

HB 1749-FN - AS INTRODUCED

2026 SESSION

26-2419
09/08

HOUSE BILL ***1749-FN***

AN ACT reinstating the death penalty for murder offenses.

SPONSORS: Rep. S. King, Coos 4; Rep. Potucek, Rock. 13; Rep. J. Aron, Sull. 4; Rep. W. MacDonald, Rock. 16; Rep. Kesselring, Hills. 18; Rep. T. Dolan, Rock. 16; Rep. Bernardy, Rock. 36; Rep. D. McGuire, Merr. 14; Rep. L. Miner, Rock. 7; Rep. Thackston, Ches. 12

COMMITTEE: Criminal Justice and Public Safety

ANALYSIS

This bill allows the death penalty for capital murder and for first degree and second degree murder. The bill further authorizes the court, in cases where the death penalty is not imposed, to sentence the defendant to life in prison or any other term that the court orders.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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 reinstating the death penalty for murder offenses.

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

1 1 Capital Murder; Death Penalty Reinstated. Amend RSA 630:1, III to read as follows:

2 III. A person convicted of a capital murder [~~shall be sentenced to imprisonment for life~~
3 ~~without the possibility for parole~~] **may be punished by death or imprisonment for such term as**
4 **the court may order.**

5 2 First Degree Murder; Death Penalty. Amend RSA 630:1-a, III to read as follows:

6 III. A person convicted of a murder in the first degree [~~shall be sentenced to life~~
7 ~~imprisonment and shall not be eligible for parole at any time~~] **may be punished by death or**
8 **imprisonment for such term as the court may order.**

9 3 Second Degree Murder; Death Penalty. Amend RSA 630:1-b, II to read as follows:

10 II. Murder in the second degree **may be punished by death** [~~shall be punishable by~~
11 ~~imprisonment for life~~] or **imprisonment** for such term as the court may order.

12 4 Procedure in Murder Seeking Death Penalty. Amend RSA 630:5 to read as follows:

13 630:5 Procedure in [~~Capital Murder~~] **Murder Cases Where the Death Penalty is Sought.**

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

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

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

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

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

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

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

HB 1749-FN - AS INTRODUCED
- Page 2 -

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

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

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

8 III. When a defendant is found guilty of or pleads guilty to the offense of ~~capital~~ murder, no
9 presentence report shall be prepared. In the sentencing hearing, information may be presented as to
10 matters relating to any of the aggravating or mitigating factors set forth in paragraphs VI and VII,
11 or any other mitigating factor or any other aggravating factor for which notice has been provided
12 under subparagraph I(b). Where information is presented relating to any of the aggravating factors
13 set forth in paragraph VII, information may be presented relating to any other aggravating factor for
14 which notice has been provided under subparagraph I(b). Information presented may include the
15 trial transcript and exhibits if the hearing is held before a jury or judge not present during the trial,
16 or at the trial judge's discretion. Any other information relevant to such mitigating or aggravating
17 factors may be presented by either the state or the defendant, regardless of its admissibility under
18 the rules governing admission of evidence at criminal trials, except that information may be
19 excluded if its probative value is substantially outweighed by the danger of unfair prejudice,
20 confusion of the issues, or misleading the jury. The state and the defendant shall be permitted to
21 rebut any information received at the hearing and shall be given fair opportunity to present
22 argument as to the adequacy of the information to establish the existence of any of the aggravating
23 or mitigating factors and as to appropriateness in that case of imposing a sentence of death. The
24 state shall open and the defendant shall conclude the argument to the jury. The burden of
25 establishing the existence of any aggravating factor is on the state, and is not satisfied unless
26 established beyond a reasonable doubt. The burden of establishing the existence of any mitigating
27 factor is on the defendant, and is not satisfied unless established by a preponderance of the evidence.

28 IV. The jury shall consider all the information received during the hearing. It shall return
29 special findings identifying any aggravating factors set forth in paragraph VII, which are found to
30 exist. If one of the aggravating factors set forth in subparagraph VII(a) and another of the
31 aggravating factors set forth in subparagraphs VII(b)-(j) is found to exist, a special finding
32 identifying any other aggravating factor for which notice has been provided under subparagraph I(b)
33 may be returned. A finding with respect to a mitigating factor may be made by one or more of the
34 members of the jury, and any member of the jury who finds the existence of a mitigating factor may
35 consider such a factor established for purposes of this section, regardless of the number of jurors who
36 concur that the factor has been established. A finding with respect to any aggravating factor must
37 be unanimous. If an aggravating factor set forth in subparagraph VII(a) is not found to exist or an

aggravating factor set forth in subparagraph VII(a) is found to exist but no other aggravating factor set forth in paragraph VII is found to exist, the court ~~[shall]~~ **may** impose a sentence of life imprisonment without possibility of parole, ***or imprisonment for such term as the court may order.*** If an aggravating factor set forth in subparagraph VII(a) and one or more of the aggravating factors set forth in subparagraph VII (b)-(j) are found to exist, the jury shall then consider whether the aggravating factors found to exist sufficiently outweigh any mitigating factor or factors found to exist, or in the absence of mitigating factors, whether the aggravating factors are themselves sufficient to justify a sentence of death. Based upon this consideration, if the jury concludes that the aggravating factors outweigh the mitigating factors or that the aggravating factors, in the absence of any mitigating factors, are themselves sufficient to justify a death sentence, the jury, by unanimous vote only, may recommend that a sentence of death be imposed ~~[rather than a sentence of life imprisonment without possibility of parole]~~. The jury, regardless of its findings with respect to aggravating and mitigating factors, is never required to impose a death sentence and the jury shall be so instructed.

