

2020 Regular Session

HOUSE BILL NO. 38

BY REPRESENTATIVE GREEN

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 and retroactive application; to provide for the  
7 resentencing of offenders previously sentenced to death; and to provide for related  
8 matters.

9 Be it enacted by the Legislature of Louisiana:

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

12 §30. First degree murder

13 \* \* \*

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

19 ~~(2) If the district attorney does not seek a capital verdict, the offender~~  
20 Whoever commits the crime of first degree murder shall be punished by life

1 imprisonment at hard labor without benefit of parole, probation, or suspension of  
2 sentence. The provisions of Code of Criminal Procedure Article 782 relative to cases  
3 in which punishment is necessarily confinement at hard labor shall apply.

4 \* \* \*

5 §42. First degree rape

6 \* \* \*

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

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

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

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

22 \* \* \*

23 §113. Treason

24 \* \* \*

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

28 Section 2. The provisions of this Act shall apply retroactively and prospectively to  
29 offenses committed prior to and on or after the effective date of this Act. Upon motion of

1 any party or upon the sentencing court's own motion, a person sentenced to death prior to  
2 the effective date of this Act shall be resentenced to a term of life imprisonment at hard labor  
3 without benefit of parole, probation, or suspension of sentence.

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## 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)]

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HB 38 Original

2020 Regular Session

Green

**Abstract:** Eliminates the death penalty and provides that persons previously sentenced to death shall be resentenced, upon motion of any party, to a term of life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence.

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.

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 be applied retroactively and prospectively to offenses committed prior to and on or after Aug. 1, 2020. Further provides that upon motion of the sentencing court or any party, persons previously sentenced to death shall be resentenced to life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence.

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