Bill as Introduced

SB 40 – AS INTRODUCED

2003 SESSION

03-1067
04/09

SENATE BILL ***SB 40***

AN ACT relative to filing of complaints for violation-level offenses.

SPONSORS: Sen. Flanders, Dist 7; Rep. Welch, Rock 79

COMMITTEE: Judiciary

ANALYSIS

This bill allows for the filing of complaints for violation-level offenses without a police officer's signature or oath.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

03-1067
04/09

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Three

AN ACT relative to filing of complaints for violation-level offenses.

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

1 Jurisdiction and Procedure; Complaints; Filings for Violation-Level Offenses. Amend RSA 592-A:7 to read as follows:

592-A:7 Complaints. Criminal proceedings before a district [~~or municipal~~] court shall be begun by complaint, signed and under oath, addressed to such court, briefly setting forth, by name or description, the party accused and the offense [~~with which he is~~] charged, ***provided that a complaint filed by a police officer, as defined in RSA 188-F:23, I, for a violation-level offense shall not require a signature or an oath.***

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

Amendments

Sen. Flanders, Dist. 7
February 3, 2003
2003-0151s
04/10

Draft Amendment to SB 40

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

AN ACT relative to filing of complaints for violation-level offenses and making the electronic submission of a false statement chargeable as unsworn falsification.

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

1 Jurisdiction and Procedure; Complaints; Filings for Violation-Level Offenses. Amend RSA 592-A:7 to read as follows:

592-A:7 Complaints. Criminal proceedings before a district [~~or municipal~~] court shall be begun by complaint, signed and under oath, addressed to such court, briefly setting forth, by name or description, the party accused and the offense [~~with which he is~~] charged, ***provided that a complaint filed by a police officer, as defined in RSA 188-F:23, I, for a violation-level offense shall not require a signature or an oath, and provided that any statements made in such complaint shall be made under penalty of perjury.***

2 Unsworn Falsification; Electronic Filings Added. Amend RSA 641:3 to read as follows:

641:3 Unsworn Falsification. A person is guilty of a misdemeanor if:

I. He ***or she*** makes a written ***or electronic*** false statement which he ***or she*** does not believe to be true, on or pursuant to a form bearing a notification authorized by law to the effect that false statements made therein are punishable; or

II. With a purpose to deceive a public servant in the performance of his ***or her*** official function, he ***or she***:

(a) Makes any written ***or electronic*** false statement which he ***or she*** does not believe to be true; or

(b) Knowingly creates a false impression in a written application for any pecuniary or other benefit by omitting information necessary to prevent statements therein from being misleading; or

(c) Submits or invites reliance on any writing which he ***or she*** knows to be lacking in authenticity; or

(d) Submits or invites reliance on any sample, specimen, map, boundary mark, or other object which he ***or she*** knows to be false.

III. No person shall be guilty under this section if he ***or she*** retracts the falsification before it becomes manifest that the falsification was or would be exposed.

3 Effective Date. This act shall take effect upon its passage.

2003-0151s

AMENDED ANALYSIS

This bill allows for the filing of complaints for violation-level offenses without a police officer's signature or oath and provides that electronic submission of a false statement shall be charged as unsworn falsification.

Senate Judiciary
March 6, 2003
2003-0587s
04/10

Amendment to SB 40

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

AN ACT relative to filing of complaints for violation-level offenses and making the electronic submission of a false statement chargeable as unsworn falsification.

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

1 Jurisdiction and Procedure; Complaints; Filings for Violation-Level Offenses. Amend RSA 592-A:7 to read as follows:

592-A:7 Complaints. Criminal proceedings before a district [~~or municipal~~] court shall be begun by complaint, signed and under oath, addressed to such court, briefly setting forth, by name or description, the party accused and the offense [~~with which he is~~] charged, ***provided that a complaint filed by a police officer, as defined in RSA 188-F:23, I, for a violation-level offense shall not require a signature or an oath, and provided that any statements made in such complaint shall be made under penalty of perjury.***

2 Unsworn Falsification; Electronic Filings Added. Amend RSA 641:3 to read as follows:

641:3 Unsworn Falsification. A person is guilty of a misdemeanor if:

