# Bill as Introduced

2000 SESSION

00-2213
09/01

HOUSE BILL ***1236***

AN ACT granting a defendant the right to inform the jury of its right to find the defendant not guilty under certain circumstances when the state or a political subdivision is the opposing party.

SPONSORS: Rep. Marple, Merr 11; Rep. Welch, Rock 18; Rep. R. Nowe, Rock 3; Rep. Alger, Graf 9; Rep. Rose, Ches 13; Sen. Roberge, Dist 9

COMMITTEE: Judiciary

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ANALYSIS

This bill establishes the right of a defendant to inform the jury of its right to find the defendant not guilty when the state or a political subdivision is the plaintiff, if the jury finds by conscientious consideration that a not guilty verdict would be a fair result.

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Explanation: Matter added to current law appears in ***bold italics.***
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

**HB 1236 – AS INTRODUCED**

00-2213
09/01

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand*

AN ACT granting a defendant the right to inform the jury of its right to find the defendant not guilty under certain circumstances when the state or a political subdivision is the opposing party.

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

1 New Section; Defendant's Right to Inform Jury. Amend RSA 519 by inserting after section 23 the following new section:

519:23-a Right to Inform Jury.

I. A defendant's right to trial by jury, in all instances where the state or a political subdivision of the state is the plaintiff, including the right to inform the jury of the jury's prerogative to judge the law as well as all the evidence, and to render a verdict dictated by conscientious consideration.

II. Once the jury has been informed in accordance with paragraph I, a party to the action shall not be prohibited from presenting arguments to the jury which may pertain to issues of law and conscience, including the following:

(a) The merit, intent, constitutionality or applicability of the law to the defendant's case.

(b) The motives, moral perspective, or circumstances of the defendant.

(c) The degree and direction of guilt or actual harm done.

(d) The sanctions which may be applied to the losing party.

III. Failure to allow the defendant to so inform the jury shall be grounds for mistrial and another trial by jury.

2 Effective Date. This act shall take effect January 1, 2001.

# Amendments

Rep. Soltani, Merr. 10
February 22, 2000
2000-3566h
09/10

Amendment to HB 1236

Amend the title of the bill by replacing it with the following:

AN ACT relative to an informed jury.

Amend the bill by replacing all after the enacting clause with the following:

1 Findings and Intent. Under both the New Hampshire constitution and the United States Constitution, the jury has an undeniable right to judge both the law and the facts in controversy. The jury system functions at its best when it is fully informed of the prerogatives. The general court wishes to perpetuate and reiterate the rights of the jury, as ordained under common law and recognized in the American jurisprudence, while preserving the rights of a criminal defendant.

2 New Section; Right of Accused; Jury Instruction. Amend RSA 519 by inserting after section 23 the following new section:

519:23-a Right of Accused. In all criminal proceedings, where the defendant has made a timely request, the court shall instruct the jury of its inherent right to judge the facts as well as the law and to nullify.

3 Effective Date. This act shall take effect January 1, 2001.

2000-3566h

AMENDED ANALYSIS

This bill states that a criminal defendant has a right to make a request that the court instruct the jury of its inherent right to judge the facts in controversy and the law and to nullify.

Rep. Soltani, Merr. 10
February 23, 2000
2000-3590h
09/10

Amendment to HB 1236

Amend the title of the bill by replacing it with the following:

AN ACT relative to an informed jury.

Amend the bill by replacing all after the enacting clause with the following:

1 Findings and Intent. Under both the New Hampshire constitution and the United States Constitution, the jury has an undeniable right to judge both the law and the facts in controversy. The jury system functions at its best when it is fully informed of these prerogatives. The general court wishes to perpetuate and reiterate the rights of the jury, as ordained under common law and recognized in the American jurisprudence, while preserving the rights of a criminal defendant.

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3 Effective Date. This act shall take effect January 1, 2001.

2000-3590h

AMENDED ANALYSIS

This bill states that a criminal defendant has a right to make a request that the court instruct the jury of its inherent right to judge the facts in controversy and the law and to nullify.

Rep. Soltani, Merr. 10
March 21, 2000
2000-3907h
09/01

Amendment to HB 1236

Amend the title of the bill by replacing it with the following:

AN ACT relative to an informed jury.

