

2023 Regular Session

HOUSE BILL NO. 228

BY REPRESENTATIVE GREEN

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

CRIMINAL/SENTENCING: Eliminates the death penalty

1 AN ACT

2 To amend and reenact R.S. 14:30(C), 42(D), and 113(C), relative to offenses punishable by
3 death; to eliminate the death penalty as punishment for the crimes of first degree
4 murder, first degree rape, and treason; to provide for the penalty of life imprisonment
5 without benefit of parole, probation, or suspension of sentence for the crime of
6 treason; to provide for prospective application; to provide for an effective date; and
7 to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 14:30(C), 42(D), and 113(C) are hereby amended and reenacted to
10 read as follows:

11 §30. First degree murder

12 * * *

13 ~~C.(1) If the district attorney seeks a capital verdict, the offender shall be~~
14 ~~punished by death or life imprisonment at hard labor without benefit of parole,~~
15 ~~probation, or suspension of sentence, in accordance with the determination of the~~
16 ~~jury. The provisions of Code of Criminal Procedure Article 782 relative to cases in~~
17 ~~which punishment may be capital shall apply.~~

18 (2) ~~If the district attorney does not seek a capital verdict, the offender~~
19 Whoever commits the crime of first degree murder shall be punished by life
20 imprisonment at hard labor without benefit of parole, probation, or suspension of

1 sentence. The provisions of Code of Criminal Procedure Article 782 relative to cases
2 in which punishment is necessarily confinement at hard labor shall apply.

3 * * *

4 §42. First degree rape

5 * * *

6 D.~~(1)~~ Whoever commits the crime of first degree rape shall be punished by
7 life imprisonment at hard labor without benefit of parole, probation, or suspension
8 of sentence.

9 ~~(2) However, if the victim was under the age of thirteen years, as provided~~
10 ~~by Paragraph (A)(4) of this Section:~~

11 ~~(a) And if the district attorney seeks a capital verdict, the offender shall be~~
12 ~~punished by death or life imprisonment at hard labor without benefit of parole,~~
13 ~~probation, or suspension of sentence, in accordance with the determination of the~~
14 ~~jury. The provisions of Code of Criminal Procedure Art. 782 relative to cases in~~
15 ~~which punishment may be capital shall apply.~~

16 ~~(b) And if the district attorney does not seek a capital verdict, the offender~~
17 ~~shall be punished by life imprisonment at hard labor without benefit of parole,~~
18 ~~probation, or suspension of sentence. The provisions of Code of Criminal Procedure~~
19 ~~Art. 782 relative to cases in which punishment is necessarily confinement at hard~~
20 ~~labor shall apply.~~

21 * * *

22 §113. Treason

23 * * *

24 C. Whoever commits the crime of treason shall be punished by ~~death~~ life
25 imprisonment at hard labor without benefit of parole, probation, or suspension of
26 sentence.

27 Section 2. The provisions of this Act shall apply prospectively only.

28 Section 3. This Act shall become effective upon signature by the governor or, if not
29 signed by the governor, upon expiration of the time for bills to become law without signature

1 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
 2 vetoed by the governor and subsequently approved by the legislature, this Act shall become
 3 effective on the day following such approval.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 228 Original

2023 Regular Session

Green

Abstract: Eliminates the death penalty as a possible punishment for the offenses of first degree murder, first degree rape, and treason.

Present law (R.S. 14:30) provides that any person convicted of the crime of first degree murder shall be punished by death or life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence.

Present law (R.S. 14:42) provides that any person convicted of the crime of first degree rape shall be punished by life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence. However, if the victim of the first degree rape was under the age of 13 years, the district attorney may seek the death penalty. Although this provision which allowed for the offender to be sentenced to death for first degree rape was declared to be unconstitutional by the U.S. Supreme Court in the case *Kennedy v. Louisiana*, 128 S.Ct. 2641 (June 25, 2008), this provision was never repealed from present law.

Present law (R.S. 14:113) provides that any person convicted of the crime of treason shall be punished by death.

Present law also provides for special proceedings and procedures with regard to offenses that are punishable by death including but not limited to the following:

- (1) Prosecution for the offense shall be instituted by grand jury indictment and there is no time limitation upon the institution of prosecution for the offense. (Const. Art. I, §15 and C.Cr.P. Arts. 382, 437, and 571)
- (2) Provisions regarding the defendant's right to counsel and the provision of public defender services for capital defendants. (C.Cr.P. Art. 512 and R.S. 15:141 et seq.)
- (3) The case shall be tried before a jury of 12 persons, all of whom must concur to render a verdict. (Const. Art. I, §17 and C.Cr.P. Arts. 780 and 782)
- (4) The sentence may only be imposed after a sentencing hearing, which occurs after the trial that determined the issue of guilt, and the jury finds beyond a reasonable doubt that at least one statutory aggravating circumstance exists and after consideration of any mitigating circumstances, determines that the sentence of death should be imposed. (C.Cr.P. Art. 905 et seq.)
- (5) Every sentence of death is reviewed by the supreme court to determine if it is excessive. (C.Cr.P. Art. 905.9) In addition, the defendant has a right to directly appeal to the supreme court from a judgment in a capital case in which a sentence of death has been imposed. The defendant may waive this right of appeal, but cannot waive the required review of the sentence by the supreme court. (C.Cr.P. Art. 912.1)

Finally, present law provides for crimes that prohibit interference with, or making false statements during trials and other judicial proceedings. Each of these present law offenses, which include perjury (R.S. 14:123), jury tampering (R.S. 14:129), intimidating witnesses (R.S. 14:129.1), and obstruction of justice (R.S. 14:130.1), provides increased penalties if the trial or judicial proceeding involves a case in which a sentence of death may be imposed.

Proposed law eliminates the death penalty as a possible punishment for the crimes of first degree murder, first degree rape, and treason. Further provides for the penalty of life imprisonment without benefit of parole, probation, or suspension of sentence for these offenses.

Proposed law provides that the elimination of the death penalty as provided in proposed law shall apply prospectively only.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Amends R.S. 14:30(C), 42(D), and 113(C))