I. He ***or she*** makes a written ***or electronic*** false statement which he ***or she*** does not believe to be true, on or pursuant to a form bearing a notification authorized by law to the effect that false statements made therein are punishable; or

II. With a purpose to deceive a public servant in the performance of his ***or her*** official function, he ***or she***:

(a) Makes any written ***or electronic*** false statement which he ***or she*** does not believe to be true; or

(b) Knowingly creates a false impression in a written application for any pecuniary or other benefit by omitting information necessary to prevent statements therein from being misleading; or

(c) Submits or invites reliance on any writing which he ***or she*** knows to be lacking in authenticity; or

(d) Submits or invites reliance on any sample, specimen, map, boundary mark, or other object which he ***or she*** knows to be false.

III. No person shall be guilty under this section if he ***or she*** retracts the falsification before it becomes manifest that the falsification was or would be exposed.

3 Effective Date. This act shall take effect upon its passage.

2003-0587s

AMENDED ANALYSIS

This bill allows for the filing of complaints for violation-level offenses without a police officer's signature or oath and provides that electronic submission of a false statement shall be charged as unsworn falsification.

Committee Minutes

Judiciary Committee

Hearing Report

To: Members of the Senate

From: Susan Duncan
Senior Legislative Aide

Re: **SB 40** – *AN ACT relative to filing of complaints for violation-level offenses.*

Hearing date: January 28, 2003

Members present: Senators Peterson, Foster, Clegg and Roberge

Members absent: Senator Sapareto

Sponsor(s): Senator Flanders and Representative Welch

What the bill does: This bill allows for the filing of complaints for violation-level offenses without a police officer's signature or oath.

Who supports the bill: Senator Flanders; Assistant Commissioner John Stephen, Department of Safety; Chief Scott Hilliard of Northfield for the NH Chiefs of Police; Senator Eaton

Who opposes the bill: No one spoke in opposition

Summary of testimony received:

- This legislation allows the misdemeanor violations for "non must appear" tickets to be without a signature documented by a Justice of the Peace.
- Having the signatures certified is time-consuming for the officers and the Department of Safety must have all of their dispatchers become Justices of the Peace.
- Tickets would still indicate the officer's name and badge number.
- It is imperative to move beyond requiring each officer to sign tickets in order to implement the "Car 54 project." This project, being done in conjunction with UNH, would have tickets electronically filed with the court.

- Senator Foster asked if rather than having the signature and Justice of the Peace acknowledgement on each ticket, could the tickets be printed with a statement on the bottom that the information contained is true "under penalty of perjury." Assistant Commissioner Stephen said that he thought this was a good idea and that he could have the tickets designed with this on there. However, he said he didn't think it was necessary because perjury or an un-sworn falsification is already covered elsewhere in statute (RSA 641: 3 or 265:87) and the computer system is really difficult for someone to break into. It is currently a misdemeanor to have a written false statement and these are punishable.
- Assistant Commissioner Stephen noted that RSA 641- 3 could be amended to state "a written or electronic" false statement.
  - He said that he would inform the Department of Safety's I. T. division to have the e-tickets designed with a statement or oath.
- The Town of Bow will be doing a pilot project with the Department of Safety on the new electronic tickets.
- Assistant Commissioner Stephen also requested that the bill be amended to make it effective upon passage.
- In a follow up to a question from Senator Peterson regarding a typographical error in entering the data for an e-ticket, Assistant Commissioner Stephen noted that the statute includes "knowingly" and that it would have to be proven that the officer knowingly provided false information.

Funding: No financial impact

Future action: The committee took the bill under advisement.

sfd
[file: SB 40 report]
Date: January 30, 2003

Date: January 28, 2003
Time: 11:40 a.m.
Room: State House, Room 105-A

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

SB 40 relative to filing of complaints for violation-level offenses

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

The Chair, Senator Peterson, opened the hearing on SB 40 by calling on Senator Flanders, prime sponsor of the bill, to provide testimony.