Amend the bill by replacing all after the enacting clause with the following:

1 Findings and Intent. Under the decisions of both the New Hampshire supreme court and the United States supreme court, the jury has an undeniable right to judge both the law and the facts in controversy. The jury system functions at its best when it is fully informed of these prerogatives. The general court wishes to perpetuate and reiterate the rights of the jury, as ordained under common law and recognized in the American jurisprudence, while preserving the rights of a criminal defendant.

2 New Section; Right of Accused; Jury Instruction. Amend RSA 519 by inserting after section 23 the following new section:

519:23-a Right of Accused. In all criminal proceedings, where the defendant has made a timely request, the court shall instruct the jury of its inherent right to judge the law as well as the facts and to nullify.

3 Effective Date. This act shall take effect January 1, 2001.

2000-3907h

AMENDED ANALYSIS

This bill states that a criminal defendant has a right to make a request that the court instruct the jury of its inherent right to judge the law and the facts in controversy and to nullify.

# Speakers

# SIGN UP SHEET

To Register Opinion If Not Speaking

Bill # HB 1236 Date Jan. 26. 2006

Committee Judiciary

** Please Print All Information **

| Name | Address | Phone | Representing | (check one) Pro | Con |
|---|---|---|---|---|---|
| Rep Michael Ahlgren | | 446-2482 | Graf 1 | ✓ | |
| Rep David Hall | Enfield | | Graf. 13 | ✓ | |
| Fred Davidson | PO Box 13 Hillsboro 03244 | | | ✓ | |
| Ida Davidson | P.O. Box #12 Hillsboro, 03244 | | | ✓ | |
| George H. Bernard Waugh, Jr. | | | NH Municipal Assn. | | ✓ |
| Senator Lasonge | | | Senate District 9 | ✓ | |
| Bill Cushman | Manchester NH | | Self | | |

# SIGN UP SHEET

To Register Opinion If Not Speaking

Bill # HB 1336 Date Jan 26, 2000

Committee Judiciary

**** Please Print All Information ****

| Name | Address | Phone | Representing | Pro | Con |
|---|---|---|---|---|---|
| State Legislator Mary Lou Nove | | | District 4 | X | |
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# Hearing Minutes

## HOUSE COMMITTEE ON JUDICIARY

## PUBLIC HEARING ON HB 1236

**BILL TITLE:** granting a defendant the right to inform the jury of its right to find the defendant not guilty under certain circumstances when the state or a political subdivision is the opposing party.

**DATE:** Jan. 26, 2000

**LOB ROOM:** 208 **Time Public Hearing Called to Order:** 11:54

**Time Adjourned:** 12:40 p.m.

(please circle if present)

**Committee Members:** Reps. Mock, Peterson, Jacobson, Keane, Bergin, Dokmo, L. Jean, Rowe, Ford, Withee, Dudley, Piccora, Soltani, Woods, Wall, DePecol, J. Pratt, Craig, Lasby, Mitchell, Solow and Wood

**Bill Sponsors:** Rep. Marple, Rep. Welch, Rep. R. Nowe, Rep. Alger, Rep. Rose, Sen. Roberge

### TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

**Rep. Marple**, sponsor, supporting
-Spoke to the power of the juries and to the need for courts to fully inform juries. Answered questions from committee.

**Robert Kingsbury**, P.O. Box 1099, Laconia
-Supporting bill. Gave history of jury system up to and beyond Magna Carta. Referenced constitution – "There are wrongful application of laws"

**John McIntosh**, representing NH Bar Assn.– spoke in opposition
-Responded to questions by committee

**Mark Zuckerman**, Atty. General's office – spoke in opposition
-Questioned the part of the bill that only addressed the government. Agreed that juries have the right to nullify. Cited Wentworth case which does not give nullification instructions to jury.

**George Stanley**, P.O. Box 421, Franklin – spoke in support
-Represents Fully Informed Jury Association (FIJA)
-Spoke fervently in support of jury nullification. Also gave brief histories.

