the issue of sentencing. Finally, the appeal process can last 10 years or more.

At current staffing levels the Attorney General's Office could not prosecute 1-3 capital murder cases per year. Even if, as in the past, the legislature provides the financial resources to properly prosecute capital murder cases, it is not realistic to think that we could simply hire additional prosecutors to supplement our staff whenever an new capital murder case occurs. Capital murder prosecutions require skilled and experienced prosecutors. It requires time to build the body of knowledge to properly prosecute capital murder cases. The Attorney General's Office is committed to ensuring the highest level of prosecution in order to prevent mistakes that could result in

wrongful convictions or improper acquittals. If this bill passes it is essential that the legislature give consideration to ensuring this commitment to the highest quality criminal justice by guaranteeing that the resources are available to prosecute, defend and adjudicate these cases.

The Office of the Attorney General is not taking any opinion on the public policy decision to expand the death penalty in HB162, which would include all purposeful First Degree Murder cases. However, my observation about resources would apply to even a greater degree if the Legislature expands the death penalty to cover all First Degree Murder cases. In my experience on average there are between 4-8 First Degree Murder cases in this State per year. Adoption of HB162, would require the State to evaluate each of these cases to determine whether to seek the death penalty. Even if the death penalty was not sought in all of these cases, that would still

result in a significant amount of resources to accurately evaluate each of these cases.

Criminal Justice & Public Safety Committee
Concord, NH 03301

February 1, 2011

Re: HB 147 and HB 162

Dear Committee Members:

As a widow of a murder victim and a victim of attempted murder, I have given considerable thought to the practice of the death penalty. There is no doubt in my mind that the death penalty is never justified.

To mention just a few issues, we have seen that the death penalty can place innocent people at risk. Comparison of states with and without the death penalty show us that it is not a deterrent to murder. It does not conform to international human rights. The cost is much higher. It is simply an act of revenge. The death penalty promotes killing as being socially acceptable.

HB 147 and HB 162 simply increase the possible killings. I am asking you to vote NO on these bills. A society must be based on moral bedrock. Killing BY ANYONE, under any conditions, should not be tolerated --- AND THAT INCLUDES THE GOVERNMENT.

Respectfully,

Anne Lyczak

Anne Lyczak
26 Pleasant St. No. 27
W. Lebanon, NH 03784

15

OFFICE OF THE BISHOP

DIOCESE OF MANCHESTER

January 26, 2011

Rep. Elaine Swinford, Chair
Criminal Justice and Public Safety Committee
Legislative Office Building, Room 204
Concord, NH 03301

Re: House Bill 147

Dear Chairman Swinford and Members of the Committee:

As a citizen of New Hampshire and as the Bishop of the Roman Catholic Diocese of Manchester, I am writing to register my opposition to HB 147, which would expand the death penalty in New Hampshire.

Like other citizens of our state, my heart is broken by the inconceivable and monstrous crimes which prompted this bill. I join with all of New Hampshire's citizens of various faiths and beliefs in praying for the victims and their families; in honoring the bravery and nobility of the police officers and first responders; and in seeking a just punishment for the guilty. However, I firmly believe that just punishment should not involve the taking of yet another life.

Both reason and faith tell us that human life is sacred, and that every human person has inestimable value. It is why the unjustified taking of someone's life is considered to be monstrous. Every human life deserves the utmost respect. The taking of a human life through the death penalty is unnecessary in order to ensure public safety today. Therefore it is inconsistent with our nation's pledge to preserve the dignity of human life. By utilizing the sentence of life without parole, the state is able to protect the lives of its citizens without resorting to lethal force. In this light, I am opposed to any statute or legislation which calls for the application of capital punishment.

When the state ends a human life, it suggests that society can end violence with more violence. Pope Benedict XVI has said:

> Killing the guilty one is not the way to rebuild justice and reconcile society. On the contrary, there is the risk that the spirit of revenge is fueled and that the seeds of new violence are sown.

Our states, therefore, should end the use of the death penalty, not only for what it does to those who are executed, but for what it does to all of society.

While the Catholic Church does not believe that the death penalty is necessary today, we are no less concerned about caring for those who have been wounded by violence. Families and victims of violent crime deserve our compassion, solidarity, and support. Our ministry seeks to

153 ASH STREET, P.O. BOX 310 MANCHESTER, NEW HAMPSHIRE 03105-0310 (603) 669-3100 FAX (303) 669-0377

support them in search for justice, peace, and healing. In so doing, our standing with families of victims does not compel us to support the use and expansion of the death penalty. Unfortunately, some of these families are further violated by the legal processes and public attention that comes with capital punishment cases. For some, a death sentence offers the illusion of closure and vindication, but experience teaches us that the pain and loss of one death cannot be wiped away by another.

I urge you to oppose House Bill 147 and any expansion of capital punishment in New Hampshire. By refusing to expand the death penalty in this state, we proclaim a moral goodness that moves beyond the influence of reaction to chilling crimes and toward a civil ethic that expands respect for the intrinsic value of every human person.

Thank you for considering this appeal and for your service to the people of our State.

Very truly yours,

John McCormack

Bishop of Manchester

Statement of NH Religious Leaders on the Death Penalty

We, the undersigned faith leaders, reflecting the rich diversity of faith traditions and spiritual practices observed in New Hampshire, stand together in expressing our opposition to New Hampshire's death penalty. As faith leaders, the public often seeks our guidance and direction on both spiritual and practical issues. As representatives of our respective faiths, we write to you today to ask you to support repeal of New Hampshire's death penalty.

As people of faith, we take this opportunity to reaffirm our opposition to the death penalty and to express our belief in the sacredness of human life. The use of the death penalty is a gravely unjust method of protecting society, given the capacity of our modern penal system to incarcerate offenders for life. The death penalty has no demonstrated deterrent effect that protects society, law enforcement or corrections officers within prisons. Moreover, the death penalty is applied disproportionately to the poor and people of color and the ever increasing numbers of exonerations shows that it is also applied inaccurately. This direct use of lethal means to protect society from unjust aggressors is unnecessary and unwarranted.