Senator Robert B. Flanders, D. 7: Thank you, Mr. Chairman and members of the Committee. I know you are behind time. I will be very quick. For the record, my name is Bob Flanders, representing Senate District #7. I'm sure that those of you who know me realize that I'm not very sharp when it comes to computers, but I try to at least keep up with times of what other people can do, not what I can do.

Yesterday, I had the honor and the thrill to sit in an experimental cruiser that all of you should see. It is an experiment that is being done through UNH. It is a completely voice orientated cruiser. You can keep both hands on the wheel and do anything in that cruiser by voice control. In the cruiser is a computer wherein, this bill needs to be passed so that they can, instead of going through all the paperwork of warrants and summons, it can be done by computer.

Now I have had two or three calls from people saying, well you won't know who your accuser is and that's not so. There are people behind me who are going to testify much clearer on this than I probably will. The name of the arresting officer will still be on the certificate. It won't be signed, but the name, his or her name will be on it. Also, you will meet your accuser at the time of court hearings. So, it really doesn't do anything, my understanding of the bill, other than it is not a signature and doesn't have to be notarized. If we are going to move ahead as our Governor says we are going to move ahead

with computers and modernize the State of New Hampshire, this is something we have to do to start that motion to computerize the state in my opinion.

Thank you.

Senator Andrew R. Peterson, D. 11: Senator Clegg for a question.

Senator Robert Clegg, Jr., D. 14: Senator Flanders, as I understand what this does is that it stops current practice of having to have a Justice of the Peace notarize the signature on the tickets and that's all it does. Correct?

Senator Robert B. Flanders, D. 7: That is my understanding. It just amends it to just do away with the Justice of the Peace. That's correct.

Senator Robert Clegg, Jr., D. 14: Thank you.

Senator Andrew R. Peterson, D. 11: Further questions? Hearing none, thank you for your testimony.

Senator Robert B. Flanders, D. 7: Thank you.

Senator Andrew R. Peterson, D. 11: I will call on John Stephen representing the Department of Safety.

Assistant Commissioner John Stephen: Thank you, Mr. Chairman. Very brief. We support this bill. We asked the Senator to put this bill in as part of our J-1 project, Justice One, which is the criminal justice integration network, which will probably be completed within the next few years, a couple of years, hopefully, but it may end up being more like five or six years.

Really, it is the electronic exchange of tickets, the non-must appear tickets out there that daily are issued by police officers in this state. Our troopers issue numerous tickets. We are going to end up doing all of them electronically.

The car that Senator Flanders is talking about is Car 54 Project, which we have worked with UNH in a collaboration. It is a model for the United States. It's a project that all, a lot of major departments throughout the country are waiting for the results so that they can integrate computer technology within the cruiser.

There's not going to be any more need to write a ticket up. Everything will be done on the lap top and the computer generate directly to headquarters. It

would come into the Financial Responsibility Bureau and sent from there electronically right to the court. So, everything would be documented and then, when there is a disposition, it would be sent electronically back to Safety.

So, in order to get that network up and running, this is an absolute necessity because, if you are going to continue to require Justice of the Peace, which we have troopers today who write tickets. I know the midnight shift, they sit around and wait. They will write a bunch of tickets and then have those JPd. So, we have to have all our dispatchers pay the $50 cost just to have JP requirements so they can JP these tickets and they are non-must appear plea by mail tickets. For years we have had that requirement and I don't think it's necessary. It's not a constitutional issue and the officer is going to appear in court anyways if the matter is contested and that officer can swear to that complaint in front of the judge. He can indicate that he has written that ticket. The officer's name, badge number and electronic number will all be on the ticket and there will be security built into the system. Because we feel it may still raise some issues, we decided let's try it as a first step in the non-must appear cases, the non-misdemeanors, your violation level offenses because that's really where we want to begin this project.

I would be happy to answer any questions.

Senator Andrew R. Peterson, D. 11: Any questions from the Committee? Senator Foster?

Senator Joseph A. Foster, D. 13: I know in certain federal matters, rather than having a JP or Justice of the Peace, there is a statement at the bottom, an affidavit and some other things that reference some federal provision, pains and penalties, or something like that.

Assistant Commissioner Stephen: Correct.

