Bill as Introduced

HB 288-FN – AS INTRODUCED

2003 SESSION

03-0544
04/09

HOUSE BILL ***288-FN***

AN ACT imposing a criminal penalty for the dissemination of certain materials without consent.

SPONSORS: Rep. Knowles, Straf 69; Rep. Welch, Rock 79; Rep. Stevens, Carr 7; Rep. K. Gilbert, Rock 82

COMMITTEE: Criminal Justice and Public Safety

ANALYSIS

This bill imposes a class A misdemeanor for the dissemination of certain material acquired by means of any device installed in a private place and which is intended to acquire information, without the specific consent of the person or persons involved.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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 288-FN – AS INTRODUCED

03-0544
04/09

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Three

AN ACT imposing a criminal penalty for the dissemination of certain materials without consent.

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

1 New Paragraph; Violation of Privacy; Dissemination of Certain Materials. Amend RSA 644:9 by inserting after paragraph I the following new paragraph:

I-a.(a) A person shall be guilty of a class A misdemeanor if such person unlawfully and without the specific consent of the person or persons entitled to privacy herein, disseminates any material acquired through the means described in subparagraph I (a) of this section.

(b) This section shall not be construed to impair or limit any otherwise lawful activities of law enforcement personnel, or employees of governmental agencies or other entities, public or private, who, in the course and scope of their employment and supported by articulable suspicion, attempt to capture any type of visual image, sound recording, or other physical impression of a person during an investigation, surveillance, or monitoring of conduct to obtain evidence of suspected illegal activity, the suspected violation of any administrative rule or regulation, a suspected fraudulent insurance claim, or any other suspected fraudulent conduct or activity involving a violation of law, or pattern of business practices adversely affecting the public health or safety.

2 Violation of Privacy; Definition of Dissemination. Amend RSA 644:9, II to read as follows:

II.***(a)*** As used in this section, "private place" means a place where one may reasonably expect to be safe from surveillance but does not include a place to which the public or a substantial group thereof has access.

(b) As used in this section, "disseminate" shall have the same meaning as defined in RSA 649-A:2, II.

3 Effective Date. This act shall take effect January 1, 2004.

LBAO
03-0544
1/10/03

HB 288-FN - FISCAL NOTE

AN ACT imposing a criminal penalty for the dissemination of certain materials without consent.

FISCAL IMPACT:

The Judicial Branch, Judicial Council, Association of Counties, and Department of Justice state this bill may increase state and county expenditures by an indeterminable amount in FY 2004 and each year thereafter. There will be no fiscal impact on state, county, and local revenue or local expenditures.

METHODOLOGY:

The Judicial Branch states this bill would make disseminating material acquired in violation of someone's right to privacy a class A misdemeanor. Each prosecution has the potential to be expensive for the judicial branch since a class A misdemeanor can involve a bench trial in the District Court, a de novo jury trial in the Superior Court, as well as an appeal to the Supreme Court. The District Court states that few prosecutions are currently brought under RSA 664:9, therefore, it does not anticipate many under this statute, if enacted.

The Judicial Council assumes that any cases arising from the enactment of this law for which the Indigent Defense Fund may be liable, will, in the first instance be handled by the public defender or contract attorneys who accept these cases on a fixed fee basis of $250 for each misdemeanor charge. If an assigned counsel attorney must be used, the hourly rate of $60 with a fee cap of $1,000 for misdemeanor cases will apply. If a motion to exceed the fee cap is approved and/or "services other than counsel" are approved, these will also be chargeable to the Indigent Defense Fund. The Council is unable to predict the number of cases that may result from the passage of this legislation, therefor, they are unable to estimate the dollar amount of the anticipated costs of such representation.

The Association of Counties states the fiscal impact of this bill depends on the number of individuals who are sentenced to a county house of corrections as a result of this bill. The Association has estimated the average annual cost to incarcerate an individual in a county house of corrections to be $21,634.

The Department of Justice states this bill will involve the agency in additional litigation. Costs would include the production of documents, research, travel, overtime for support staff, and additional caseloads for attorneys. Exclusive of staff time, the cost of litigation averages $2,388 for civil cases and $1,351 for criminal cases. In addition, any increase in the number of complaints to the agency will increase both workload and the priority in which they are handled.