**Joe Haas,** P.O. Box 218, Ashland
-Spoke in favor. Gave anecdotal testimony. Answered questions

**Rep. Marple** – spoke briefly in rebuttal.

Respectfully submitted,

Rep. Loren J. Clerk, Clerk

HOUSE COMMITTEE ON JUDICIARY

PUBLIC HEARING ON HB 1236

BILL TITLE: **granting a defendant the right to inform the jury of its right to find the defendant not guilty under certain circumstances when the state or a political subdivision is the opposing party.**

DATE: **Jan. 26, 2000**

LOB ROOM: **208** **Time Public Hearing Called to Order:** 11:54

**Time Adjourned:** 12:40

(please circle if present)

**Committee Members:** Reps. Mock, Peterson, Jacobson, Kearns, Bergin, Dokmo, L. Jean, Rowe, Ford, Withee, Dudley, Piccoli, Soltani, Woods, Wall, DePecol, J. Pratt, Craig, Lasky, Mitchell, Solow and Wood

**Bill Sponsors:** {Type SPONSORS' NAMES}

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

HB 1230

Rep Maple. Spoke to the power of juries and to the need for courts to fully inform juries Answered ?

Robert Knightsway: Laconia Spoke in support Gave history of jury system up to and beyond Magna Carta. Referenced constitution. "There are wrongful applications of laws"

John McIntosh. Spoke in opposition. Responded to ?

Mark Zuckerman AG. spoke in opposition. Questioned the part of bill that only addressed the govt. Agreed that juries have the right to nullify. Cited Wentworth case. Which does not give jury nullification instructions to jury.

Peg Stanley: Spoke in support. Spoke fervently in support of Jury Nullification. Also gave brief histories.

Jo Ann Haas: Spoke in favor gave anecdotal testimony. Answered ?

Rep Maple Spoke briefly in rebuttal

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# Voting Sheets

HOUSE COMMITTEE ON JUDICIARY

EXECUTIVE SESSION on HB 1236

BILL TITLE: **granting a defendant the right to inform the jury of its right to find the defendant not guilty under certain circumstances when the state or a political subdivision is the opposing party.**

DATE: 3/22/00 ~~Jan. 26, 2000~~

LOB ROOM: 208

**Amendments:**

Sponsor: Rep. Soltani OLS Document #: 3907 h

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

**Motions:** OTP, (OTP/A), ITL, Re-Refer, Interim Study (Please circle one.)

Moved by Rep. Soltani

Seconded by Rep. Jean

Vote: (Please attach record of roll call vote.)

**Motions:** OTP, OTP/A, ITL, Re-Refer, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote: (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE:

(Vote to place on Consent Calendar must be unanimous.)

**Statement of Intent:** Refer to Committee Report

Respectfully submitted,

Rep. Loren J. Jean, Clerk

# OFFICE OF THE HOUSE CLERK

2000 SESSION

JUDICIARY

Bill #: _____ Title: _____

PH Date: ____/____/____ Exec Session Date: 3/22/00

Motion: OTP A Amendment #: _____

| MEMBER | YEAS | NAYS |
|---|---|---|
| Mock, Henry P, Chairman | ✓ | |
| Peterson, Andrew R, V Chairman | ✓ | |
| Jacobson, Alf E | | ✓ |
| Keans, Sandra B | | |
| Bergin, Peter F | | |
| Dokmo, Cynthia J | | |
| Jean, Loren J, Clerk | ✓ | |
| Rowe, Robert H | | |
| Ford, Nancy M | | |
| Withee, Dennis J | | |
| Dudley, Terri C | ✓ | |
| Picconi, Al J | ✓ | |
| Soltani, Tony F | ✓ | |
| Woods, Phyllis L | ✓ | |
| Wall, Janet G | ✓ | |
| DePecol, Benjamin J | | |
| Pratt, John M | ✓ | |
| Craig, James W | | ✓ |
| Lasky, Bette R | | ✓ |
| Mitchell, McKim W | ✓ | |
| Solow, Martha S | | ✓ |
| Wood, Jane | | |
| TOTAL VOTE: | 10 | 4 |

Printed: 12/30/1999

JUDICIARY 1999 SESS.