Senator Joseph A. Foster, D. 13: Would that solve any of the problems? Take out the JP and just have a statement at the bottom of the form or the ticket so that somebody signing it... I'm not trying to suggest that anybody would write a ticket in bad faith, but that apparently is what the oath is there for.

Assistant Commissioner Stephen: It's a really good suggestion. I forgot to mention, Senator, that for some reason, this same bill was in the House in Criminal Justice Committee and I have seen that on a couple bills this year. So, I'm not sure why, but, in any event, I testified a few weeks ago and that same issue was raised. I think it is a good question; however, if you look at

the criminal code, there are provisions in there for false statements that would be implicated anyways. So, I don't believe it's necessary because we already have that ability on a Class A misdemeanor offense to arrest and prosecute anyone that does something that you are talking about.

Again, in this day and age, when we get to the point of computerization and the way the system is going to be built with security, it would really be very difficult for anyone to break into that system and actually get into the cruiser or get into the laptop, know the security code. I think it is going to enhance the privacy concerns and the reliability and credibility of that ticket. Even the issues today that you talk about that occur, those cases are handled under the criminal code and I don't see law enforcement coming in asking to change that criminal code, so I assume it's working.

Senator Andrew R. Peterson, D. 11: Thank you. Further questions from the Committee? Seeing none, thank you.

Assistant Commissioner Stephen: Thank you.

Senator Andrew R. Peterson, D. 11: Chief Scott Hilliard representing the New Hampshire Chiefs of Police speaking in favor. Good morning.

Chief Scott Hilliard: Thank you. Good morning, Mr. Chairman and members of the Committee. My name is Scott Hilliard. I'm the Chief of Police for Northfield, New Hampshire and I'm here in favor of this bill representing the New Hampshire Chiefs of Police Association and I, as others, will be very brief.

A couple of points that we felt were important were, as it stands now, there are occasions when an officer might be getting off a shift, as you heard from Commissioner Stephen, and he may leave the building. If we have to arraign somebody on a violation level offense and that person has gone and he hasn't signed the complaint, and believe me it happens more than not, we call them back, which, from my perspective, costs money because it is overtime. It is my opinion with twenty-three years as a police officer that I think the oath was administered because civilians could swear to complaints as well. I think just to keep people in a truthful mode, if you will.

I think this is a great idea, specifically with the J-1 Project that we hope to be on line with in a couple of years and I think it would be very important and I would urge your support. I will be very happy to take any questions.

Senator Andrew R. Peterson, D. 11: Questions from the Committee? I guess my only question is I don't see any terrible problem with being flexible

about this at this level of offense and seeing how it works. Is there way that the combining what Senator Foster said, that the form itself could indicate that the keystroke obligates the officer to the information within and so forth? It's a matter that you don't have at this level, an actual signed document from the person accusing you of speeding or whatever it is I guess is, in essence, the idea. Do you have any discomfort with the idea of simply our communications age taking over?

Chief Hilliard: No, not at all. In fact, I would think that would be fine, Mr. Chairman, a verbiage on the bottom that checks that the officer attests. As Commissioner Stephen said...

Senator Andrew R. Peterson, D. 11: Via submission.

Chief Hilliard: Right. That would be a false swearing if somebody alleged something in a complaint that was inappropriate.

Senator Andrew R. Peterson, D. 11: My further question would be, is that something that needs to be built into this bill or is that something that could be handled by rules?

Chief Hilliard: The only holdup I would see would be financial because the forms are already preprinted and preprinted in large quantities. I would think that may be a holdup from that end because we have to reprint those forms.

Senator Andrew R. Peterson, D. 11: Perhaps I will ask Commissioner Stephen is he could give us some edification on that point. Thank you for your testimony. Further questions? Seeing none. Commissioner Stephen, would you be willing to respond to that?

Assistant Commissioner Stephen: Sure. If I may, the statute that I was referring to in the criminal code is RSA 641:3. It pertains to unsworn falsification. 641:2 is false swearing. That statute makes it a misdemeanor if you make a false statement under oath where you swear and affirm to the truth of a statement previously made and you don't believe it to be true. The oath issue is not present here, so it really would be under that section 3, unsworn falsification, which is a misdemeanor, and it states if a person makes a written false statement which he does not believe to be true or pursuant to a form bearing a notification authorized by law to the effect that false statements made therein are punishable.

