

HB 1730-FN - AS INTRODUCED

2026 SESSION

26-3238

09/08

HOUSE BILL ***1730-FN***

AN ACT making all offenses against minors involving sexual penetration or contact felony-level offenses punishable by death.

SPONSORS: Rep. Sweeney, Rock. 25; Rep. Alexander Jr., Hills. 29; Rep. Berry, Hills. 44

COMMITTEE: Criminal Justice and Public Safety

ANALYSIS

This bill makes all offenses involving sexual penetration or contact against a minor under 16 years of age a felony potentially punishable by death.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty-Six

AN ACT making all offenses against minors involving sexual penetration or contact felony-level offenses punishable by death.

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

1 1 Aggravated Felonious Sexual Assault. Amend RSA 632-A:2, I(l) to read as follows:

2 (l) When the victim is less than ~~[13]~~ **16** years of age.

3 2 Aggravated Felonious Sexual Assault. Amend RSA 632-A:2, II to read as follows:

4 II. A person is guilty of aggravated felonious sexual assault without penetration when he **or**
5 **she** ~~[intentionally touches]~~ **engages in sexual contact** whether directly, through clothing, or
6 otherwise, ~~[the genitalia of]~~ **with** a person under the age of 13 under circumstances that can be
7 reasonably construed as being for the purpose of sexual arousal or gratification, **or engages in**
8 **sexual contact with a person 13 year of age or older, but under 16 years of age, where:**

9 (a) **The age difference between the actor and the other person is 5 years or more;**

10 **or**

11 (b) **Where the person was in a position of authority over the victim and is more**
12 **than 4 years older than the victim; or**

13 (c) **Under any of the circumstances in paragraph I.**

14 3 Felonious Sexual Assault. Amend RSA 632-A:3, III(a)(2) to read as follows:

15 (2) ~~[Thirteen]~~ **Sixteen** years of age or older and under 18 years of age when the actor
16 is in a position of authority over the victim and is more than 4 years older than the victim.

17 4 Sexual Assault. Amend RSA 632-A:4, I to read as follows:

18 I. A person is guilty of a class A misdemeanor ~~[under any of the following circumstances:~~

19 (a) when the actor subjects another person who is ~~[13]~~ **16** years of age or older to sexual
20 contact under any of the circumstances named in RSA 632-A:2.

21 ~~[(b) When the actor subjects another person who is 13 years of age or older and under 16~~
22 ~~years of age to sexual contact where the age difference between the actor and the other person is 5~~
23 ~~years or more.~~

24 ~~(c) In the absence of any of the circumstances set forth in RSA 632-A:2, when the actor~~
25 ~~engages in sexual penetration with a person who is 13 years of age or older and under 16 years of~~
26 ~~age where the age difference between the actor and the other person is 4 years or less.]~~

27 5 New Paragraph; Sexual Assault; Penalties. Amend RSA 632-A:10-a by inserting after
28 paragraph I the following new paragraph:

29 I-a. A person convicted of aggravated felonious sexual assault may be sentenced to death,
30 following the provisions in RSA 630:5.

1 6 Chapter Name Change. Amend the chapter heading of RSA 630 to read as follows:

2 **HOMICIDE AND CAPITAL OFFENSES**

3 7 Procedure in Cases Seeking Death Penalty. Amend RSA 630:5 to read as follows:

4 630:5 Procedure in Capital ~~[Murder]~~ **Offenses Where the Death Penalty is Sought.**

5 I. Whenever the state intends to seek the sentence of death for ~~[the]~~ **a capital** offense ~~[of~~
6 ~~capital murder]~~, the attorney for the state, before trial or acceptance by the court of a plea of guilty,
7 shall file with the court and serve upon the defendant, a notice:

8 (a) That the state in the event of conviction will seek the sentence of death; and

9 (b) Setting forth the aggravating factors enumerated in paragraph VII of this section
10 and any other aggravating factors which the state will seek to prove as the basis for the death
11 penalty. The court may permit the attorney for the state to amend this notice for good cause shown.
12 Any such amended notice shall be served upon the defendant as provided in this section.

13 II. When the attorney for the state has filed a notice as required under paragraph I and the
14 defendant is found guilty of or pleads guilty to the **capital** offense ~~[of capital murder]~~, the judge who
15 presided at the trial or before whom the guilty plea was entered, or any other judge if the judge who
16 presided at the trial or before whom the guilty plea was entered is unavailable, shall conduct a
17 separate sentencing hearing to determine the punishment to be imposed. The hearing shall be
18 conducted:

19 (a) Before the jury which determined the defendant's guilt;

20 (b) Before a jury impaneled for the purpose of the hearing if:

21 (1) The defendant was convicted upon a plea of guilty; or

22 (2) The jury which determined the defendant's guilt has been discharged for good
23 cause; or

24 (3) After initial imposition of a sentence under this section, redetermination of the
25 sentence under this section is necessary.