We have concerns about the way the death penalty fails murder victims' family members. As religious leaders, victims' family members often look to us as resources in the aftermath of murder. As such, we have a special interest in advocating for policies that serve their needs and promote healing and well-being. We believe that the death penalty does not help these families; instead, it prolongs their pain and delays their healing.

We write to voice our unease about the way our state's death penalty diverts funds from other needs. In light of the serious economic challenges that face our state and the nation, the valuable resources that are expended in pursuing death sentences would be better spent on programs that have been proven to prevent crime, such as improving education, providing mental health services, funding community corrections programs and putting more law enforcement officers on our streets. The funds would also be better spent supporting programs that assist victims of crime and their families.

It is our respect for human life and our opposition to violence in our society that prompts us to join with other death penalty opponents in New Hampshire to advocate for repeal of New Hampshire's death penalty. We urge you to recommend that capital punishment be repealed in New Hampshire and that state resources be devoted to prevention of crime and achieving healing and restorative justice for victims.

Sincerely,

(Over 200 religious leaders in New Hampshire.)



Join Other NH Religious Leaders Now

January 22, 2011

Faith Leaders Call for Repeal of the New Hampshire Death Penalty

The Rev. Susan Ackley, Rector,

Rev. Dr. Larry Adams, Pastor

Rev. Michele Allan

The Rev. Robert E. Aspinwall

The Rev. Ted Asta

Very Rev. Dennis J. Audet, VF

Pastor Marilyn Ayer

The Reverend Noel Bailey

Marian K. Baker

Rev. W. Pierre Baker

Rev. Brendon Bass

Rev. Jean Bass

Rev. Louise K. Bastille,

Rev. Henry Beairsto

Rev. Gerald R. Belanger

The Reverend Daniel Bernier

Rev. Dr. Dawn C. Berry

Rev. Gerry Bertin

Rev. Dr. Margaret W. Bickford

The Rev. John Blackadar

Sr. Suzanne Bourret, P.M.

The Rev. David Boyer

Pastor Shawn Brace, Pastor

The Rev. Michael Bradley

Rev Roger Burkhart, UCC

The Rev. Grace P. Burson

Rev. Marilyn Bushnell

Rev. James S. Chaloner
Rev. Craig Chaney

Fr. Thomas Chininis

Most Rev. Francis J. Christian

The Rev. Charles H. Clark

Concord Monthly Meeting of the
Religious Society of Friends
(Quaker)

Rev. Roland P. Cote

Aaron R. Cox

Br. Paul Crawford, OFM, Cap.,

Rev. Gordon L. Crouch

Fr. Andrew W. Cryans

Rev. Barbara Luckett Currie

Rev. Randolph K. Dales, Rector,

The Rev. Dr. William R. Daniels

Br. Paul Demers

The Rev. Dr. Donald F. Derse

Rev. Marc B. Drouin

Rev. Thomas L. Duston

The Rev. Marthe F. Dyner

Rev. Charles E. DesRuisseaux

Dover Quarterly Religious
Society of Friends
(Quaker)

The Rev. William Exner

Rev. Dr. Gordon E. Ellis

Rev Caroline Fairless

The Rev. Daniel Ferry

Deacon T. Kelly Fitzpatrick

Rev. Leonard R. Foisy

Mary Ellen Foley rsm 3399

Sister Therese H. Forcier, p.m.

The Rev. Heidi Frantz-Dale

Rev. Virginia Fryer, Pastor

Rev. Rodrigue J. Gallant

Rev. William S. Gannon

Rev. Virginia Fryer, Pastor

The Rev. Fran Gardner, Rector

Rev. Steve Garnaas-Holmes

Rev. Michael E. Gendron

Rev. Dr. Louis A. George, D. Min.

Rev. Thomas M. Getchell-Lacey

Rev. Richard Giroux

Revs. John and Susan Gregory-Davis
Rev. Michael J. Griffin

Rev. Bob Guillemette

Fr. Joseph Gurdak OFM Cap

Rev. Karen J. Hagy

Hanover Monthly Meeting
Religious Society of Friends
(Quaker)

Patricia C. Harris

The Rev. Dr. Miranda K. Hassett

Dwight S. Haynes

Rev. Gilman E. Healy

Rev. Celeste A. Hemingson

Reverend Linda C. Hey

Rev. Peter Hey

Rev. Charles B. Higgins

Rev. Mary Higgins

Rev. Deborah A. Hill

Rev. Dr. Judith A. Gooch

Rev. Susan Grant-Rosen

Rev. Dr. Nelson Howard, III

Rev. Allen M. Humes

Rev. Mary A. James, Pastor

Rabbi Larry Karol

Rev. John W. Keegan, S.J.

Rev. David Keller

Rev. Susan de Puy Kershaw

Pastor Timothy J. Keyl

Rabbi Richard L. Klein

The Rev. W. Allan Knight

The Rev. Mark Kozielec

Rev. Anthony F. Kuzia, CM

Rev. Daniel Lamothe

Rev. Shannon F. Lamothe

The Rev. Susan Langle

Rev. Ellen Lankhorst

Rev. Richard I. Learned
Rev. Richard G. Leavitt

Rev. Leo LeBlanc

Rev Pojen Lee

Rev. Beverly L. Lindsey

Rev. Joyce Lovejoy

Rev. Peter Lovejoy

Rev. Andrew J. MacLeod

Most Rev. John McCormack, DD

Rev. Kimberly S. McKerley

Deacon Gregory McGinn

Rev. Marcel Martel

Pauline Maurier, CSC

Rev Curtis Metzger

Rev. John W. Michalowski, SJ

Monadnock Monthly Meeting
Religious Society of Friends
(Quaker)

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Rev. Paul D. Montminy

Rev. Marc R. Montminy

Deb Moore

Rev. William R. Morley

Deacon Edward P. Munz

Mrs. Ruth Nace

The Rev. William E. Nelson

The Rev. Stephanie Nichols

Rev. Murray Nickerson

Rev. Jeanne Nieuwejaar

Rev. Les Norman

Rev. Jean O'Bresky

Rev. Msgr. Wilfrid H. Paradis

Rev. David Pendleton

Very Rev. Fredrick Pennett, V.F.

