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CAPITAL CRIMES IN THE STATES

RICHARD REIFSNYDER

The author is a student of law in the University of Pennsylvania. His article below grew out of his work as assistant to Professor Louis B. Schwartz when the latter was engaged recently in writing on Capital Punishment in the United States. They who take it as a matter-of-course that our states recognize but one or two capital offenses will be corrected here.—EDITOR.

In the past, there have been several listings¹ of the capital crimes in the forty two states that still stand by the institution of capital punishment.² A look at the statutes, however, leads the author to believe that the lists have been somewhat misleading, and it is the purpose of this note to present more accurate information of the number and types of capital crimes in the states. It appears from a search of the statutes that there are more capital offenses in existence than one might be led to believe by previous lists.

The following remarks should be made before the presentation of the main table of capital crimes. Under the "Murder" column, those states that have the crime divided into degrees are designated by "M(1)", and those states that do not have degrees of murder are designated simply by "M".

The act of kidnaping alone, without additional elements to the offense, is made a capital crime in only three states; Delaware, Maryland, and Mississippi. The rest of the states that have made this crime a capital offense require other elements, the most common of which is that the kidnaping be committed for ransom. Seventeen states have this one extra requirement. The remaining states have even more necessary components of the crime in order for it to be capital, the most usual of these are that the victim be injured, either seriously or not, and/or that he is not released either before the trial or the sentence. Virginia makes kidnaping for ransom a capital offense, but also considers kidnaping a girl with intent to defile her, or kidnaping a girl under sixteen years of age for the purposes of prostitution, capital crimes. The latter two elements are unusual.

The heading of "Rape" in the table is not intended to mean only forcible rape, but in most states includes many other acts, one of the most common being carnal knowledge of girls under varying ages; e.g. in Georgia, the girl must be under fourteen years old. Included in some of the states' capital rape offenses are personating a husband, carnal knowledge of an insane woman, or carnal knowledge after administering drugs to the victim. Within Kentucky's rape law, it is a capital offense for an adult woman to have carnal knowledge of a boy under twelve years old.

¹ E.g. BARNES AND TEETERS, *NEW HORIZONS IN CRIMINOLOGY*, page 424 (1943).

² Maine, Michigan, Minnesota, North Dakota, Rhode Island, and Wisconsin have abolished capital punishment. For all intents and purposes, Michigan and North Dakota punish treason with death. North Dakota punishes by death, also, one who, while serving a life sentence for murder, commits another murder.

State	Murder*	Kidnaping	Rape	Treason	Rob- bery	Assault by life Prisoner	Perjury** in Capital case	Train wreck- ing	Arson	Bur- glary
Alabama	M(1)	×	×	×	×	×		×	×	×
Arizona	M(1)	×		×		×	B	×		
Arkansas	M(1)	×	×	×					×	
California	M(1)	×		×			B	×		
Colorado	M(1)	×					B			
Connecticut	M(1)	×		×						
Delaware	M(1)	×	×	×						
Florida	M(1)	×	×							
Georgia	M(1)	×	×	×	×		A		×	
Idaho	M(1)	×					B			
Illinois	M	×		×			B			
Indiana	M(1)	×		×						
Iowa	M(1)	×								
Kansas	M(1)			×			A			
Kentucky	M	×	×		×					×
Louisiana	M	×	×	×						
Maryland	M(1)	×	×	×						
Massachusetts	M(1)									
Mississippi	M	×	×	×	×					
Missouri	M(1)	×	×	×	×		A			
Montana	M(1)	×		×			B			
Nebraska	M(1)	×								
Nevada	M(1)	×	×	×	×		C			
New Hampshire	M(1)									
New Jersey	M(1)	×		×						
New Mexico	M(1)	×						×		
New York	M(1)	×		×						
North Carolina	M(1)		×						×	×
Ohio	M(1)	×								
Oklahoma	M	×	×		×					
Oregon	M(1)			×						
Pennsylvania	M(1)									
South Carolina	M	×	×							
South Dakota	M	×								
Tennessee	M(1)	×	×							
Texas	M	×	×	×	×		A			
Utah	M(1)	×				×				
Vermont	M(1)	×		×			C			
Virginia	M(1)	×	×	×	×				×	×
Washington	M(1)	×		×						
West Virginia	M(1)	×	×	×						
Wyoming	M(1)	×						×		
Totals	42	36	18	24	9	3	12	4	5	4

* Active participation in a lynching that results in death is a special type of murder that is made a capital offense in five states:—Alabama, Indiana, Kentucky, South Carolina, and Texas. Duelling that causes death is another, and is capital in South Carolina and Utah. Some states include such special killings in their murder statutes; e.g. New York and train wrecking.

** A—no requirement that a person be executed as a result of the perjury.

B—an innocent person must be executed as a result of the perjury.

C—a person must be executed as a result of the perjury, but no express requirement that he be innocent.

Outside of Alabama and Texas, most of the states that have "Robbery" as a capital offense require some additional elements, generally that force and violence or deadly weapons be involved. Missouri and Nevada consider train robbery serious enough to be a capital crime.

