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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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.

HB 288-FN – AS AMENDED BY THE HOUSE

12mar03... 0445h

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

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.

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 AMENDED BY THE HOUSE

12mar03... 0445h

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 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.

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:

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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.

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Amendments

Sen. Clegg, Dist. 14
May 12, 2003
2003-1583s
04/09

Amendment to HB 288-FN

Amend RSA 644:9, III as inserted by section 1 of the bill by replacing it with the following:

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 without the express consent of the other person or persons who appear in the photograph or videotape. In this paragraph, "disseminate" and "sexual activity" shall have the same meaning as in RSA 649-A:2. This paragraph 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.

2003-1583s

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 without the express consent of the other person or persons who appear in the photograph or videotape. This bill also provides an exception for the lawful activities of law enforcement personnel.

Senate Judiciary
May 14, 2003
2003-1621s
04/05

Amendment to HB 288-FN

Amend RSA 644:9, III as inserted by section 1 of the bill by replacing it with the following:

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 without the express consent of the other person or persons who appear in the photograph or videotape. In this paragraph, "disseminate" and "sexual activity" shall have the same meaning as in RSA 649-A:2. This paragraph 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.

2003-1621s

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 without the express consent of the other person or persons who appear in the photograph or videotape. This bill also provides an exception for the lawful activities of law enforcement personnel.

Committee Minutes

Judiciary Committee

Hearing Report

To: Members of the Senate

From: Susan Duncan
Senior Legislative Aide

Re: **HB 288-FN** – *AN ACT imposing a criminal penalty for the dissemination of certain materials without consent.*

Hearing date: May 6, 2003

Members present: Senators Peterson, Foster, Clegg, Roberge and Sapareto

Members absent: None

Sponsor(s): Representatives Knowles, Welch, Stevens & K. Gilbert

What the bill does: 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.

Who supports the bill: Representative Knowles
Linda Griebsch, NHCADSV

Who opposes the bill: No one spoke in opposition

Summary of testimony received:

- This legislation was filed as the result of consent being given to the making of a tape, but consent was not given to dissemination of the tape on the web. A judge subsequently ruled in the case. This is to clarify the situation.
- A lengthy discussion was held regarding the definition of sexual activity in RSA 649: A-II.
- Senator Clegg asked if there is any danger or unintended consequences of referencing the child statute.

- Attorney Lehmann said that an option would be to reprint the definition in this statute rather than to refer to it.
- Requests for this type of legislation has come in from crisis centers, especially in areas where there are college populations (i.e., frat houses, etc.).
- Attorney Ann Rice of the Department of Justice helped with the bill when it was in the House.
- The assumption has been made by law enforcement that if you consented to the sexual act, then you also consented to the distribution. Representative Knowles said that this is not the case.
- Senator Clegg said that he understands the intent behind the legislation, but wondered what the impact to news services that are videotaping a riot at a college and in the back are two kids having sex in the corner. Or what about Mardi Gras in New Orleans?
- Senator Foster wondered if the insertion of "a private place" would clarify the intent.
- Senator Clegg suggested the language "a reasonable expectation of privacy."
- Senator Sapareto wondered what about the late night television shows.
    - Ms. Griebsch said that that is totally different in that these actors are on paid television – that they have given their consent and that would not be covered here.
- Attorney Lehmann noted that an event that occurs outdoors would probably be covered under the First Amendment. He further noted that criminal statutes cannot be vague.

Funding: See fiscal note.

Future action: The committee took the bill under advisement.

sfd
[file: HB 288-FN report]
Date: May 7, 2003

Date: May 6, 2003
Time: 4:40 p.m.
Room: State House, Room 105

The Senate Committee on Judiciary held a hearing on the following:

HB 288-FN imposing a criminal penalty for the dissemination of certain materials without consent.

Members of Committee present:
Senator Peterson
Senator Foster
Senator Clegg
Senator Roberge
Senator Sapareto

The Chair, Senator Andrew R. Peterson, opened the hearing on HB 288 and called on Representative Knowles, prime sponsor, to introduce the legislation.

Representative Knowles: Thank you, Mr. Chairman and members of the Committee. For the record, I am Representative William Knowles, representing Strafford District 69.

