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## DIGEST

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HB 215 Original

2019 Regular Session

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**Abstract:** Eliminates the death penalty as a possible punishment for the offenses of first degree murder, first degree rape, and treason committed on or after Aug. 1, 2019.

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by the U.S. Supreme Court in the case *Kennedy v. Louisiana*, 128 S.Ct. 2641 (June 25, 2008), this provision was never repealed from present law.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. (La. 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. (La. 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. Arts. 905 et seq.)

- (5) Every sentence of death is reviewed by the La. 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 La. 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 only to offenses committed on or after Aug. 1, 2019.

For offenses committed prior to Aug. 1, 2019, proposed law retains present law.

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