Deacon Robert Potvin

Rev. Debra Pratt-Peckham

Rev. Russell Pregeant

Rev. Emily Preston

Rabbi Louis Rieser

Deacon Bill Rich

Rev. Beth Richeson

Rev. David Robins

The Rt. Rev. V. Gene Robinson

Rev. Nancy Rockwell

The Rev. Sarah Rockwell

Rev. M. Dean Roth

The Rev. Dr. Sheila S. Rubdi

Rev. Michael Scott

Rev. Gary M. Schulte

Rev. Steven M. Seminerio

Rev. Polly H. Shamy

Sisters of Mercy of the Americas,
Northeast Community

Rev. David Slater

Rev. John S. Sledziona, CM.

Rev. Dr. David W. Smith

Rev. Larry W. Smith

Rev. Richard A. Smith

Rev. Carol Snow-Asher

Rev. Robin Thomas Soller,

Rev. Louis A. Soucey

Rev. Theresa M Stirling

Rev. Daniel A. St. Laurent

Rev. Carlos Jauhola Straight

Rev. Nancy Talbott

Monique C. Therriault

The Rt. Rev. Douglas E. Theuner

Rev. Jane Thickstun

Rev. Maren Tirabassi

Rev. Charles Tirrell

Rev. Kathleen H.N. Towns

Rev. Albert Tremblay, Jr.

The Rev. Jane W. Van Zandt

The Rev. E. Nicholas Van Gombos

The Rev. Stephen C. Washburn

The Rev. Dr. P. Mark Watts

Weare Monthly Meeting-
Religious Society of Friends
(Quaker)

The Rev. Jason Wells

Sr. Mary Elizabeth Whalen, S.N.D.deN

Reverend Gayle Whittemore

Rev. Harry Widman

Rev. Robert Windsor

Rev. Nancy Wood

Rev. Woody Woodland

Pastor David Yasenka

The Rev. Leonard Zecchini

January 24, 2011



Justice for Justin

On November 02, 2010 Our son, Justin Lewis Flanders was murdered in the town of Pittsburg, N.H. He was just 21.

Our son was not only shot to death but his body was burned beyond recognition. We have already been told that his murderer **WILL NOT** receive the death penalty because of the way that the Capital Murder Law reads in the state of New Hampshire. It is our goal to have that law changed!

We are in hopes that this petition will bring some much needed attention to the way that the law is written and band-aided together, maybe if we get enough signatures we can get the legislature to sit down and adopt a Capital Murder Law that will offer the everyday citizen protection of the death penalty. To our knowledge, there are currently only five ways in which the death penalty can be asked for. Unfortunately, these five ways have been added after the crime has already been committed. We feel that the law should be re-written so that when a murder is committed the death penalty could be asked for instead of sticking band-aids on the problem, after the fact.

The Department of Corrections states the average annual cost of incarcerating an individual in the general prison population for the fiscal year ending 06-30-08 was $32,753. We the tax payers should not have to support these criminals for the rest of their lives!! It seems that prison life is better than civilian life!! **Free** medical, dental, food, cable, etc. There are **INNOCENT** children, elderly and homeless people on the outside that do not even have these benefits/luxuries. Personally we feel that if it is **proven BEYOND A BENEFIT OF A DOUBT** that a person has committed a premeditated crime, such as murder, they should lose their rights and be put to death. The person they murdered didn't chose to die, so why shouldn't the criminal suffer the same fate. **MAYBE** if our state adopted a new Capital Murder Law and saw it through, these heinous crimes would not happen in our state anymore.
People would actually stop and think.

If you feel the same way that we do, **PLEASE** sign this petition. It is our hope that if we get enough signatures and take them to the Legislature, maybe someone will take notice and try and help us **BEFORE** someone else's child or loved one is murdered.
Thank you for your support.

Jeffrey & Alberta Flanders

I am Margaret Hawthorn, mother of Molly Hawthorn MacDougall, who was murdered in her home in Henniker on April 29, 2010. I live in Rindge, NH, and Winchendon, MA.

Molly was two weeks from graduating from nursing school at New Hampshire Technological Institute. She was married to a wonderful young man named Dan Paul – they lived in their small house on a corner of his family's farm. She was an avid gardener, a dancer, a potter, a gracious hostess, a fisherwoman, and so much more. Molly was a lover of life and a lover of people.

Our family lost a precious light on April 29. New Hampshire lost a good and responsible citizen.

As tragic and senseless as Molly's death is, I am relieved this is not a capital case. Another death would only increase my family's trauma, and would not bring Molly back. I understand one of the bills being introduced today would make a case like hers capital because it was a home invasion.

As a child I came to my own conclusion that the death penalty was wrong. But, like anyone who believes the death penalty is wrong, I later had to consider the question, "Easy for you to talk of non-violence, but what if it were your loved one?"

Now it is my loved one. As a grieving mother, I have a voice I would never have chosen.

Here are some of the well-rehearsed reasons why New Hampshire should not consider expanding its death penalty, and should move towards abolishing it altogether:

- Murder is murder, even when state sanctioned, and murder is cruel and inhumane. When a state carries out an execution, every citizen of that state in party to a murder.

- Capital punishment has not been proven to be an effective deterrent.

- Innocent people wind up being executed.

- Opponents of the death penalty shy away from discussions of fiscal cost. There seem to be questions of taste and propriety in bringing money into this discussion. But Rennie Cushing, a fellow family member of a murder victim in New Hampshire, addresses this issue cogently in his response to the study panel's recommendation.

Others who testify will go into each of these arguments in more depth.

As the ~~other~~ mother of a murder victim, I would like to give my thoughts on the best possible outcome I can imagine to my family's overwhelming loss.

One day last fall I ran into a friend I hadn't seen in a while. She asked how I was doing, and said how sorry she was to hear about Molly. She added, "I hope he gets what he deserves."

I must have looked confused. She said, "He doesn't deserve to live."

I explained it's not a capital murder case, and that I'm relieved because I wouldn't want to think about the death penalty.

Whoever killed Molly (there has been no trial, so I can't speak in specifics)... whoever killed Molly now bears a responsibility for two lives – his own, and the life he stole from our daughter. The most positive outcome I can imagine is to see that person put his life to good use in whatever circumstances he is to live it out. That could bring a little light into this most awful situation. I wouldn't want such a possibility eliminated through an execution.