This particular piece of legislation is the result of a court decision. We already have the statute on the books for a violation of privacy, but the wording of the particular bill is very short and it says a person is guilty of a misdemeanor if such person unlawfully and without the consent of the persons entitled to privacy therein installs or uses. Now, the key word is without the consent of the persons entitled. In any private place, any device for observing, photographing, recording, amplifying or broadcasting sound for events in such place or outside a private place, any device for hearing, recording, amplifying or broadcasting sounds originating in such place which would not ordinarily be audible or comprehensible outside.

This particular person had agreed to have a videotape made of herself and another person in a sexual act. The person that took the videotape ended up eventually putting that videotape on the web. The girl consented to the tape being made. Don't ask me why. But, she had consented to that, but she did

not consent to the distribution or the dissemination of the tape. What the judge ruled, the only thing that we had in the statute itself was that, since she had given consent to have this done, she must have realized that it was going to be distributed.

So, what this particular section of the bill is trying to do is clear up that, that in the event the person does not agree to the dissemination of this tape, the person who would disseminate it would be guilty of a Class A misdemeanor. That, in a nutshell, is what this is about.

Senator Andrew R. Peterson, D. 11: Thank you. Senator Roberge?

Senator Sheila Roberge, D. 9: Would this get into anything like speakerphones or any of those kinds of things, any of those kinds of tapings?

Representative Knowles: That's a different type of thing.

Senator Sheila Roberge, D. 9: It is. I know. But, this doesn't go that far. This is very specific to what you are talking about?

Representative Knowles: That's correct.

Senator Sheila Roberge, D. 9: Thank you.

Senator Andrew R. Peterson, D. 11: You are speaking of the bill as amended, is that correct?

Representative Knowles: Yes.

Senator Andrew R. Peterson, D. 11: By the House? And you probably agree that, despite the passage of a bill like this, it would probably be good to be somewhat cautious about when you're being videotaped in circumstances.

Representative Knowles: Very definitely, sir.

Senator Andrew R. Peterson, D. 11: Well, I'm glad to hear that. Senator Sapareto?

Senator Frank V. Sapareto, D. 19: Thank you, Mr. Chairman. Does that mean that, if I kiss somebody and they take a picture of it and they show the picture, that I am guilty of a Class A misdemeanor? I mean, under the statute, as it is written, it just says that I am disseminating it. I guess a kiss could be determined as sexual activity. Let's say I have decided I want to go

after an old girlfriend. She has an old picture and showed a friend. Can they convict here of a Class A misdemeanor?

Representative Knowles: That's a very good question, but I do not believe so, sir. First off, you do expect privacy at the time the picture was taken. Because, the way it is worded, they define what privacy is. 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.

Senator Frank V. Sapareto, D. 19: I'm in a closet.

Representative Knowles: You must have expected privacy.

Senator Andrew R. Peterson, D. 11: Senator, I think the question that comes to mind is, what is the definition of sexual activity in this bill. Could you answer that question for us?

Representative Knowles: Well, let me read this over just for a second.

Senator Andrew R. Peterson, D. 11: Take your time.

Attorney Lehmann: There is not a definition. There are definitions in 632-A of sexual conduct, contact and sexual penetration.

Senator Robert Clegg, Jr., D. 14: So, sexual contact would be considered sexual activity, but was it sexual contact?

Senator Frank V. Sapareto, D. 19: Sexual contact means the intentional touching, whether directly, through clothing or otherwise, of the victim's or actor's sexual or intimate parts, including breasts and buttocks. Sexual contact includes only that aforementioned conduct which can be reasonably construed as being for the purpose of sexual arousal or gratification.

Senator Andrew R. Peterson, D. 11: What's your intent?

Representative Knowles: You are using that definition of sexual contact rather than sexual activity.

Senator Robert Clegg, Jr., D. 14: Sexual contact is too broad because, if you touch somebody through their clothes and you show somebody else the picture, you are going to go to jail. It could be one of those pictures where you see a handprint on somebody's behind. I wouldn't want to send a girl to jail for that.

Senator Sheila Roberge, D. 9: No, absolutely.

Senator Andrew R. Peterson, D. 11: This is one of those things that you know when you see it, but it is hard to define.