HB 1230 Bill #

Public Hearings Executive Session ✓

COMMITTEE REPORT: OTP A

| | YEAS | NAYS |
|---|---|---|
| Mock, Henry P, Chairman | ✓ | |
| Peterson, Andrew R, V Chairman | | ✓ |
| Jacobson, Alf E | | ✓ |
| Keans, Sandra B | | |
| Bergin, Peter F | | |
| Dokmo, Cynthia J | | |
| Jean, Loren J, Clerk | ✓ | |
| Rowe, Robert H | | |
| Ford, Nancy M | | |
| Withee, Dennis J | | |
| Dudley, Terri C | ✓ | |
| Picconi, Al J | ✓ | |
| Soltani, Tony F | ✓ | |
| Woods, Phyllis L | ✓ | |
| Wall, Janet G | | ✓ |
| DePecol, Benjamin J | | |
| Pratt, John M | ✓ | |
| Craig, James W | | ✓ |
| Lasky, Bette R | | ✓ |
| Mitchell, McKim W | | ✓ |
| Solow, Martha S | ✓ | |
| Wood, Jane | | |
| TOTAL VOTE | | |

| Appeared in Favor | Appeared in Opposition |
|---|---|
| 8 | 6 |

# Committee Report

# MAJORITY
# COMMITTEE REPORT

COMMITTEE: **Judiciary**

BILL NUMBER: **HB 1236**

TITLE: granting a defendant the right to inform the jury of its right to find the defendant not guilty under certain circumstances when the state or a political subdivision is the opposing party.

DATE: March 22, 2000 CONSENT CALENDAR YES ☐ NO ☒

☐ OUGHT TO PASS

☒ OUGHT TO PASS WITH AMENDMENT

☐ INEXPEDIENT TO LEGISLATE

☐ RE-REFER

☐ REFER TO COMMITTEE FOR INTERIM STUDY
(Available only in second year of biennium.)

**STATEMENT OF INTENT**
**(Include Committee Vote)**

New Hampshire juries inherently have the right to judge the law as well as the facts of the case before them. The juries have had this power since the provincial days, through the revolutionary period, through the civil rights efforts, and to this day. No one challenges the right of the juries, sitting in this sate, to acquit a defendant in a case which they find unjust or one which may do violence to their conscience. The opponents, however, argue that we should not inform the jury that they have this right. The majority of the committee was of the opinion that a fully informed juror is the best juror for both sides of the controversy. It makes no sense to withhold from a jury information to which it is entitled. Nor is it appropriate to convey information to a jury in language which is coded or incomprehensible. A jury which is forced to remain ignorant of its legal prerogative is not better suited to serve the purposes of the state or to mete our justice as recognized under New Hampshire law.

Vote 8-6.

Rep. Tony F. Soltani
FOR THE MAJORITY

Original: House Clerk
cc: Committee Bill file

USE ANOTHER REPORT FOR MINORITY REPORT

Judiciary

**HB 1236,** granting a defendant the right to inform the jury of its right to find the defendant not guilty under certain circumstances when the state or a political subdivision is the opposing party. OUGHT TO PASS WITH AMENDMENT

Rep. Tony F. Soltani for Majority of Judiciary: New Hampshire juries inherently have the right to judge the law as well as the facts of the case before them. The juries have had this power since the provincial days, through the revolutionary period, through the civil rights efforts, and to this day. No one challenges the right of the juries, sitting in this sate, to acquit a defendant in a case which they find unjust or one which may do violence to their conscience. The opponents, however, argue that we should not inform the jury that they have this right. The majority of the committee was of the opinion that a fully informed juror is the best juror for both sides of the controversy. It makes no sense to withhold from a jury information to which it is entitled. Nor is it appropriate to convey information to a jury in language which is coded or incomprehensible. A jury which is forced to remain ignorant of its legal prerogative is not better suited to serve the purposes of the state or to mete our justice as recognized under New Hampshire law. Vote 8-6.

# MINORITY
# COMMITTEE REPORT

COMMITTEE: **Judiciary**

BILL NUMBER: **HB 1236**

TITLE: granting a defendant the right to inform the jury of its right to find the defendant not guilty under certain circumstances when the state or a political subdivision is the opposing party.

DATE: March 22, 2000 CONSENT CALENDAR YES ☐ NO ☒

☐ OUGHT TO PASS

☐ OUGHT TO PASS WITH AMENDMENT

☒ INEXPEDIENT TO LEGISLATE

☐ RE-REFER

☐ REFER TO COMMITTEE FOR INTERIM STUDY
(Available only in second year of biennium.)