My friend said, "You're a better person than I am."

But I am not. I am self-protective. Revenge is tricky, self-destructive. It doesn't turn out sweet, seldom plays out the way one thinks it will. Too often family members find the execution of their loved one's murderer doesn't bring the hoped-for closure. I don't want to allow room for revenge to impose its disappointment on me.

I can't begin to describe how painful it is to learn to live in a world where Molly is not with us. I haven't begun to approach forgiveness. Trauma still wraps its armor around me, protecting me from taking in more than I can survive. In the meantime, I trust the state to make sane decisions that show compassion for all while I ride an emotional roller coaster I wouldn't wish on anyone.

There may never be a turn around in the murderer's heart, and I know not to count on it. My healing can't rest on what happens to or within another person. The state can best help me by funding ongoing private counseling and support groups with professional facilitators, and allowing me to go about the work of healing can happen, free from the specter of another death.

I do believe some people are so broken that for the safety of others they need to be contained, permanently. I am not naïve enough to think everyone can be rehabilitated and returned to society. On and off for nearly twenty years I have served as a facilitator with the Alternatives to Violence Program, a Quaker initiative that helps inmates – and groups on the outside – seek non-violent ways to respond to conflict. Having been inside New Hampshire prisons, I'm aware it is a grim existence. Eliminating the death penalty is not synonymous with letting people off the hook.

A woman who volunteers in the New Hampshire prison system read an article to some inmates on our family's statement about not yielding to hatred. The woman's co-facilitator was an inmate serving a long sentence. He promised her that when and if

someone is convicted of murdering Molly, he would reach out immediately to help that person begin to make something better of his life. Please don't eliminate the possibility of that promise.

When I think about how to best honor Molly, I am certain it is by living into the values she embraced. She trained to do life-supporting work. Her love for people and deep compassion led her to choose a career of caring for others. She would not want anyone killed in her name.

New Hampshire Council of Churches

People of faith strengthening New Hampshire communities!

PO Box 1087, Concord, NH 03302-1087 (603) 224-1352 www.NHChurches.org

Joint Statement on the Death Penalty

New Hampshire Council of Churches

The New Hampshire Council of Churches, an ecumenical Christian body of ten diverse denominations including Protestant, Anglican, Roman Catholic and Orthodox Christian traditions, regard the use of capital punishment as problematic and unacceptable. As Christians we believe that every human being is created in the image and likeness of God (Gen 1:26). In our human condition sin tarnishes this image; nevertheless, we believe that the promise of redemption is offered to all through repentance. Thus, each of us is called to respect the life and dignity of every person, even when that person denies the dignity of others. We must still recognize that their dignity is a gift from God and is not something that is earned or lost through their behavior. Respect for life applies to all, even the perpetrators of terrible acts.

Scripture cautions us: "Do not repay anyone evil for evil, but take thought for what is noble in the sight of all" (Romans 12:17). From this Christian perspective we are led to conclude that the death penalty does not provide justice. Instead the death penalty perpetuates inhumane retribution, fosters feelings of revenge, and exacerbates a cycle of violence upon the perpetuators and victims without regard for that which is noble. These responses dehumanize society and blind us to God's image in all; perpetrators and victims, rich and poor, young and old, Christian and non-Christian, no matter what color their skin may be. The use of capital punishment does not restore a broken society; it perpetuates the violence and injustice instead of condemning such intolerable acts.

Therefore, we, the undersigned, condemn the expansion of capital punishment and call for the abolishment of its use in the State of New Hampshire, asking all to seek that which is noble.

Adopted by the Board of Directors May 20, 2010

Member Denominations:

American Baptist, Episcopal, Evangelical Lutheran Church of America, Friends, Greek Orthodox, Presbyterian Church/USA, Roman Catholic, United Church of Christ, United Methodist, Unitarian Universalist

HB147

22

First, I extend to the Cates family my deepest prayers of condolence and grief with you for the charges to be made to your family and the lives to our community

Good morning,

My name is Fr. Thomas Chininis. I currently serve the St. Philip Greek Orthodox parish in Nashua, NH and am a resident of Amherst. I come before you today offering testimony on behalf of the New Hampshire Council of Churches. ~~First,~~ On behalf of the Council and its ten member denominations, I would like to offer you a joint statement:

Statement attached.

The essence of this statement is the belief that all people are created in the image and likeness of God. This belief guides the manner in which we relate to each other. No matter who we are, rich or poor, young or old, people of all color and creeds, we are created in God's image and likeness. To the point of our gathering today, being created in God's image and likeness we are compelled to see that spark of the divine in all. We readily see God's image in victims. We are less incline to see that same image in the perpetrators. Yet, it exists bringing dignity to all humanity and along with it, the hope of repentance.

Who among us does not feel the pain of the Cates family and revile the actions of the perpetrators. We can feel this pain and deal with our emotions and loss, but what is imperative for us, as a civil society, is to respect life and recognize the dignity in all, though the perpetrators themselves deny the dignity of the victims. Expanding the use of the death penalty, even the established use of the death penalty, fails to honor us as a society and distorts our ability to see God.

The expansion of the death penalty perpetuates this violence which does not provide justice, rather retribution and revenge. It does not act as a deterrent to violence. Perpetrators do not think about the consequences of their acts; the possibility of the death penalty does not come into play. The use of the death penalty then essentially seeks to assuage our feelings of anger and vulnerability, and not to provide justice. God will, in His time, provide His justice which is much more severe than anything we could possibly impose.

Therefore on behalf of the NHCC, I encourage that this distinguished committee not to recommend this bill, or any other bill seeking to expand the death penalty, for action by the ~~full House~~ General Court.

The test of whether the death penalty can be used is not the gravity of the offense, but whether it is absolutely necessary to protect society. The *Catechism* adds that today "the cases in which the execution of the offender is an absolute necessity 'are very rare, if not practically nonexistent'" (CCC, 2267).