Senator Robert Clegg, Jr., D. 14: I don't think it is anything we are going to be able to deal with today. Sexual activity has to be...

Representative Knowles: I thought it was so cut and dried when I looked at it.

Senator Andrew R. Peterson, D. 11: We were hopeful on that as well.

Attorney Lehmann: You will have to use penetration. That may be too narrow.

Senator Robert Clegg, Jr., D. 14: Because a naked photo with no sexual activity wouldn't be covered under this anyway.

Senator Andrew R. Peterson, D. 11: That's right.

Attorney Lehmann: I think it would have to be, if you use the definition of sexual contact, the video or depiction would have to be a physical touching with the purpose of sexual gratification.

Senator Andrew R. Peterson, D. 11: Is there a definition of sexual materials? There must be something about sexual materials for sale or distribution, etc.

Attorney Lehmann: Well, there is only the child pornography statute.

Senator Robert Clegg, Jr., D. 14: What's the point? If you use something that was made as an attempt at sexual gratification.

Representative Knowles: They do have the definition of sexual activity. It is in 649-A:2. That is in child pornography and it says sexual activity means human masturbation, the touching of the actor's or other person's sexual organs in the context of a sexual relationship, sexual intercourse, actual or simulated, normal or perverted, whether alone or between members of the same or opposite sex, or between humans and animals, any lewd exhibition of the genitals, flagellation or torture. Sexual intercourse is simulated when it depicts explicit sexual intercourse, which gives the appearance of the consummation of sexual intercourse, normal or perverted.

Senator Andrew R. Peterson, D. 11: Why don't we just reference that? How about that?

Senator Robert Clegg, Jr., D. 14: That's under the child statutes, correct?

Representative Knowles: It doesn't really matter, though.

Senator Andrew R. Peterson, D. 11: You just reference the one definition.

Senator Robert Clegg, Jr., D. 14: Pull that definition out and make a definition. Is there any danger in crossing this in with that statute?

Attorney Lehmann: Danger?

Senator Robert Clegg, Jr., D. 14: Yes.

Senator Andrew R. Peterson, D. 11: Well, unintended consequences.

Senator Sheila Roberge, D. 9: You can write it out. It's only a paragraph.

Senator Andrew R. Peterson, D. 11: Well, is this in that section of the RSAs anyway?

Representative Knowles: It's in the criminal code. We can make reference to anything in the criminal code, as defined in such and such.

Senator Andrew R. Peterson, D. 11: There is already a reference to 649 in here.

Senator Robert Clegg, Jr., D. 14: My question would be, you do defense, if you have two adults and one gets brought up on this, is there an argument for an attorney to say that that's for underaged? If we reference a youth law or child law, does that become a problem?

Attorney Lehmann: Not if you say, for the purposes of this section, sexual activity means and you can reference the statute or just reprint it. Probably reprint it.

Representative Knowles: Quite often we use as defined in 179-A section such and such and that's different than the 600 series.

Senator Robert Clegg, Jr., D. 14: That definition defines someone who does it by himself.

Representative Knowles: He could give himself permission.

Senator Robert Clegg, Jr., D. 14: But, if he doesn't.

Senator Frank V. Sapareto, D. 19: Just because someone is an animal, doesn't mean he gave permission.

Senator Andrew R. Peterson, D. 11: This is about someone who is photographing and is in the picture and about someone whose photograph is not in the picture.

Attorney Lehmann: It has to be two people.

Senator Andrew R. Peterson, D. 11: As it should be.

Senator Robert Clegg, Jr., D. 14: Do you want to do a quick amendment?

Senator Andrew R. Peterson, D. 11: Well, I want to get all the testimony in first. Are there further questions for Representative Knowles? Hearing none, thank you. Call Linda Griebsch.

Representative Knowles: Thank you and thank you for the lesson on marital masters today. It was very interesting.

Linda Griebsch: I will try to keep this really short. Essentially, we encourage this legislation. My name is Linda Griebsch. I am with the New Hampshire Coalition Against Domestic and Sexual Violence.

We do get promptings from the various groups about legislation. Usually, primarily from either constituents who are survivors or the families of survivors or whatever. They come from crisis centers. We deal with a lot of frontline issues, or they come from law enforcement.

