

**SB 463-FN - AS INTRODUCED**

2016 SESSION

16-2820  
04/05

SENATE BILL **463-FN**

AN ACT suspending the imposition of the death penalty.

SPONSORS: Sen. Avard, Dist 12; Sen. Daniels, Dist 11; Sen. Kelly, Dist 10; Sen. Lasky, Dist 13; Rep. Seidel, Hills. 28; Rep. Cushing, Rock. 21; Rep. Ferreira, Hills. 28

COMMITTEE: Judiciary

-----

ANALYSIS

This bill suspends the imposition of the death penalty until such time that methods exist to ensure that the death penalty cannot be imposed on an innocent person.

-----  
-----

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

16-2820  
04/05

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Sixteen*

AN ACT suspending the imposition of the death penalty.

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

1 Suspension of Death Penalty. On the effective date of this section and thereafter, the provisions of RSA 630:1 relative to capital murder, RSA 630:5 relative to

procedure in capital murder cases, and RSA 630:6 relative to the place of execution and witnesses to the execution, are hereby suspended and shall not be enforced until such time that methods exist to ensure that the death penalty cannot be imposed on an innocent person. This section shall not apply to any person convicted of capital murder prior to the effective date of this section.

2 Effective Date. This act shall take effect 60 days after its passage.

LBAO  
16-2820  
12/23/15

## SB 463-FN- FISCAL NOTE

AN ACT suspending the imposition of the death penalty.

### FISCAL IMPACT:

The Judicial Branch, Judicial Council, and Department of Justice state this bill, **as introduced**, will decrease state expenditures by an indeterminable amount in FY 2017 and each year thereafter. There will be no impact on state, county and local revenue or county and local expenditures.

### METHODOLOGY:

The Judicial Branch states the proposed bill would suspend imposition of the death penalty in all future prosecutions for capital murder until such time methods exist to ensure the penalty cannot be imposed on an innocent person. Assuming methods do not exist to ensure the death penalty cannot be imposed on an innocent person, the bill would result in savings to the Branch because there would be no capital murder prosecutions. The Branch indicates life in prison cases are less hard-fought and have shorter trials than cases in which the death penalty is a possible outcome. The Branch states New Hampshire has seen so few capital murder indictments that any potential savings would be unquantifiable and sporadic. The Branch states there are no capital murder cases pending trial and there is one case in post-trial proceedings. The Branch indicates, since the bill would not apply to any capital murder convictions prior to the effective date, there would be no savings with respect to the existing capital murder conviction.

The Judicial Council assumes, because of the enormous cost of defending against a capital prosecution, and since most defendants are too poor to afford privately-retained counsel, almost all criminal defendants in death penalty prosecutions are represented by court-appointed counsel. The Council indicates RSA 604-A:21, I permits the court to provide two lawyers to represent an indigent defendant facing capital prosecution and it is common practice in death penalty

jurisdictions to provide at least two lawyers to represent a death penalty defendant. The Council states it has little prior experience in paying for death penalty representation on which to estimate the potential future cost of such cases. There have been two indigent defense capital cases in the past 20 years: State v. Gordon Perry, and State v. Michael Addison. In the Perry case, the guilty plea came early in the proceedings, and the Council did not request additional funds from the State. To date, the state has expended approximately \$2.8 million to provide representation and non-counsel services in the defense of Michael Addison. The Council states New Hampshire does not prosecute capital cases on a regular basis, and the budget for Public Defender Program does not include funding for representation of a defendant in a future capital prosecution. The Council assumes, in the event of a capital prosecution, it would present a request for additional funding to the Joint Fiscal Committee and the Governor and Executive Council pursuant to RSA 604-A:1-b. The Council cannot predict whether the Department of Justice will be confronted with a death penalty case in which the Attorney General might institute capital proceedings and has no way to determine the amount of time or resources that may be needed for the defense.

The Department of Justice states it prosecutes all homicides, including capital murder cases. The Department indicates with the passage of this bill, any potential capital murder cases would be prosecuted in accordance with the standard procedures for homicide cases. The Department states, in general, death penalty cases are more expensive to prosecute than non-death penalty cases and this bill would result in a decrease in state expenditures. The Department states it has spent \$4.6 million for the two death penalty cases it has prosecuted, and expects it will incur additional costs in the Addison case for several years. By comparison, the Department states the costs to prosecute a first or second degree murder cases range from \$81,374 to \$322,626.