According to a survey of the former and present presidents of the country's top academic criminological societies, 88% of these experts reject the notion that the death penalty acts as a deterrent to murder. (Radelet & Lacock, 2009) Consistent with previous years, the 2008 FBI Uniform Crime Report showed that the South had the highest murder rate. The South accounts for over 80% of executions. The Northeast, which has less than 1% of all executions, had the lowest murder rate.

conversion of those who commit evil acts.
Each of us is called to respect the life and dignity
of every human being. Even when people deny the dignity
of others, we must still recognize that their dignity
is a gift from God and is not something that is earned
or lost through their behavior. Respect for life applies
to all, even the perpetrators of terrible acts. Punishment
should be consistent with the demands of justice
and with respect for human life and dignity.

When Cain killed Abel, God did
not end Cain's life. Instead, he sent Cain into exile,
not only sparing his life but protecting it by putting
"a mark on Cain, lest anyone should kill him at sight"
(Gn 4:15). Jesus refused to stone the woman accused
of adultery (Jn 8:1-11), reminding us to be cautious in
judging others and to have hope in the possibility of
reform and redemption.

"If, however, non-lethal means are sufficient
to defend and protect people's safety from the aggressor,
authority will limit itself to such means, as these
are more in keeping with the concrete conditions of
the common good and more in conformity with the
dignity of the human person."

Christ on the cross...even he calls upon us to forgive.

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WRITTEN TESTIMONY OF
MICHAEL J. IACOPINO

on behalf of

THE NEW HAMPSHIRE ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

before

THE NEW HAMPSHIRE SENATE JUDICIARY COMMITTEE,

in opposition to

HB 147 & HB 162

February 1, 2011

I. INTRODUCTION

The New Hampshire Association of Criminal Defense Lawyers (NHACDL) consists of approximately 280 Granite State lawyers whose practices include a significant amount of criminal defense work. Our membership includes private practitioners, and state and federal public defenders. NHACDL is the local affiliate of the National Association of Criminal Defense Lawyers and shares its mission to ensure due process and fairness in the administration of the criminal justice system. NHACDL provides its membership with significant continuing legal education opportunities in the field of criminal defense. Additionally, we facilitate communication amongst members of our organization on the issues which confront criminal defense lawyers on a daily basis. NHACDL will also, from time to time, take public positions with respect to important cases before the courts, or proposed legislation, which affects fairness and due process in the administration of the criminal justice system.

We have appeared before you in the past in support of the repeal of the death

penalty. It should be no surprise to you that NHACDL opposes the expansion of the death penalty contained in both HB 147 and HB 162. Although the murder of Kimberly Cates was an atrocious and heinous act, these bills are not the answer. These bills are knee jerk reaction that could seriously impair whatever low level of effectiveness and any value that our present death penalty law may have.

II. THE CRIMINAL JUSTICE SYSTEM CANNOT GUARANTEE THAT INNOCENT MEN AND WOMEN WILL NOT BE SENTENCED TO DEATH.

While our criminal justice system in principle is the fairest in the world, we know that it is not perfect and that it is fraught with risk - risk that an innocent person may be wrongfully convicted. Over the past several years advances in DNA technology have demonstrated in over 200 cases that wrongful convictions occur and occur with frequency and without regard to geography. In more than 120 cases the accused had been sentenced to death. In these cases the accused was exonerated and usually released from prison. Once executed an exoneration means nothing.

It is very likely that innocent people have been executed in our country. Recent exposes in the Chicago Tribune and Houston Chronicle have highlighted three Texas cases where it is most likely that innocent men were executed. Likewise, in a case in Missouri, new testimony from the first officer on the scene suggests that a man was wrongly executed - now we are not talking about mere wrongful convictions but wrongful executions. In November 2010 DNA testing revealed that the execution of Claude Jones in 2000 was likely a wrongful execution based upon bogus scientific hair analysis.

My sister and brothers at NHACDL work in the courts every day. We read police

reports , we investigate cases, we argue our cases. What we see is a system that cannot guarantee certainty, a system that can be misdirected, and a system that makes serious and egregious mistakes. A system that reacts based upon emotions and sometimes even based upon politics. Although this may be the best system in the world it still carries an untenable degree of risk that a person can be executed for a crime that he or she did not commit.

III. CAPITAL PUNISHMENT DOES NOT DETER OTHERS WHEN COMPARED TO THE SENTENCE OF LIFE WITHOUT PAROLE

There has been much debate about whether or not the death penalty deters homicides. At the end of the day the evidence is clear that none of the research and none of the evidence demonstrates that the death penalty deters homicides. In fact some of the research demonstrates a "brutalization" effect where murder rates actually increase in response to executions. No studies show that the death penalty is more of a deterrent than the sentence of life without parole. The vast majority of socuial scientists agree tha the death penalty does not present a deterrent effect on crime. Crime statistics do not support the theory that the death penalty deters homicide. Additionally in New Hampshire life without parole means exactly what it says - no parole, no release.

IV. CAPITAL PUNISHMENT COSTS TOO MUCH

The death penalty is too expensive both in terms of money and in terms of the "blood, sweat, toil and tears" that it exacts in our society. Death penalty cases require the expenditure of huge amounts of money from the public treasury. The financial costs

effect our society across the board. The costs effect county and state prosecutorial budgets. Ths costs effect the budget for public defense. The costs effect police departments. The costs effect the Corrections Department. The costs effect the judiciary. The taxpayer ultimately bears these costs. The taxpayer bears these costs because it is ultimately the taxpayer who receives the protection of capital punishment. But is what we pay really worth what we receive in return? Of course an executed criminal cannot commit further crimes. But neither can a criminal who is behind bars for the rest of his life. Most studies demonstrate that life without parole is less expensive that seeking the death penalty. The benefit to society is the same. But, the taxpayer gets a better deal without the death penalty.

In Georgia a single death penalty case bankrupted their entire indigent defense system. In New Hampshire we have already spent in excess of $4 Million on the prosecution of death penalty cases alone. This figure does not include the public defense costs or the costs to individual police agencies or the Department of Corrections.

There are also hidden non-monetary costs that the capital punishment system imposes on those involved. Prosecutors, judges, witnesses, jurors and even victims are subject to enormous stress when the ultimate penalty is someone's life. In many cases this stress can be very similar to the effects of physical trauma and can last for a lifetime.