This particular bill came as a result of the crisis centers in three areas where they deal primarily with college populations. Apparently, while this sounds like a really unusual thing and, again, I don't endorse the behavior, but apparently it is a problem, a real problem. Couples engage in sexual activity and then somebody either, as a member of a fraternity house or one of the parties, decides that this would be fun to advertise and whatever.

When we pursued this because, when somebody comes up with some thoughts on legislation, we usually go to several committees and do... We asked law enforcement about it and they came up with a whole other set of

categories where this was a problem and they had just recently dealt with a case with a couple, I think it was a homosexual couple, and they were breaking up and the one person then sent suggestive photographs to the other person's employer and to their mother and whatever and it went on and on.

So, I guess this is, at the time I thought, how big a problem is this, but apparently, it occurs often enough and it is a big enough problem that it seemed worthwhile to address.

Then we did what we, what you try to do is you try to address all of the concerns and make as many people as happy as possible and, in doing that, we concerned other people because we sort of said that we wanted to exempt law enforcement from the enforcement of their duties and so forth. Then that looked to certain people that we had expanded their realm. So, then the AG's Office, Ann Rice, that's why I was sorry she left before we got to this sexual activity question, offered to redraft it leaving that piece out and just being very narrow and focused and this is the result.

I did think, as we all hoped, that it would be very simple and straightforward. But, right now, the problem is that, if someone consents to sexual activity, the assumption is on law enforcement, because there is no statutory definition otherwise that they are consenting therefor to everything that goes along with that, including dissemination of any photos or videotapes of that activity. I think that is taking consent a little too broadly and, from what I can ascertain from people who are dealing with people involved in this, the consent was never intended to go that far. So, all this bill is intended to do is make sure that there is consent specific to the dissemination of the part of the consent to the activity. That's the nuts and bolts of what we want and it sounds like you are getting to the gist of it and that you understand that it is a bigger problem than one case.

If sexual activity is a problem, I could go back to Ann Rice and ask her if she used that term specifically with the definition in mind or if she felt that the definition in the child pornography statute would be suitable for this and get back to you tomorrow on that.

Senator Andrew R. Peterson, D. 11: Thank you. Senator Clegg?

Senator Robert Clegg, Jr., D. 14: I understand what the intent is, but how does this bill affect a legitimate news service over at UNH and they've got a riot and a big party and they are videotaping what's happening and there's two people off on the side having sex? Do we now sue or do those people now have the right to sue Channel 9 under this bill?

Ms. Griebsch: I would think that, to my knowledge, the news normally tries to get consent before they print photographs of people, but they do have a certain layer of immunity, so that, if you have a photograph of a crowd in the newspaper, they obviously don't have to get consent of every single person there. And, I suspect that would protect them in this situation as well.

Attorney Lehmann: And, it wouldn't affect the news because, presumably the people bringing you the news are not engaged in sexual activity that they are broadcasting.

Senator Robert Clegg, Jr., D. 14: Ah, but the other part of this bill says or of another person voluntarily engaging in sexual activity while in his or her presence. So, now every news camera is present. I guess my question would be, and I know you don't have it, but I'm going to voice it is, what happens when Channel 7 in Boston telecasts in New Hampshire a one-hour special on Mardi Gras in New Orleans?

Ms. Griebsch: We actually, Nina and I were talking about that before, about some friend of hers was watching some news clips.

Nina Gardner: Ads of those videos about those college kids in Can Cun.

Senator Robert Clegg, Jr., D. 14: Yes.

Ms. Gardner: And, they saw their own kids.

Ms. Griebsch: And, I don't know if it will cover it or not. I think it should, but it probably won't.

Senator Robert Clegg, Jr., D. 14: I'm getting really nervous with this. I understand the purpose, but I'm getting nervous.

Ms. Gardner: Obviously, the girls gave consent while the video camera was roaming.

Senator Robert Clegg, Jr., D. 14: Typically, but my understanding from someone who investigated that is that they go through and people have had a little too much to drink, both male and female, and they are more than happy to display for the camera until they sober up. But, once they have displayed in public, the theory was tough. This bill doesn't say that, though.