In the states that are listed in the table under the heading "Perjury in a Capital Case", it will be noted that only four of them do not require by statute that a person be executed as a result of the perjury; Georgia, Kansas, Missouri and Texas. The remaining listed states make it necessary that a person be executed, and most of these states require that the executed person be innocent of the crime for which he was executed.

The heading "Trainwrecking" is an accurate description of the crime that is made a capital offense in the states listed in the table, that is to say that there is no additional requirement that a person be killed as a result of the wreck. In many states, train wrecking is a capital crime if a person die thereby.³ In still other states, the train wrecking plus the death of a person is defined as "murder" in the statutes, but the crime of murder in those states is divided into degrees. In other words, if the train wrecking and the death of a human are proved, it is not automatically murder in the first degree (and thus capital). These states are not listed, but West Virginia and Virginia are examples of states that have this type of statute.⁴

In all the states listed under "Arson", there are additional elements to the crime before it is made a capital one. For example, Virginia has made arson a capital offense when it is committed at night of an inhabited dwelling house.

"Burglary" also requires special elements, generally that it be committed at night of a dwelling house or with force of arms, for it to comprise a capital crime.

The above table does not include all the capital offenses in the various states, and there are many more acts that have been made punishable by death. While perusing the following described crimes that have been made capital, it would not be accurate to conclude that all of them are statutes that have been passed many years ago and have been merely overlooked by the legislatures, although this seems to be true of some. In 1941, the Georgia legislature made it a capital offense to desecrate a grave with intent to rob or molest the human remains.⁵ Florida, last year, 1953, passed a statute that makes giving, selling, or furnishing narcotics to minors a capital crime.

There are several capital offenses that have to do with anarchy and sabotage, among them being:—sabotage or attempted sabotage that results in a death (Alabama), anarchy and sedition that results in a death (Colorado), sabotage during preparation for war (Florida), and insurrection or attempt to incite insurrection (Georgia). Much in the same vein is Vermont's statute that makes it a capital offense for three or more persons to make raids to commit felonies while the United States is at war or threatened by war.

³ Florida (includes airplane wrecking), Illinois, Indiana, Kentucky (willfully putting an obstruction in a road that results in death is a capital offense in Kentucky), Montana, North Carolina, Ohio, Pennsylvania, and Texas.

⁴ This includes Michigan and North Dakota.

⁵ This statute caused some embarrassment a few years ago when several high school students broke into a grave and carried some of the remains to school for a lark. The statute, however, is still in existence.

Bombs and machine guns are very dangerous instrumentalities, and their use in the following situations is considered so dangerous that some legislatures have attached the heaviest penalty thereto:—setting off explosives dangerously near an inhabited vessel or house (Alabama), throwing bombs or shooting machine guns with intent to do bodily harm or to injure property (Florida), bombing or planting a bomb almost anywhere with the intent to injure persons or property (Mississippi), bombing where a person is injured or put in danger of injury (Missouri), destroying a building or attempting to destroy a building with a person in it (Nevada), and using a machine gun for a crime of violence or attempt at a crime of violence (Virginia). In two other states, the use of explosives is not a capital crime unless someone dies as a result; destroying a house with explosives that results in death (Georgia), and exploding a munitions plant that causes a death (Illinois).

Various statutes have been passed that make particular types of assault crimes that are punishable by death. These crimes may involve persons in high places, sex, or other added elements, and are as follows:—drugging a woman with intent to rape (Arkansas), attempting to kill the President of the United States or any foreign ambassador accredited to the United States (Connecticut), castration of another person (Georgia), armed assault with intent to rob (Kentucky), assaulting the President, Vice President or foreign ruler with intent to kill (this includes the attempt to commit the assault, and the conspiracy to commit the assault) (New Jersey), assaulting with intent to rape (South Carolina), assault and battery on a girl under twelve years old with intent to have carnal knowledge, and assault with a deadly weapon in disguise (Tennessee), and an assault by a member of the Ku Klux Klan or a like organization where the injury results in death (West Virginia).

In addition to the foregoing crimes that are capital, there are also the following unrelated ones. Causing death while escaping from prison (Nevada), attacking a train with the intent to commit a felony, and making an assault on a jail which results in the death of a jailer (New Mexico), abandoning a person to die (and he does) of smallpox, and entering a bank with a deadly weapon with the intent to commit larceny (Virginia), and boarding a train with the intent to commit a felony against a passenger or employee of the railroad (Wyoming).

The number of people who have been actually executed for the commission of the crimes listed in the table and those described thereafter is, of course, comparatively few. In many instances, a much more lenient punishment may be inflicted upon the criminal, where, for example, the statute will prescribe death, or life imprisonment, or not less than a certain number of years imprisonment as the penalty for a particular crime. This is particularly true in the capital rape statutes of the southern states, statutes which seem aimed chiefly at the Negro, so far as the death penalty is concerned. This note, however, is not intended to deal with those questions.

But it does appear that there are more capital crimes in the statute books than some who oppose the institution care to think. If capital punishment is being slowly but surely abolished, the process of abolition is sometimes so slow as to be unnoticeable, and the sureness of the process seems to remain a matter for conjecture.