V. THE HISTORY OF THE DEATH PENALTY REVEALS THAT IT CANNOT BE EQUITABLY APPLIED AND HAS AN DISPROPORTIONATE IMPACT ON MINORITIES AND THE POOR

Over decades, there have been serious and scholarly studies conducted that create fundamental questions about the fairness of the application of the death penalty. It seems that the poor and minorities are disproportionately put to death in this great nation of ours. In fact, this question has arisen right here in our own state in the past year. A rich white man who was convicted of a clearly premeditated and planned kidnaping and murder for hire was spared the death penalty during the sentencing phase of his murder trial, while an indigent young black man was condemned to death for killing a police officer - a killing that the sentencing jury found was not a purposeful act. Regardless of the merits of these individual cases, these results clearly bring home the question the fairness of the death penalty right here in New Hampshire.

Other states and nations have recognized the fundamental unfairness of the application of the death penalty. New Mexico and New York have abolished their death penalty. New Jersey has recently repealed its death penalty. In December 2008, a blue ribbon Maryland commission recommended the repeal of the death penalty in the State of Maryland. Likewise, most of the developed nations of the world have seen the inherent unfairness in the death penalty. Article 2 of the Charter of Fundamental Rights of the European Union prohibits the death penalty in the countries of the European Union. The United States remains one of a handful of nations that still employ the death penalty. We are right up there with China, Iran, and Pakistan.

Whether the racial disparity in the application of the death penalty is de facto or

de jure - it is clear that it exists. Expanding our death penalty statute will only contribute to the extent of disparity.

VI. HB 147

This bill should be killed because it does nothing to relieve the problems that accompany the use of the death penalty in our society. It is also poorly drafted and will extend to numerous situations that do not include the typical "worst of the worst" cases that our death penalty traditionally applies to. The language is extremely broad and would apply to any murder committed "while in another's residence." This language will extend the death penalty to many circumstances beyond the home invasion that resulted in the murder of Kimberly Cates. The language is also vague and ambiguous as it also applies to a murder that occurs as "a consequence of having been in another's residence, without invitation or right." Such overly broad, vague and ambiguous laws will do nothing to deter people from committing murder and will increase the cost to the state and the public for the investigation of every murder that occurs in the home of another. The bill, if passed, will fail to achieve justice but most definitely will achieve confusion and additional costs in the investigation, prosecution and defense of such cases.

VII. HB 162

Passage HB 162 would render a seismic change in the manner in which homicide cases have been investigated, prosecuted and defended in this state. The bill abandons the notion that our death penalty is reserved for the "worst of the worst." It ignores the fact that since 1939 this state has only seen fit to render the judgment of

death on two occasions. It will require the expenditure of millions of dollars per case of purposeful murder. All sides of the death penalty debate agree that "death is different." The imposition of a death penalty leaves no room for error. Death penalty cases require more resources for investigation, prosecution and defense. Under HB 162 those resources will need to be applied to every case that was heretofore a first degree murder case.

VIII. CONCLUSION

My testimony has focused on the reasons why you should kill HB 147 and HB 162. I have also discussed why the death penalty in general is bad policy. However there is one final reason that must be stated. Killing another human being is wrong. It is wrong whether it is done by a cold-hearted criminal or done by the government. We have all told our children that "two wrongs don't make it right." That lesson is a good one for our children and should be a good one for our government as well. Please do not expand the death penalty.

FEB 6, 2011

TO THE CRIMINAL JUSTICE COMMITTEE

"NO EXECUTIONS IN 70 YEARS"

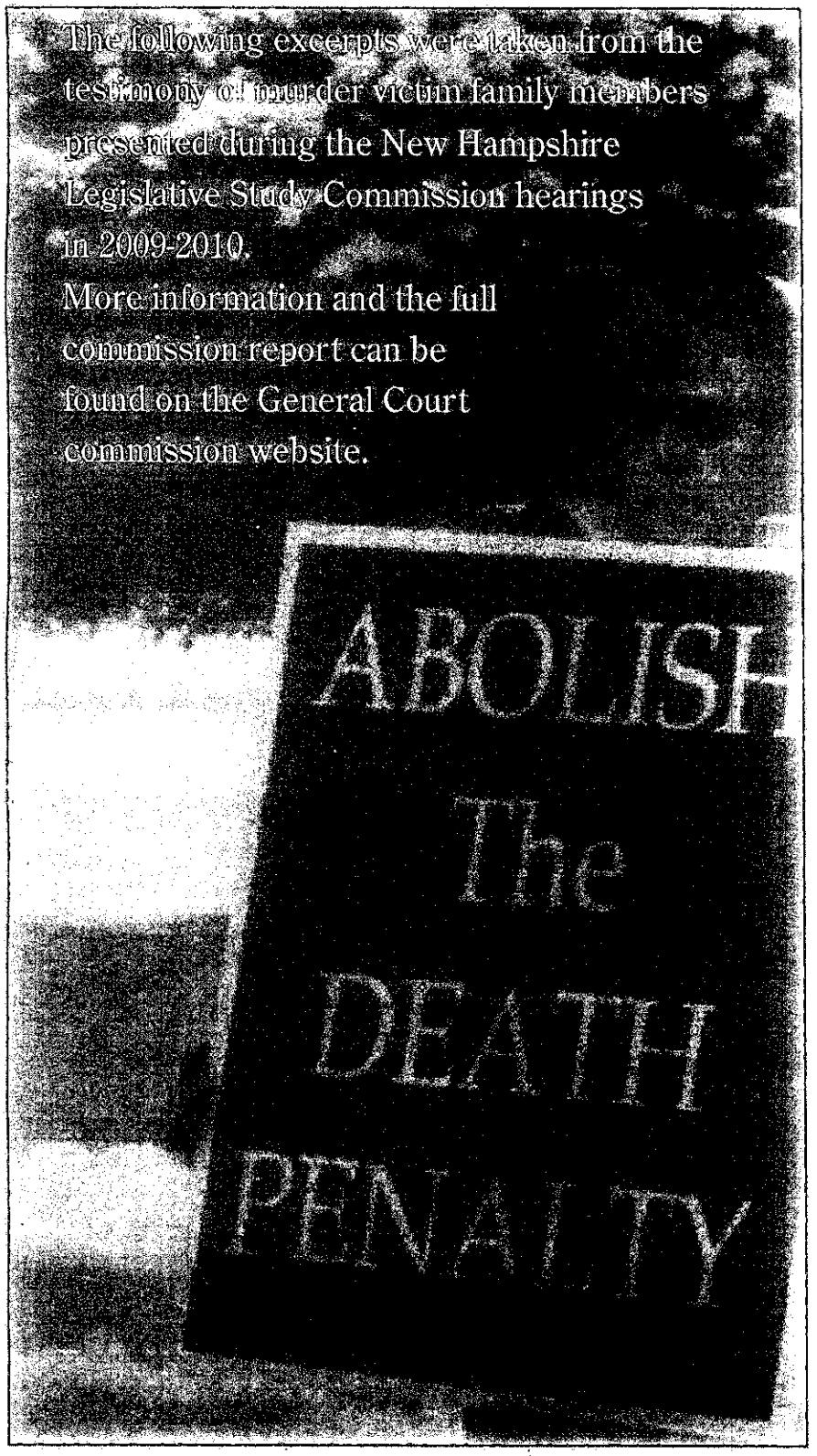
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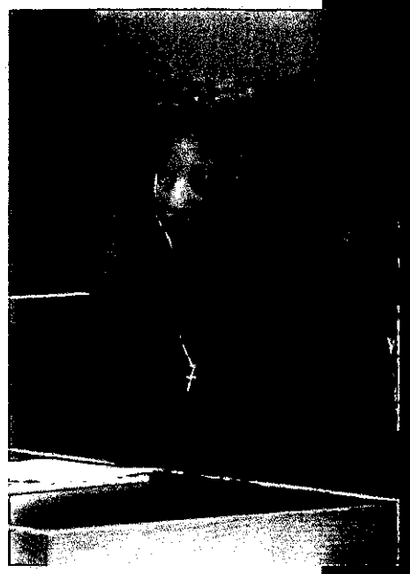
TODAY WE HAVE TEN TIMES MORE CRIME THAN WE DID 70 YEARS AGO