Ms. Gardner: I know. That's my concern.

Ms. Griebsch: But, I guess my first thought would be they shouldn't be doing that anyway because if people are that drunk, they couldn't give consent, even if they tried.

Senator Robert Clegg, Jr., D. 14: I didn't say they were that drunk. I just said that, after a few drinks, the inhibitions go away. That doesn't mean that they are out of their minds. They don't know what they are doing.

Senator Andrew R. Peterson, D. 11: We can talk about this in executive session and I would ask you, is that such a bad thing? If the broadcaster is licensed, circumscribes some of what they decide to put on of prurient interest in order to gain ratings and they haven't asked the people involved, they have just spun a camera around. Is that the worst thing in the world that we would have a possibility of a fine or some sort of a misdemeanor circumstance if that was a normal behavior and part of a news outlet or anybody else? Honestly, what do you think?

Ms. Griebsch: That was my first reaction, too. I'm not so sure that I think that that wouldn't be so terrible to try to curtail in some way.

Senator Sheila Roberge, D. 9: Right. They can always cut the tape.

Ms. Griebsch: Yes.

Senator Joseph A. Foster, D. 13: Would we go 95% of the way here if we had this limited to the situations where the activity takes place in a private place. This is a frat party, this person in the room...(inaudible)...

Ms. Griebsch: It's under this particular statute because there is a reasonable expectation of privacy and I guess that does address what Senator Clegg is saying. In this statute, it is about having a reasonable expectation of privacy.

Senator Joseph A. Foster, D. 13: And that it is not going to be disseminated?

Ms. Griebsch: Right. So, it is two people in a bedroom or maybe three people in a bedroom, that kind of thing.

Senator Andrew R. Peterson, D. 11: So, it only applies in places where you have a reasonable expectation of privacy, although there is a camera on.

Senator Joseph A. Foster, D. 13: There's a camera on.

Senator Robert Clegg, Jr., D. 14: There goes the expectation.

Ms. Griebsch: People do strange things. I can't explain. I have no clue.

Senator Andrew R. Peterson, D. 11: Senator Sapareto?

Senator Frank V. Sapareto, D. 19: Thank you, Mr. Chairman. That brings up two others issues, too. What about, number one, when you see these advertisements and things, they blot out whatever the exact scene is. Is that also a violation?

Senator Robert Clegg, Jr., D. 14: Under that definition it would be, yes, because you know what is happening even though you can't...

Senator Frank V. Sapareto, D. 19: But, these are advertisements on regular television, which brings my next thing. Late night, one, two, three o'clock, most of these paid advertisements have girls on them. That would qualify under sexual gratification because of the way they do the advertisements on those and now you've got Channel 50, Channel 9.

Ms. Griebsch: If they are doing it on television, obviously they have consented.

Senator Frank V. Sapareto, D. 19: A gratification. For the purpose of sexual gratification. That would cover under the best of purpose of the commercial.

Ms. Griebsch: But, it's only one of the elements. The other element is they have to have not have consent. Obviously, someone who is getting paid to do that on television has given consent, either explicitly or implicitly, because they are getting paid to do it. They wouldn't qualify under this. This bill is about the consent and it is also about an expectation of privacy, which doesn't happen if you are filming for commercials.

Attorney Lehmann: It also doesn't happen if you are filming events that occur outdoors in public setting. The broadcasting, which is probably protected under the First Amendment because it is already a newsworthy event. It is recording a public event.

Senator Andrew R. Peterson, D. 11: Picture Woodstock.

Senator Robert Clegg, Jr., D. 14: Well, if you could figure out how to tighten it up so it means, as Senator Peterson said, there's three of you in the bedroom and one of them has a camera, what was your reasonable expectation of privacy?

Attorney Lehmann: And, I would think that sometimes it is even a problem with the criminal statute that even uses that language of reasonable expectation of privacy because the criminal statute can't be vague. What conduct is described has to be very clearly defined in the statutes.

Senator Robert Clegg, Jr., D. 14: I mean, I know what you are talking about. You're talking about a guy and a girl and it is probably not a third person in there. It is probably on a stand someplace and one of them gets upset and sends it out on the web or to their boyfriend or husband or whatever. I know you are trying to stop that, but in the meantime, we are picking up a whole lot of people.