So, with that in mind, we could, when we are putting together the J-1 Project, we could put a statement on the form, which would be electronic ticket that

indicates what you are trying to accomplish. And maybe I would recommend that in conjunction with us doing that, you amend 641:3 to state makes a written or electronic false statement to some extent so that it is applying to electronically transmitting information as well.

And, on our end, I could report back to you when we have completed our ticket design phase, which now I know in a few months they are supposed to be completed. The Bow Police Department right now is currently the first agency that is going to do the pilot testing with us. So, when we do that ticket, I can make sure just by simply informing our IT division that that's the way we want to issue these tickets.

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

Senator Robert Clegg, Jr., D. 14: Bow Police is what kind of a pilot? The electronic tickets?

Assistant Commissioner Stephen: Yes.

Senator Robert Clegg, Jr., D. 14: But, the bill, as written, would also, currently the third shift officers that have to hang around waiting for a JP to sign off on their tickets. If this bill passed now without that amendment, it would benefit a lot of communities.

Assistant Commissioner Stephen: Absolutely. That's a whole nother (sic) issue and it's something the State Police had asked us to put in a couple years ago and we prioritized our legislation and didn't bring that forward because we had a lot of pieces of legislation at that session that they requested it and that request hasn't come back. But, I know the State Police troopers would be very, very happy if we just had that requirement in law. I can meet your demands doing that on our own when we put the system together, but if you give us the tools in that false swearing statute that I think would strengthen that law, then I think that we will achieve your result.

Again, I think the effective date here... This is not a criminal punishment issue and I think the effective date should be upon passage because what you are talking about, Senator Clegg, is what law enforcement needs today, not January 1st.

Senator Andrew R. Peterson, D. 11: The question that comes to my mind is the instance where you have a mistake made on what's typed into a machine or what is put down at a point in time and perhaps a concern for the officer to be caught in an electronic false statement circumstance through simple

human error. Right now, although I understand you have the additional expense of JPs and overtime expense and so forth. There is an opportunity for at least to take advantage of, doing a second check of what's written. Are we losing that in the process here? Do we need to preserve it in any way?

Assistant Commissioner Stephen: Absolutely not. Again, the unsworn falsification statute, which I referred to, already is on the books; it has been on the books for a number of years. The element, the mens rea that applicable is knowing, awareness, know and acknowledge basically in his mind that the statement is not true, where it says makes a false statement, which he does not believe to be true. That's the element you have to prove and those cases, again, proving knowingly.

Those cases are cases that I think that we would all hear about. They are publicized. This is an officer that has clearly abused his or her public trust. I don't see those types of cases, but when it happens, the Attorney General's Office through their Public Integrity Unit, would obviously investigate it, but would have to still prove that that officer today didn't believe it to be true. That law is going to be on the books tomorrow, the next day unless you change it. Whatever we do with this bill, I just think that you still are going to have that authority anyway, so this would help law enforcement by removing what I believe is, now I don't want to say pure technical requirement, but is a more technical requirement than is necessary today. Again, we are not asking for that on misdemeanors, which again, you are talking imprisonment. You are not talking about any chance of imprisonment here at all.

Senator Andrew R. Peterson, D. 11: So, your recommendation to this Committee would be to amend the bill to be effective upon passage and do the change to 641:3?

Assistant Commissioner Stephen: Yes. To apply to electronic and I can take care of the intent I'm gathering on the ticket itself.

Senator Andrew R. Peterson, D. 11: Thank you. Further questions from the Committee? Hearing none, thank you for your testimony.

Assistant Commissioner Stephen: Thank you.

Senator Andrew R. Peterson, D. 11: I have Senator Tom Eaton having signed on in favor of this bill. I have no one else to testify. So, therefore, we will close the hearing on SB 40.

Hearing concluded at 12:10 p.m.