26 A jury impaneled under subparagraph (b) shall consist of 12 members, unless at any time before
27 the conclusion of the hearing, the parties stipulate with the approval of the court that it shall consist
28 of any number less than 12.

29 III. When a defendant is found guilty of or pleads guilty to the **capital** offense ~~[of capital~~
30 ~~murder]~~, no presentence report shall be prepared. In the sentencing hearing, information may be
31 presented as to matters relating to any of the aggravating or mitigating factors set forth in
32 paragraphs VI and VII, or any other mitigating factor or any other aggravating factor for which
33 notice has been provided under subparagraph I(b). Where information is presented relating to any
34 of the aggravating factors set forth in paragraph VII, information may be presented relating to any
35 other aggravating factor for which notice has been provided under subparagraph I(b). Information
36 presented may include the trial transcript and exhibits if the hearing is held before a jury or judge
37 not present during the trial, or at the trial judge's discretion. Any other information relevant to such

1 mitigating or aggravating factors may be presented by either the state or the defendant, regardless
 2 of its admissibility under the rules governing admission of evidence at criminal trials, except that
 3 information may be excluded if its probative value is substantially outweighed by the danger of
 4 unfair prejudice, confusion of the issues, or misleading the jury. The state and the defendant shall
 5 be permitted to rebut any information received at the hearing and shall be given fair opportunity to
 6 present argument as to the adequacy of the information to establish the existence of any of the
 7 aggravating or mitigating factors and as to appropriateness in that case of imposing a sentence of
 8 death. The state shall open and the defendant shall conclude the argument to the jury. The burden
 9 of establishing the existence of any aggravating factor is on the state, and is not satisfied unless
 10 established beyond a reasonable doubt. The burden of establishing the existence of any mitigating
 11 factor is on the defendant, and is not satisfied unless established by a preponderance of the evidence.

12 IV. The jury shall consider all the information received during the hearing. It shall return
 13 special findings identifying any aggravating factors set forth in paragraph VII, which are found to
 14 exist. If one of the aggravating factors set forth in subparagraph VII(a) and another of the
 15 aggravating factors set forth in subparagraphs VII(b)-(j) is found to exist, a special finding
 16 identifying any other aggravating factor for which notice has been provided under subparagraph I(b)
 17 may be returned. A finding with respect to a mitigating factor may be made by one or more of the
 18 members of the jury, and any member of the jury who finds the existence of a mitigating factor may
 19 consider such a factor established for purposes of this section, regardless of the number of jurors who
 20 concur that the factor has been established. A finding with respect to any aggravating factor must
 21 be unanimous. If an aggravating factor set forth in subparagraph VII(a) is not found to exist or an
 22 aggravating factor set forth in subparagraph VII(a) is found to exist but no other aggravating factor
 23 set forth in paragraph VII is found to exist, the court shall impose a sentence of life imprisonment
 24 without possibility of parole **or a sentence permitted by RSA 632-A:10-a**. If an aggravating factor
 25 set forth in subparagraph VII(a) and one or more of the aggravating factors set forth in
 26 subparagraph VII (b)-(j) are found to exist, the jury shall then consider whether the aggravating
 27 factors found to exist sufficiently outweigh any mitigating factor or factors found to exist, or in the
 28 absence of mitigating factors, whether the aggravating factors are themselves sufficient to justify a
 29 sentence of death. Based upon this consideration, if the jury concludes that the aggravating factors
 30 outweigh the mitigating factors or that the aggravating factors, in the absence of any mitigating
 31 factors, are themselves sufficient to justify a death sentence, the jury, by unanimous vote only, may
 32 recommend that a sentence of death be imposed rather than a sentence of life imprisonment without
 33 possibility of parole **or a sentence permitted by RSA 632-A:10-a**. The jury, regardless of its
 34 findings with respect to aggravating and mitigating factors, is never required to impose a death
 35 sentence and the jury shall be so instructed.

1 V. Upon the recommendation that the sentence of death be imposed, the court shall sentence
2 the defendant to death. Otherwise the court shall impose a sentence of life imprisonment without
3 possibility of parole **or a sentence permitted by RSA 632-A:10-a.**

4 VI. In determining whether a sentence of death is to be imposed upon a defendant, the jury
5 shall consider mitigating factors, including the following:

6 (a) The defendant's capacity to appreciate the wrongfulness of his conduct or to conform
7 his conduct to the requirements of law was significantly impaired, regardless of whether the capacity
8 was so impaired as to constitute a defense to the charge.

