

PUBLIC

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Death penalty / Legal concern

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USA (New Hampshire)

Governor threatens to veto juvenile death penalty bill

On 22 April, the New Hampshire House of Representatives voted in favour of legislation to raise from 17 to 18 the minimum age at which a person can be eligible for the death penalty in the state. The bill had already passed the Senate, and will now proceed to the Governor. However, Governor Craig Benson has indicated that he will veto the legislation. Amnesty International urges him to respect the will of the legislature and international law on this issue and allow the bill into New Hampshire law.

A fundamental and unequivocal principle of international law prohibits the use of the death penalty against child offenders – anyone who was under 18 at the time of the crime. Senate Bill 513 would bring New Hampshire into line with this principle. The bill states simply: “In no event shall any person under the age of 18 years at the time the offense was committed be culpable of a capital murder.”

On 19 February 2004, the bill was passed by the Senate, 12 votes to 11. It then moved to the House of Representatives, which promotes itself as the “third-largest parliamentary body in the English speaking world”, behind only US Congress and the British parliament. On 22 April, the House passed SB 513 by the overwhelming majority of 272 votes to 72.

Governor Benson is a death penalty supporter. Following the House vote, his spokesperson said that the Governor would veto the bill “because he doesn’t want to look in the eye of the family of a fallen police officer and tell them there’s nothing he can do”. Such a statement seems to imply a stark choice between execution and acquittal – clearly not the case, as a 17-year-old could still face life imprisonment if convicted of first-degree murder.

Earlier this year, Governor Mike Rounds of South Dakota and Governor Dave Freudenthal of Wyoming signed similar bills into law after they had passed both chambers of their states’ respective legislatures. Today, 19 US states with the death penalty prohibit it for those under 18 at the time of the crime. With the 12 states that do not use the death penalty against anyone, this means that 31 of the 50 US states currently do not use the death penalty against child offenders. New Hampshire would make it 32.

It is not known when Governor Benson will take action. He will receive SB 513 on 28 April and he would have to act within 10 days. For the legislature to override a veto, a two thirds vote in each house of the legislature would be required.

Governor Benson has adopted the political platform: “*Common Sense. Real World. Leadership.*” Amnesty International urges him to apply this sentiment to his response to Senate Bill 513 and to provide the leadership to bring New Hampshire into line with a global consensus against the use of the death penalty against child offenders.

BACKGROUND INFORMATION

In recognition of the immaturity of children and their capacity for rehabilitation and change, four human rights treaties as well as international humanitarian law (the laws of war), prohibit the use of the death penalty against anyone who was under 18 at the time of the crime. One of these treaties, the Convention on the Rights of the Child has been ratified by 192 countries, without a specific reservation to this provision. In 2002, the Inter-American Commission on Human Rights concluded that the prohibition on the execution of child offenders had become a peremptory norm of international law (*jus cogens*). The Commission noted that “the

acceptance of this norm crosses political and ideological boundaries” and that the norm was binding on all countries, including the USA. No country can legally exempt itself from this global ban.

The USA accounts for 54 per cent of the world’s executions of child offenders known since 1990 (19 of 35) and 65 per cent of those reported since 1998 (13 of 20). Although there are sporadic executions of child offenders elsewhere, the USA is now the only country which openly acknowledges executing child offenders within its normal criminal justice system and claims for itself the right to do so.

Later this year, the US Supreme Court will revisit its 1989 *Stanford v Kentucky* decision in which it held that the execution of 16 and 17-year-old offenders was constitutional. One of the issues it will look at is whether a “national consensus”, primarily measured by the legislative activity in individual states, has emerged against the execution of child offenders since 1989 (see *USA: Indecent and internationally illegal: The death penalty against child offenders*, AMR 51/143/2002, September 2002 <http://web.amnesty.org/library/Index/ENGAMR511432002>). In this context, it is hugely important that Governor Benson not prevent SB 513 from becoming law. Each state that is added to the list of those banning the execution of child offenders will help to persuade the Supreme Court that the time has come to outlaw this practice nationwide. In October 2002 four of the nine Supreme Court Justices dissented against the Court’s refusal to revisit its *Stanford* decision, holding that the execution of child offenders was a “relic of the past” and a “shameful practice”. A fifth Justice is needed for a majority.

RECOMMENDED ACTION: Please send appeals to arrive as quickly as possible, in English or your own language, in your own words:

- welcome the passing of Senate Bill 513 by both chambers of the New Hampshire legislature, including by a bipartisan majority of 200 in the House of Representatives, the third largest parliamentary body in the English-speaking world;
- noting that the state legislature has thereby complied with an overwhelming global consensus that the use of the death penalty against offenders who were under 18 at the time of the crime is wrong;
- noting that this fundamental principle does not seek to exempt young offenders from criminal sanction, but simply recognizes that their immaturity and capacity for change render the death penalty an unacceptable punishment in their cases;
- welcoming that the Governors of South Dakota and Wyoming signed similar bills into law in March;
- urging him to offer principled leadership on this issue, in line with international law and the law of a majority of US states, and in the interest of the reputation of New Hampshire;
- urging him not to veto SB 513.

APPEALS TO:

Governor Craig Benson

Office of the Governor, 107 North Main Street

Room 208, Concord, NH 03301, USA

Telegrams: Governor of New Hampshire, Office of the Governor, New Hampshire, USA

Fax: +1 603 271 7630

Email: <http://oit.nh.gov/goveforms/opinions.asp> (email form on pending legislation - you should insert SB 513 as the bill number, mark yourself as being “for” the bill , and add any comment you see fit)

Salutation: Dear Governor

COPIES TO: diplomatic representatives of USA accredited to your country.

PLEASE SEND APPEALS IMMEDIATELY. All appeals must arrive by 9 May 2004.