V. Upon the recommendation that the sentence of death be imposed, the court shall sentence the defendant to death. Otherwise the court ~~[shall]~~ **may** impose a sentence of life imprisonment without possibility of parole, ***or imprisonment for such term as the court may order.***

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

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

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

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

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

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

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

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

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

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

HB 1749-FN - AS INTRODUCED
- Page 4 -

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

(a) The defendant:

(1) Purposely killed the victim;

(2) Purposely inflicted serious bodily injury which resulted in the death of the victim;

(3) Purposely engaged in conduct which:

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

(B) Resulted in the death of the victim.

(b) The defendant has been convicted of another state or federal offense resulting in the death of a person, for which a sentence of life imprisonment or a sentence of death was authorized by law.

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

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

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

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

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

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

(i) The murder was committed for pecuniary gain.

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

VIII. If a person is convicted of the offense of ~~capital~~ murder and the court does not impose the penalty of death, the court ~~shall~~ **may** impose a sentence of life imprisonment without possibility of parole, **or imprisonment for such term as the court may order**.

IX. If the jury cannot agree on the punishment within a reasonable time, the judge ~~shall~~ **may** impose ~~the~~ **a** sentence of life imprisonment without possibility of parole, **or imprisonment for such term as the court may order**. If the case is reversed on appeal because of error only in the presentence hearing, the new trial which may be ordered shall apply only to the issue of punishment.

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

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

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

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

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

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

16 (a) Affirm the sentence of death; or

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

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

24 XIV. The commissioner of corrections or his designee shall determine the substance or
25 substances to be used and the procedures to be used in any execution, provided, however, that if for
26 any reason the commissioner finds it to be impractical to carry out the punishment of death by
27 administration of the required lethal substance or substances, the sentence of death may be carried
28 out by hanging under the provisions of law for the death penalty by hanging in effect on December
29 31, 1986.

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

34 XVI. The infliction of the punishment of death by administration of the required lethal
35 substance or substances in the manner required by this section shall not be construed to be the
36 practice of medicine, and any pharmacist or pharmaceutical supplier is authorized to dispense drugs

HB 1749-FN - AS INTRODUCED

- Page 6 -

1 to the commissioner of corrections or his designee, without prescription, for carrying out the
2 provisions of this section, notwithstanding any other provision of law.

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

7 5 Effective Date. This act shall take effect January 1, 2027.

**HB 1749-FN- FISCAL NOTE
AS INTRODUCED**

AN ACT reinstating the death penalty for murder offenses.

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 \$3,500,000	Indeterminable Increase \$0 to \$3,500,000	Indeterminable Increase \$0 to \$3,500,000
<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**

The Office of Legislative Budget Assistant is unable to provide a complete fiscal note for this bill, as introduced, as it is awaiting information from the Department of Justice. The Department was originally contacted on 11/20/25 for a fiscal note worksheet and again on 12/09/25. When completed, a revised fiscal note will be forwarded to the House Clerk's Office

METHODOLOGY:

This bill reinstates the death penalty in New Hampshire for capital murder, first degree murder, and second degree murder. It allows the death penalty to be imposed in any murder case where the State files notice of its intent to seek death, and it authorizes the court to impose a sentence of life imprisonment or any other term if death is not imposed.

The Judicial Branch states this bill would authorize the death penalty for a substantially larger category of cases than current law, including capital murder, first degree murder and second degree murder. 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 murder cases will qualify for death penalty litigation under this bill. If no cases are filed, there would be no fiscal impact. However, if one or more cases are brought, the Branch indicates that additional staffing specifically a Superior Court judge, a court monitor, a court operations specialist, and a law clerk would be needed. The Judicial Branch estimates the fiscal

impact is indeterminable, but could be between \$500,000 and \$1,000,000 per year, beginning in FY 2027 as cases begin to advance through the courts. The Branch states it cannot absorb these costs within its operating budget and that the bill does not authorize new positions.

The Judicial Council states this bill would result in 10 to 20 new death-eligible cases per year, and the Council assumes most defendants would qualify for indigent defense. Because the current public defender contract excludes capital representation, these cases would be handled by assigned counsel unless the contract is amended. The Council estimates each case would involve significant attorney and expert expenditures. Using historical data from prior New Hampshire capital cases and projected future caseload volume, the Council estimates costs of \$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