9 (b) The defendant was under unusual and substantial duress, regardless of whether the
10 duress was of such a degree as to constitute a defense to the charge.

11 (c) The defendant is punishable as an accomplice (as defined in RSA 626:8) in the
12 offense, which was committed by another, but the defendant's participation was relatively minor,
13 regardless of whether the participation was so minor as to constitute a defense to the charge.

14 (d) The defendant was youthful, although not under the age of 18.

15 (e) The defendant did not have a significant prior criminal record.

16 (f) The defendant committed the offense under severe mental or emotional disturbance.

17 (g) Another defendant or defendants, equally culpable in the crime, will not be punished
18 by death.

19 (h) The victim consented to the criminal conduct [~~that resulted in the victim's death~~].

20 (i) Other factors in the defendant's background or character mitigate against imposition
21 of the death sentence.

22 VII. If the defendant is found guilty of or pleads guilty to the **capitol** offense [~~of capital~~
23 ~~murder~~], the following aggravating factors are the only aggravating factors that shall be considered,
24 unless notice of additional aggravating factors is provided under subparagraph I(b):

25 (a) The defendant:

26 (1) Purposely **committed the act** [~~killed the victim~~];

27 (2) Purposely inflicted serious bodily injury [~~which resulted in the death of the~~
28 ~~victim~~];

29 (3) Purposely engaged in conduct which:

30 (A) The defendant knew would create a grave risk of death to a person, other
31 than one of the participants in the offense; and

32 (B) Resulted in the death of the victim.

33 (b) The defendant has been convicted of another **analogous** state or federal offense
34 [~~resulting in the death of a person,~~] for which a sentence of life imprisonment or a sentence of death
35 was authorized by law.

1 (c) The defendant has previously been convicted of 2 or more state or federal offenses
2 punishable by a term of imprisonment of more than one year, committed on different occasions,
3 involving the infliction of, or attempted infliction of, serious bodily injury upon another person.

4 (d) The defendant has previously been convicted of 2 or more state or federal offenses
5 punishable by a term of imprisonment of more than one year, committed on different occasions,
6 involving the distribution of a controlled substance.

7 (e) In the commission of the **capital** offense [~~of capital murder~~], the defendant
8 knowingly created a grave risk of death to one or more persons in addition to the victims of the
9 offense.

10 (f) The defendant committed the offense after substantial planning and premeditation.

11 (g) The victim was particularly vulnerable due to old age, youth, or infirmity.

12 (h) The defendant committed the offense in an especially heinous, cruel or depraved
13 manner in that it involved torture or serious physical abuse to the victim.

14 (i) The murder was committed for pecuniary gain.

15 (j) The murder was committed for the purpose of avoiding or preventing a lawful arrest
16 or effecting an escape from lawful custody.

17 VIII. If a person is convicted of the **capital** offense [~~of capital murder~~] and the court does
18 not impose the penalty of death, the court shall impose a sentence of life imprisonment without
19 possibility of parole **or a sentence permitted by RSA 632-A:10-a**.

20 IX. If the jury cannot agree on the punishment within a reasonable time, the judge shall
21 impose the sentence of life imprisonment without possibility of parole **or a sentence permitted by**
22 **RSA 632-A:10-a**. If the case is reversed on appeal because of error only in the presentence hearing,
23 the new trial which may be ordered shall apply only to the issue of punishment.

24 X. In all **capital** cases [~~of capital murder~~] where the death penalty is imposed, the judgment
25 of conviction and the sentence of death shall be subject to automatic review by the supreme court
26 within 60 days after certification by the sentencing court of the entire record unless time is extended
27 for an additional period not to exceed 30 days by the supreme court for good cause shown. Such
28 review by the supreme court shall have priority over all other cases and shall be heard in accordance
29 with rules adopted by said court.

30 XI. With regard to the sentence the supreme court shall determine:

31 (a) Whether the sentence of death was imposed under the influence of passion, prejudice
32 or any other arbitrary factor; and

33 (b) Whether the evidence supports the jury's finding of an aggravating circumstance, as
34 authorized by law; and

35 (c) Whether the sentence of death is excessive or disproportionate to the penalty imposed
36 in similar cases, considering both the crime and the defendant.

1 XII. In addition to its authority regarding correction of errors, the court, with regard to
2 review of death sentences, shall be authorized to:

3 (a) Affirm the sentence of death; or

4 (b) Set the sentence aside and remand the case for resentencing.