Respectfully submitted,

L. Gail Brown
Senate Secretary
2/3/2003

Speakers

SENATE JUDICIARY COMMITTEE

Date 1/28/03 Time 11:00 a.m. Public Hearing on **SB 40**

Relative to filing of complaints for violation-level offenses

Please check box(es) that apply.

SPEAKING	FAVOR	OPPOSED	NAME (Please print)	REPRESENTING
☑	☐	☐	BOB FLANDERS	SEN DIST 7
☑	☑	☐	John Stephen	Safety
☐	☑	☐	Sen. Tom Eaton	
☑	☐	☐	Chief Scott Hilliard	NH Chief's of Police
☐	☐	☐		
☐	☐	☐		
☐	☐	☐		
☐	☐	☐		
☐	☐	☐		
☐	☐	☐		
☐	☐	☐		
☐	☐	☐		
☐	☐	☐		
☐	☐	☐		
☐	☐	☐		
☐	☐	☐		
☐	☐	☐		
☐	☐	☐		
☐	☐	☐		
☐	☐	☐		
☐	☐	☐		

Testimony

Section 641:3

641:3 Unsworn Falsification. – A person is guilty of a misdemeanor if:

I. He makes a written false statement which he does not believe to be true, on or pursuant to a form bearing a notification authorized by law to the effect that false statements made therein are punishable; or

II. With a purpose to deceive a public servant in the performance of his official function, he:

(a) Makes any written false statement which he does not believe to be true; or

(b) Knowingly creates a false impression in a written application for any pecuniary or other benefit by omitting information necessary to prevent statements therein from being misleading; or

(c) Submits or invites reliance on any writing which he knows to be lacking in authenticity; or

(d) Submits or invites reliance on any sample, specimen, map, boundary mark, or other object which he knows to be false.

III. No person shall be guilty under this section if he retracts the falsification before it becomes manifest that the falsification was or would be exposed.

Source. 1971, 518:1, eff. Nov. 1, 1973.

Committee Report

STATE OF NEW HAMPSHIRE

SENATE

REPORT OF THE COMMITTEE

Date:

THE COMMITTEE ON Judiciary

to which was referred Senate Bill 40

AN ACT relative to filing of complaints for violation-level offenses

VOTE: 5-0

2003-0587s

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

SB40 Docket

Next|Prev|Results List|Main|Bill Status

Bill Title: (New Title) relative to filing of complaints for violation-level offenses and making the electronic submission of a false statement chargeable as unsworn falsification.

Date	Body	Description
1/9/2003	S	Introduced and Ref. to Judiciary; SJ 2, Pg.25
1/17/2003	S	Hearing; January 28, 2003, Room 105-A, SH, 11:00 a.m.SC4
3/7/2003	S	Committee Report; Ought to Pass with Amendment{0587},(New Title), [03/13/03]; SC13, Pg.8-9
3/13/2003	S	Committee Amendment{0587},(New Title), AA, VV; SJ 8, Pg.87-88
3/13/2003	S	Ought to Pass with Amendmnet{0587},(New Title), MA, VV; OT3rdg; SJ 8, Pg.88
3/13/2003	S	Passed by 3rd Reading Resolution; SJ 8, Pg.101
3/13/2003	H	Introduced and ref to Crim Just & PSfty; HJ24, p630
4/2/2003	H	Hearing Apr 15 10:00 RM204,LOB
4/30/2003	H	Prop Comm Am{1438}; HC 39, p1244
4/30/2003	H	Maj Report OTP/AM for May 15 (Vote 11-0;CC)
5/15/2003	H	Removed from Consent Cal, req Rep Marple; HJ 42,p1309
5/15/2003	H	Comm Am, AA VV; Passed with Am VV; HJ 42, p1348 + 1354
5/29/2003	S	Sen. Peterson Concur with House Amendment{1438}, MA, VV; SJ 18, Pg.485
6/5/2003	S	Enrolled; SJ 19, Pg.682
6/5/2003	H	Enrolled;
6/17/2003	S	Signed by the Governor on 6/17/2003 Eff- 6/17/2003 Chap- 0158

Next|Prev|Results List|Main|Bill Status

Docket Abbreviations