Senator Frank V. Sapareto, D. 19: If it is presented in court in a divorce case.

Senator Andrew R. Peterson, D. 11: We can deal with it from here.

Senator Robert Clegg, Jr., D. 14: That's adultery.

Senator Andrew R. Peterson, D. 11: We can deal with this in executive session. Do you have any further questions of the witness? Hearing none, and I will ask if there others who have testified want to testify again on 288 prior to closing the hearing. Seeing none, close the hearing on HB 288, which concludes our hearings for today.

Hearing concluded at 5:05 p.m.

Respectfully submitted,

L. Gail Brown
Senate Secretary
6/4/03

Speakers

SENATE JUDICIARY COMMITTEE

Date 5/6/03 Time 10:15 a.m. Public Hearing on **Bill HB 288-FN**

HB 288imposing a criminal penalty for the dissemination of certain materials without consent.
(Insert here the title of the Bill)

Please check box(es) that apply.

SPEAKING	FAVOR	OPPOSED	NAME (Please print)	REPRESENTING
☑	☑	☐	LINDA GRIEBSCH	NHCADSV
☑	☑	☐	REP KNOWLES	STRAF. 69
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Committee Report

STATE OF NEW HAMPSHIRE

SENATE

REPORT OF THE COMMITTEE

Date:

THE COMMITTEE ON Judiciary

to which was referred House Bill 288-FN

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

VOTE: 4-1

2003-1621s

Having considered the same, report the same with the following amendment and recommend that the bill: **AS AMENDED OUGHT TO PASS.**

Senator Robert Clegg, Jr.
For the Committee

HB288 Docket

Next|Prev|Results List|Main|Bill Status

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

Date	Body	Description
1/9/2003	H	Introduced and ref to Crim Just & PSfty; HJ 12, p190
1/21/2003	H	Copy to Chairman on 1/21/2003
1/22/2003	H	Hearing Jan 29 1:30 RM204,LOB
2/12/2003	H	Maj Report OTP for Feb 20 (Vote 15-0;CC)
2/20/2003	H	Removed from Consent Cal, req Rep Welch; HJ 18, p387
2/20/2003	H	Recommitted to Crim Just & PSfty, Rep Welch MA VV; HJ 18, p414
3/3/2003	H	Maj Report OTP/AM for Mar 12 (Vote 11-1;CC)
3/3/2003	H	Prop Comm Am{0445}; HC20, p462
3/12/2003	H	Passed with Am; HJ23, p540 + 590
4/24/2003	S	Introduced and Ref. to Judiciary; SJ 14, Pg.342
5/2/2003	S	Hearing; May 6, 2003, Room 105-A, SH, 10:15 a.m.; SC21
5/15/2003	S	Committee Report; Ought to Pass with Amendment{1621}, [05/22/03]; SC23, Pg.14
5/22/2003	S	Committee Amendment{1621}, AA, VV; SJ 17, Pg.464-465
5/22/2003	S	Ought to Pass with Amendment{1621}, MA, VV; OT3rdg; SJ 17, Pg.465
5/22/2003	S	Passed by 3rd Reading Resolution; SJ 17, Pg.479
5/29/2003	H	House Nonc with Sen Am req Conf Comm, Rep Welch MA VV; HJ 45, p1446
5/29/2003	H	(Spkr appts: Reps Knowles, Tholl, Stevens & Kurk)
6/5/2003	S	Sen. Peterson Accede to Request for Committee of Conference, MA, VV; SJ 19, Pg.529-530
6/5/2003	S	President Appoints; Senators Clegg, Sapareto, Foster; SJ 19, Pg.530
6/11/2003	H	Conf Comm Meeting June 12 3:00 RM204,LOB
6/19/2003	S	Committee of Conference Report; Sen. Am{2142}, Filed;
6/24/2003	S	Conference Committee Report{2142}, Adopted, VV; SJ 20, Pg.773
6/24/2003	H	Conf Comm Report Adopted VV;
6/30/2003	H	Enrolled;
6/30/2003	S	Enrolled;

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Docket Abbreviations