Representative Robert Kingsbury
BELKAP DISTRICT 4

The following excerpts were taken from the testimony of murder victim family members presented during the New Hampshire Legislative Study Commission hearings in 2009-2010.

More information and the full commission report can be found on the General Court commission website.





Nancy Filiault

Nancy's sister, niece and nephew were murdered in their home. Nancy testified that it took 4 ½ years for the case to go to trial, and each phase of the trial was worse than the last.

"Until my sisters murder I always thought I was for the death penalty. I thought people who kill other people should have to die themselves. And then someone killed my sister and her two beautiful babies. My heart broke. Killing is senseless. All killing needs to end."

"If you care about victims' families and justice, please do the work that needs to be done to abolish the death penalty in NH. It takes courage to stop the violence and stop the cycle of killing."

Gail's brother, a Denver police officer, was killed in the line of duty.

"The death penalty ignores the real needs of surviving families by diverting millions of dollars and much attention from the services that they need to help them heal. Instead the focus is on the murderer, not the survivors. Services are often provided through the prosecutor's office, so when the criminal case is over, the services for the victim's family end also. What if murder victims' survivors were given the choice of whether the money used for death penalty cases could be used instead for grief counseling, financial assistance, ongoing support and more investigators to solve cold cases? I think I know what choices most survivors would want."

Gail Rice



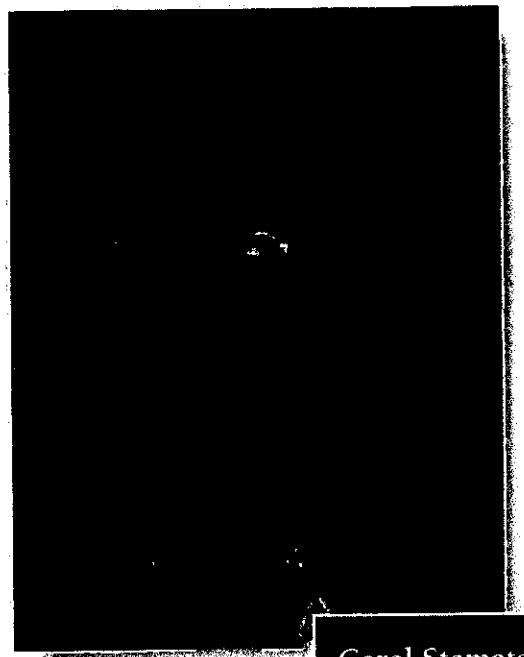


Sandra Place

Sandra's mother was murdered in 1996. Her mother's killer was convicted of capital murder and sentenced to death. His sentence was reversed after years of appeals.

"Each court date, each appeal, each write-up in the newspaper, revisiting and revisiting the pain, each event keeping me that much further from the curative process I and my family so greatly deserve."

"I am here because I need to share my experience as a victim of a judicial system that does not consider the impact of its actions on the survivors. If I were asked to speculate what the difference would be in my life if my mother's murderer had not been subject to the death penalty, I would say I would have used those years to focus on the healing process. Who knows what that would have meant?"



Carol Stamatakis

Carols' father was murdered at the furniture store he owned and operated for more than 30 years prior to this death. His case is still unsolved.

Carol testified that almost 50% of homicides are never solved so that almost half of murder victims' families never know what happened to their loved ones.

"I think when we talk about deterrence, we need to always remember that before we even get to the question of punishment, half of the murderers go free. There is no justice."

"In New Hampshire, there are 117 victims currently on the cold case list. The cold case unit has been allocated $1.2 million dollars through July 2013. However, the resources that had been dedicated to the two capital cases (Brooks and Addison) exceeds $5 million so far. So, that's two victims versus 117 victims. If the interest is supporting victims, think about how we are allocating our resources and what implications that might have for public policy."



Bess Klassen-Landis

Beth's mother was murdered in her home when Bess was just 13 years old.

"I've heard it said that in New Hampshire, the death penalty is a moral issue, and shouldn't have anything to do with cost. I say, how we spend our money in government has everything to do with morality. That money should be used to get murder victim family members counseling. It could be used to help them rebuild their lives. We could put more police on the streets, we could offer educational opportunities to those in poverty, to reduce the root causes of crime. And we could investigate cold cases like my own, to get dangerouspeople off the street."