5 XIII. When the penalty of death is imposed, the sentence shall be that the defendant be
6 imprisoned in the state prison at Concord until the day appointed for his execution, which shall not
7 be within one year from the day sentence is passed. The punishment of death shall be inflicted by
8 continuous, intravenous administration of a lethal quantity of an ultrashort-acting barbiturate in
9 combination with a chemical paralytic agent until death is pronounced by a licensed physician
10 according to accepted standards of medical practice.

11 XIV. The commissioner of corrections or his designee shall determine the substance or
12 substances to be used and the procedures to be used in any execution, provided, however, that if for
13 any reason the commissioner finds it to be impractical to carry out the punishment of death by
14 administration of the required lethal substance or substances, the sentence of death may be carried
15 out by hanging under the provisions of law for the death penalty by hanging in effect on December
16 31, 1986.

17 XV. An execution carried out by lethal injection shall be performed by a person selected by
18 the commissioner of the department of corrections and trained to administer the injection. The
19 person administering the injection need not be a physician, registered nurse, or licensed practical
20 nurse, licensed or registered under the laws of this or any other state.

21 XVI. The infliction of the punishment of death by administration of the required lethal
22 substance or substances in the manner required by this section shall not be construed to be the
23 practice of medicine, and any pharmacist or pharmaceutical supplier is authorized to dispense drugs
24 to the commissioner of corrections or his designee, without prescription, for carrying out the
25 provisions of this section, notwithstanding any other provision of law.

26 XVII. The governor and council or their designee shall determine the time of performing such
27 execution and shall be responsible for providing facilities for the implementation thereof. In no event
28 shall a sentence of death be carried out upon a pregnant woman or a person for an offense committed
29 while a minor.

30 8 Registration of Criminal Offenders. Amend RSA 651-B:1, IX(a) to read as follows:

31 (a) RSA 169-B:41, II; RSA 632-A:3, I; ~~[RSA 632-A:3, II;]~~ RSA 632-A:3, IV if the victim
32 was 13 years of age or older but less than 18 years of age; RSA 633:2; RSA 633:3; RSA 633:7; RSA
33 639:3, III; RSA 645:1, II; RSA 645:1, III; RSA 645:2; RSA 649-A:3; RSA 649-A:3-a; RSA 649-A:3-b;
34 RSA 649-A:3-c; RSA 649-B:3; RSA 649-B:4; RSA 650:2, II; or RSA 644:8-g.

35 9 Registration of Criminal Offenders. Amend RSA 651-B:1, VII(a)-(b) to read as follows:

36 (a) Any of the following offenses, where the victim was under the age of 18 at the time of
37 the offense: capital murder, RSA 630:1, I(e); first degree murder, RSA 630:1-a, 1(b)(1); aggravated

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1 felonious sexual assault, RSA 632-A:2; felonious sexual assault, RSA 632-A:3; sexual assault, RSA
2 632-A:4, ~~I(a)~~ **I** or RSA 632-A:4, III; kidnapping, RSA 633:1; criminal restraint, RSA 633:2; false
3 imprisonment, RSA 633:3; incest, RSA 639:2; violation of privacy, RSA 644:9, I(a) or RSA 644:9, III-
4 a; a second or subsequent offense within a 5-year period for indecent exposure and lewdness, RSA
5 645:1, I; indecent exposure and lewdness, RSA 645:1, II and RSA 645:1, III; or prostitution, RSA
6 645:2.

7 (b) Intentional contribution to the delinquency of a minor, RSA 169-B:41, II; ~~sexual~~
8 ~~assault, RSA 632-A:4, I(b) if the actor was 18 years of age or older at the time of the offense;~~
9 endangering the welfare of a child, RSA 639:3, III; possession of child sexual abuse images, RSA 649-
10 A:3; distribution of child sexual abuse images, RSA 649-A:3-a; manufacture of child sexual abuse
11 images, RSA 649-A:3-b; creation of a child intimate visual representation, RSA 649-A:3-c; computer
12 pornography, RSA 649-B:3; certain uses of computer services prohibited, RSA 649-B:4; or obscene
13 matters, RSA 650:2, II.

14 10 Registration of Criminal Offenders. Amend RSA 651-B:1, VIII(a) to read as follows:

15 (a) RSA 632-A:4, **I** ~~I(a)~~; ~~RSA 632-A:4, I(b)~~; RSA 632-A:4, III; RSA 644:9, I(a); RSA
16 644:9, III-a; or a second or subsequent offense within a 5-year period for indecent exposure and
17 lewdness, RSA 645:1, I.