**STATEMENT OF INTENT**
**(Include Committee Vote)**

The bill would effectively require that the burden of proof be raised for the prosecution in criminal trials from "....beyond a reasonable doubt" to one where the perceived validity of the law and the personal prejudices of the individual jurors would also need to be overcome. In other words, a prosecutor would have to not only prove the facts but defend the law in every criminal trial. No other state was found which requires this practice. The minority felt that a better way of doing this would have been to allow a presiding judge flexibility in this matter, but require that he or she state the reasons in writing when a request that jury nullification instructions be given is denied.

Rep. Andrew R. Peterson
FOR THE MINORITY

Original: House Clerk
cc: Committee Bill file

USE ANOTHER REPORT FOR MINORITY REPORT

Judiciary

**HB 1236,** granting a defendant the right to inform the jury of its right to find the defendant not guilty under certain circumstances when the state or a political subdivision is the opposing party. INEXPEDIENT TO LEGISLATE

Rep. Andrew R. Peterson for the Minority of Judiciary: The bill would effectively require that the burden of proof be raised for the prosecution in criminal trials from "....beyond a reasonable doubt" to one where the perceived validity of the law and the personal prejudices of the individual jurors would also need to be overcome. In other words, a prosecutor would have to not only prove the facts but defend the law in every criminal trial. No other state was found which requires this practice. The minority felt that a better way of doing this would have been to allow a presiding judge flexibility in this matter, but require that he or she state the reasons in writing when a request that jury nullification instructions be given is denied.

Judiciary

**HB 1236,** granting a defendant the right to inform the jury of its right to find the defendant not guilty under certain circumstances when the state or a political subdivision is the opposing party. INEXPEDIENT TO LEGISLATE

Rep. Andrew R. Peterson for the Minority of Judiciary: The bill would effectively require that the burden of proof be raised for the prosecution in criminal trials from "....beyond a reasonable doubt" to one where the perceived validity of the law and personal prejudices would also need to be overcome. In other words, a prosecutor would have to not only prove the facts but defend the law in every criminal trial. No other state was found which requires this practice. The minority felt a better way of doing this would be to allow a presiding judge flexibility in this matter, but require that he or she state the reasons in writing when a request that jury nullification instructions be given is denied.

New Hampshire juries inherently have the right to judge the law as well as the facts of the case before them. The juries have had this power since the provincial days, through the revolutionary period, through the civil rights efforts, and to this day. Noone challenges the right of the juries, sitting in this state, to acquit a defendant in a case which they find unjust or one which may do violence to their conscience. The opponents, however, argue that we should not inform the jury that they have this right. The majority of the committee was of the opinion that a fully informed juror is the best juror for both sides of the controversy. It makes no sense to withhold from a jury information to which it is entitled. Nor is it appropriate to convey information to a jury in language which is coded or incomprehensible. A jury which is forced to remain ignorant of its legal prerogative is not better suited to serve the purposes of the state or to mete out justice as recognized under New Hampshire law.

# Minority Report HB-1236

The bill would effectively require that the burden of proof be raised for the prosecution in criminal trials from "... beyond a reasonable doubt" to one where the perceived validity of the law and personal prejudices would also need to be overcome. ~~in every case.~~ ~~No other~~ In other words, a prosecuter would have to not only prove the facts but defend the law in every criminal trail. No other state was found which requires this practice. The minority felt a better way of doing this would be to allow a presiding judge flexibility in this matter, but require that he or she state the reasons in writing when a request ~~for~~ that jury nullification instructions be given is denied.

Jim Craig dissent

A. Peterson

New Hampshire juries inherently have the right to judge the law as well as the facts of the case before them. The juries have had this power since the provincial days, through the revolutionary period, through the civil rights efforts, and to this day. Noone challenges the right of the juries, sitting in this state, to acquit a defendant in a case which they find unjust or one which may do violence to their conscience. The opponents, however, argue that we should not inform the jury that they have this right. The majority of the committee was of the opinion that a fully informed juror is the best juror for both sides of the controversy. It makes no sense to withhold from a jury information to which it is entitled. Nor is it appropriate to convey information to a jury in language which is coded or incomprehensible. A jury which is forced to remain ignorant of its legal prerogative is not better suited to serve the purposes of the state or to mete out justice as recognized under New Hampshire law.


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