Amendments

Rep. Knowles, Straf. 69
March 3, 2003
2003-0445h
04/01

Amendment to HB 288-FN

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

1 New Paragraph; Violation of Privacy; Dissemination of Certain Materials. Amend RSA 644:9 by inserting after paragraph II the following new paragraph:

III. A person is guilty of a class A misdemeanor if that person knowingly disseminates or causes the dissemination of any photograph or video recording of himself or herself engaging in sexual activity with another person, or of another person voluntarily engaging in sexual activity while in his or her presence without the express consent of the other person or persons who appear in the photograph or videotape. In this paragraph, "disseminate" shall have the same meaning as in RSA 649-A:2.

2 Effective Date. This act shall take effect January 1, 2004.

2003-0445h

AMENDED ANALYSIS

This bill establishes a class A misdemeanor offense for any person who knowingly disseminates or causes the dissemination of any photograph or video recording of himself or herself engaging in sexual activity with another person, or of another person voluntarily engaging in sexual activity while in his or her presence without the express consent of the other person or persons who appear in the photograph or videotape.

Speakers

SIGN UP SHEET

To Register Opinion If Not Speaking

Bill # HB 288-FN Date 1/29/2003

Committee CJ&PS

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

Name	Address	Phone	Representing	Pro	Con
Claire Ebel	18 Low AV	225-3080	NHCLU	X	

Hearing Minutes

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

PUBLIC HEARING ON HB 288-FN

BILL TITLE: imposing a criminal penalty for the dissemination of certain materials without consent.

DATE: January 29, 2003

LOB ROOM: 204 **Time Public Hearing Called to Order:** 1:30 p.m.

Time Adjourned: 1:48 p.m.

(please circle if present)

Committee Members: Reps. Welch, Tholl, Fesh, Jones, Kennedy, K. Gilbert, Nedeau, Stevens, Weare, Bemis, Bicknell, Fish, Oliver, D. Smith, Winchell, Knowles, Callaghan, Movsesian, Berube, Pantelakos and T. Robertson.

Bill Sponsors: Rep. Knowles, Welch, Stevens, K. Gilbert

TESTIMONY

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

Rep. Knowles, prime sponsor
- ✓ Presented the bill at the request of the New Hampshire Coalition on Domestic Violence

Linda Griebsch, NHCADSV
- ✓ Bill is designed to prohibit dissemination of materials acquired by any device in a private place where there is no consent
- ✓ Internet heightens the problem
- ✓ Fraternity parties show videos that were filmed in private
- ✓ Several questions were answered with regard to how to determine consent

Pink Cards:
- ✓ Rep. William Knowles, prime sponsor. Supports the bill.
- ✓ Linda Griebsch, NHCADSV. 224-8893. Supports the bill.

Respectfully submitted,

Stanley E. Stevens

Rep. Stanley E. Stevens
Committee Clerk

SES:co

Voting Sheets

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

EXECUTIVE SESSION on HB 288-FN

BILL TITLE: **imposing a criminal penalty for the dissemination of certain materials without consent.**

DATE: March 3, 2003

LOB ROOM: 204

Amendments:

Sponsor: Rep. Knowles — OLS Document #: 2003 0445h

Sponsor: Rep. — OLS Document #:

Sponsor: Rep. — OLS Document #:

Motions: (OTP), OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. Knowles — AMENDMENT ONLY

Seconded by Rep. Stevens

Vote: 11-1 (Please attach record of roll call vote.)

Motions: OTP, (OTP/A), ITL, Interim Study (Please circle one.)

Moved by Rep. Knowles

Seconded by Rep. Stevens

Vote: 11-1 (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE: 15-0

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

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Stanley E. Stevens, Clerk

CRIMINAL JUSTICE AND PUBLIC SAFETY

Bill #: HB288-FN **Title:**

PH Date: / / Exec Session Date: 3/3/03

Motion: ADOPT AMENDMENT Amendment #: 2003-0445h

MEMBER	YEAS	NAYS
Welch. David A. Chairman	✓	
Tholl. John E. V Chairman		
Fesh. Bob M		
Jones. Constance A		
Kennedy. Richard E		✓
Gilbert. Karl I	✓	
Nedeau. Stephen H		
Stevens. Stanley E	✓	
Weare. E Albert		
Bemis. Alan B		
Bicknell. Elbert I	✓	
Fish. Douglas K	✓	
Oliver. James H	✓	
Smith. Donald C		
Winchell. George D	✓	
Knowles. William V	✓	
Berube. Roger R		
Callaghan. Frank D		
Movsesian. Lori A	✓	
Pantelakos. Laura C	✓	
Robertson. Timothy N	✓	
	11	1