18 11 Repeal. The following are repealed:

19 I. RSA 632-A:3, II, relative to sexual penetration with a person between 13-16 with an age
20 difference of 4 years or more.

21 II. RSA 632-A:3, III(a)(1), relative to sexual contact with minors under 13.

22 III. RSA 632-A:4, II, relative to registration of certain offenders.

23 12 Effective Date. This act shall take effect January 1, 2027.

**HB 1730-FN- FISCAL NOTE
AS INTRODUCED**

AN ACT making all offenses against minors involving sexual penetration or contact felony-level offenses punishable by death.

FISCAL IMPACT: This bill does not provide funding, nor does it authorize new positions.

Estimated State Impact				
	FY 2026	FY 2027	FY 2028	FY 2029
Revenue	\$0	\$0	\$0	\$0
<i>Revenue Fund(s)</i>	None			
Expenditures*	\$0	Indeterminable Increase \$0 to \$10,000,000	Indeterminable Increase \$0 to \$10,000,000	Indeterminable Increase \$0 to \$10,000,000
<i>Funding Source(s)</i>	General Fund			
Appropriations*	\$0	\$0	\$0	\$0
<i>Funding Source(s)</i>	None			

*Expenditure = Cost of bill

*Appropriation = Authorized funding to cover cost of bill

Estimated Political Subdivision Impact				
	FY 2026	FY 2027	FY 2028	FY 2029
County Revenue	\$0	\$0	\$0	\$0
County Expenditures	\$0	Indeterminable Increase \$10,000 to \$100,000 per county	Indeterminable Increase \$10,000 to \$100,000 per county	Indeterminable Increase \$10,000 to \$100,000 per county
Local Revenue	\$0	\$0	\$0	\$0
Local Expenditures	\$0	\$0	\$0	\$0

METHODOLOGY:

This bill expands several sexual assault offenses involving minors to felony-level offenses eligible for the death penalty and applies the full capital-case framework currently used for capital murder prosecutions under RSA 630:5. The bill requires capital-case procedures including bifurcated trials, heightened evidentiary standards, appointed counsel with capital qualifications, expert witnesses, and automatic Supreme Court review.

The Judicial Branch states this bill makes various sexual assault offenses involving minors of certain ages eligible for the death penalty. Death penalty cases require intensive judicial

resources throughout pretrial proceedings, jury selection, trial, and post-conviction litigation. The Branch states it is unknown how many capital cases would be brought after January 1, 2027, but notes that the expanded statute could have applied to approximately 44 to 407 aggravated felonious sexual assault cases, 131 felonious sexual assault cases, and 95 sexual assault cases based on prior-year filings. The Judicial Branch states that if no capital cases are filed, there would be no fiscal impact. If one or more capital cases are filed, the Branch anticipates needing additional Superior Court judges, court monitors, law clerks, and court operations specialists, as well as increased jury costs. The Branch estimates the fiscal impact would be indeterminable, but could be between \$2,500,000 and \$5,000,000 per year, depending on the number of capital cases pursued. The Branch states it cannot absorb these costs within its operating budget and that the bill does not authorize new positions.

The Department of Justice states that capital murder prosecutions are extremely resource intensive. In prior capital cases, the Department expended approximately \$3,522,488 across two prosecutions (State v. Addison at \$2,481,097 and State v. Brooks at \$1,041,391). Based on this historical experience, and recognizing that these figures are more than 10 years old, the Department estimates that future capital prosecutions will be more than \$2,500,000 per case for investigation, experts, trial preparation, litigation, and appellate work. The number of cases that may be brought under the proposed law is unknown; therefore, the total fiscal impact is indeterminable, but each case would exceed \$2.5 million in General Fund expenditures.

Additionally, the Department notes there would be county-level costs associated with preliminary investigations, detention, and coordination with the Attorney General. These costs are indeterminable but could be \$10,000 to \$100,000 or less per county, depending on the number of cases.

The Judicial Council states that capital cases are not considered in the current public defender contract; therefore, any capital case would be assigned to private counsel. Based on Judicial Branch data, the Council assumes the bill may apply to at least 90 defendants per year, with each case lasting 2 to 3 years. The Council estimates that each capital case would cost at least \$100,000 per year in legal and expert expenses, and costs could substantially exceed that amount. A comparable case for which historical data exists cost more than \$3,000,000 total. As a result, the Council estimates State expenditures could be between \$1,000,000 to \$2,500,000 per year depending on the number of cases pending simultaneously and whether cases proceed through appeals.

AGENCIES CONTACTED:

Judicial Branch, Department of Justice, and Judicial Council