The New Hampshire Coalition
to Abolish the Death Penalty is made up of a numerous organizations and individuals who are committed to ending the death penalty in the state of New Hampshire.

Through outreach, education and advocacy, we can make a difference!
We regularly bring experts on various death penalty issues to NH to share their experience with the public and the legislature.

Our volunteer base is growing as concerned citizens are making their voices known.
You too can make a difference.
Learn more and become a member of the Coalition at www.nodeathpenaltynh.org.

Voting Sheets

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

EXECUTIVE SESSION on HB 147-FN

BILL TITLE: **making the commission of certain offenses punishable under the capital murder statute.**

DATE: March 9, 2011

LOB ROOM: 204

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: (OTP,) OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. Phil J. Greazzo

Seconded by Rep. Kyle J. Tasker

Vote: 14-2 (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote: (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE: NO

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Gene Charron, Clerk

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

EXECUTIVE SESSION on HB 147-FN

BILL TITLE: **making the commission of certain offenses punishable under the capital murder statute.**

DATE: 3-9-2011

LOB ROOM: 204

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. Braiotta.

Seconded by Rep. Tasker.

Vote: (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote: (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE:

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Gene Charron, Clerk Reg Calendar

OFFICE OF THE HOUSE CLERK 2011 SESSION

CRIMINAL JUSTICE AND PUBLIC SAFETY

Bill #: HB147-FN Title: making the commission of certain offenses punishable under the capital murder statute.

PH Date: 02/01/11 Exec Session Date: 3/9/2011

Motion: OTP Amendment #:

MEMBER	YEAS	NAYS
Swinford, Elaine B, Chairman	✓	
Gagne, Larry G, V Chairman	✓	
Welch, David A	✓	
Fields, Dennis H	✓	
Fesh, Robert M	✓	
Charron, Gene P	✓	
Villeneuve, Moe	✓	
Antosz, Jason P	✓	
Greazzo, Phil J	✓	
Kreis, Kenneth	✓	
Parsons, Robbie L	✓	
Tasker, Kyle J	✓	
Warden, Mark	—	—
Pantelakos, Laura C	✓	
Berube, Roger R		✓
Shurtleff, Stephen J		✓
Ginsburg, Philip E	✓	
	14	2

TOTAL VOTE:

Printed: 1/4/2011

Committee Report

REGULAR CALENDAR

March 15, 2011

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Committee on CRIMINAL JUSTICE AND PUBLIC SAFETY to which was referred HB147-FN,

AN ACT making the commission of certain offenses punishable under the capital murder statute. Having considered the same, report the same with the recommendation that the bill OUGHT TO PASS.

Rep. Phil J Greazzo

FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

COMMITTEE REPORT

Committee:	**CRIMINAL JUSTICE AND PUBLIC SAFETY**
Bill Number:	**HB147-FN**
Title:	**making the commission of certain offenses punishable under the capital murder statute.**
Date:	**March 9, 2011**
Consent Calendar:	**NO**
Recommendation:	**OUGHT TO PASS**

STATEMENT OF INTENT

This bill would expand the death penalty law to include murder committed during home invasions where the killing is premeditated. The majority was horrified by the tragedy in Mont Vernon in 2009. We believe that this legislation represents a necessary enhancement of protection for those in their homes who have the right to be safe and secure. It will achieve justice for victims and allow for deterrence to those who would enter the homes of others to murder them. This is a measured and responsible expansion of the NH death penalty statute.

Vote 14-2.

Rep. Phil J Greazzo
FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

CRIMINAL JUSTICE AND PUBLIC SAFETY

HB147-FN, making the commission of certain offenses punishable under the capital murder statute. **OUGHT TO PASS.**

Rep. Phil J Greazzo for CRIMINAL JUSTICE AND PUBLIC SAFETY. This bill would expand the death penalty law to include murder committed during home invasions where the killing is premeditated. The majority was horrified by the tragedy in Mont Vernon in 2009. We believe that this legislation represents a necessary enhancement of protection for those in their homes who have the right to be safe and secure. It will achieve justice for victims and allow for deterrence to those who would enter the homes of others to murder them. This is a measured and responsible expansion of the NH death penalty statute. **Vote 14-2.**

Original: House Clerk
Cc: Committee Bill File

HB 147-FN making the commission of certain offenses punishable under the capital murder statute.

OTP 14-2 RC

This bill would expand the death penalty law to include murder committed during home invasions where the killing is premeditated. The majority was horrified by the tragedy in Mont Vernon in 2009. We believe that this legislation represents a necessary enhancement of protection for those in their homes who have the right to be safe and secure. It will achieve justice for victims and allow for deterrence to those who would enter the homes of others to murder them. This is a measured and responsible expansion of the NH death penalty statute.

Rep. Phil Greazzo

Rep. Elaine Sanford

HB 147 Kimberly Cates Bill

OTP 14-2

Rep. Phil Greazzo for the Majority of Criminal Justice and Public Safety: This bill would expand the death penalty law to include murder committed during home invasions where the killing is premeditated. The Majority was horrified by the tragedy in Mont Vernon in 2009. We believe that this legislation represents anecessary enhancement of protection for those in their homes who have the right to be safe and secure. It will achieve justice for victims and allow for deterrence to those would enter the homes of others to murder them. This is a measured and responsible expansion of the NH death penalty statute.

COMMITTEE REPORT

COMMITTEE: Criminal Justice & Public Safety

BILL NUMBER: HB 147-FN

TITLE: making the Commission of certain offenses punishable under the capital murder statute

DATE: March 9, 2011 CONSENT CALENDAR: YES ☐ NO ☒

☒ OUGHT TO PASS

☐ OUGHT TO PASS W/ AMENDMENT

☐ INEXPEDIENT TO LEGISLATE

☐ INTERIM STUDY (Available only 2nd year of biennium)

Amendment No. _____

STATEMENT OF INTENT:

See Attached Blurb

COMMITTEE VOTE: 14-2

RESPECTFULLY SUBMITTED,

Rep. Phil Greazzo
For the Committee

- Copy to Committee Bill File
- Use Another Report for Minority Report

Rev. 02/01/07 - Yellow