TOTAL VOTE:
Printed: 1/6/2003

CRIMINAL JUSTICE AND PUBLIC SAFETY

Bill #: HB288-FN **Title:** _____

PH Date: ___/___/___ **Exec Session Date:** 3/3/03

Motion: OTPA **Amendment #:** _____

MEMBER	YEAS	NAYS
Welch. David A. Chairman	✓	
Tholl. John E. V Chairman		
Fesh. Bob M		
Jones. Constance A		
Kennedy. Richard E		✓
Gilbert. Karl I	✓	
Nedeau. Stephen H		
Stevens. Stanley E	✓	
Weare. E Albert		
Bemis. Alan B		
Bicknell. Elbert I	✓	
Fish. Douglas K	✓	
Oliver. James H	✓	
Smith. Donald C		
Winchell. George D	✓	
Knowles. William V	✓	
Berube. Roger R		
Callaghan. Frank D		
Movsesian. Lori A	✓	
Pantelakos. Laura C	✓	
Robertson. Timothy N	✓	
	11	1

TOTAL VOTE:
Printed: 1/6/2003

Committee Report

COMMITTEE REPORT

COMMITTEE: ~~Ways and Means~~ Criminal Justice + Public Safety

BILL NUMBER: **HB 288-FN**

TITLE: imposing a criminal penalty for the dissemination of certain materials without consent.

DATE: March 3, 2003 CONSENT CALENDAR YES ☒ NO ☐

☐ OUGHT TO PASS

☒ OUGHT TO PASS WITH AMENDMENT

☐ INEXPEDIENT TO LEGISLATE

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

STATEMENT OF INTENT
(Include Committee Vote)

This legislation clarifies the statute on violation of privacy. It prohibits dissemination of any photograph or video recording of a person or persons voluntarily engaging in sexual activity without the express consent of the person or persons who appear in the photograph or videotape.

Vote 11-1.

Rep. William V. Knowles
FOR THE COMMITTEE

Original: House Clerk
cc: Committee Bill file

USE ANOTHER REPORT FOR MINORITY REPORT

CONSENT CALENDAR

~~Ways and Means~~ CJ + PS

HB 288-FN, imposing a criminal penalty for the dissemination of certain materials without consent. **OUGHT TO PASS WITH AMENDMENT**

Rep. William V. Knowles for Ways and Means: This legislation clarifies the statute on violation of privacy. It prohibits dissemination of any photograph or video recording of a person or persons voluntarily engaging in sexual activity without the express consent of the person or persons who appear in the photograph or videotape. **Vote 11-1.**

COMMITTEE REPORT

COMMITTEE: **Criminal Justice and Public Safety**

BILL NUMBER: **HB 288-FN**

TITLE: imposing a criminal penalty for the dissemination of certain materials without consent.

DATE: Feb. 12, 2003 CONSENT CALENDAR YES ☒ NO ☐

☒ OUGHT TO PASS

☐ OUGHT TO PASS WITH AMENDMENT

☐ INEXPEDIENT TO LEGISLATE

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

STATEMENT OF INTENT
(Include Committee Vote)

This legislation imposes a Class A misdemeanor on a person if such person, unlawfully and without the specific consent of the person or persons entitled to privacy, disseminates any material acquired through the violation of such privacy.

Vote 15-0.

Rep. William V. Knowles
FOR THE COMMITTEE

Original: House Clerk
cc: Committee Bill file

USE ANOTHER REPORT FOR MINORITY REPORT

COMMITTEE REPORT

COMMITTEE: **Criminal Justice and Public Safety**

BILL NUMBER: **HB 288-FN**

TITLE: imposing a criminal penalty for the dissemination of certain materials without consent.

DATE: CONSENT CALENDAR YES ☑ NO ☐

☑ OUGHT TO PASS

☐ OUGHT TO PASS WITH AMENDMENT

☐ INEXPEDIENT TO LEGISLATE

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

STATEMENT OF INTENT
(Include Committee Vote)

This legislation imposes a class A misdemeanor on a person, if such person unlawfully and without the specific consent of the person or persons entitled to privacy, disseminates any material acquired through the violation of such privacy

Vote 15-0

Rep. Wm. V. Knowles
FOR THE COMMITTEE

Original: House Clerk
cc: Committee Bill file

USE ANOTHER REPORT FOR MINORITY REPORT