Bill as Introduced

HB 1324 - AS INTRODUCED

1998 SESSION

98-2003
01/09

HOUSE BILL ***1324***

AN ACT requiring parental notification before abortions may be performed on certain minors.

SPONSORS: Rep. Adams, Merr 9; Rep. Lyman, Carr 5; Rep. Boyce, Belk 5; Rep. Flora, Hills 15; Rep. Letendre, Hills 15

COMMITTEE: Judiciary and Family Law

ANALYSIS

This bill prohibits any physician from performing an abortion on certain minors or incompetent females without giving 48 hours' written notice, in person or by certified mail, to a parent or guardian.

This bill provides a procedure for alternate notice in certain circumstances.

A violation of these requirements constitutes a class B misdemeanor.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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 1324 - AS INTRODUCED

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord One Thousand Nine Hundred and Ninety-Eight

AN ACT requiring parental notification before abortions may be performed on certain minors.

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

1 Legislative Purpose and Findings.

I. It is the intent of the legislature in enacting this parental notification provision to further the important and compelling state interests of protecting minors against their own immaturity, fostering the family structure and preserving it as a viable social unit, and protecting the rights of parents to rear children who are members of their household.

II. The legislature finds as fact that:

(a) Immature minors often lack the ability to make fully informed choices that take account of both immediate and long-range consequences.

(b) The medical, emotional, and psychological consequences of abortion are serious and can be lasting, particularly when the patient is immature.

(c) The capacity to become pregnant and the capacity for mature judgment concerning the wisdom of an abortion are not necessarily related.

(d) Parents ordinarily possess information essential to a physician's exercise of best medical judgment concerning the child.

(e) Parents who are aware that their minor daughter has had an abortion may better ensure that she receives adequate medical attention after her abortion.

III. The legislature further finds that parental consultation is usually desirable and in the best interests of the minor.

2 New Subdivision; Parental Notification Prior to Abortion. Amend RSA 132 by inserting after section 21 the following new subdivision:

Parental Notification Prior to Abortion

132:22 Definitions. For purposes of this subdivision, the following definitions shall apply:

I. "Abortion" means the use of any means to terminate the pregnancy of a female known to be pregnant with knowledge that the termination with those means will, with reasonable likelihood, cause the death of the fetus.

II. "Emancipated minor" means any minor female who is or has been married or has by court order or otherwise been freed from the care, custody, and control of her parents.

III. "Fetus" means any individual human organism from fertilization until birth.

IV. "Guardian" means the guardian or conservator appointed under RSA 464-A, for pregnant females.

V. "Minor" means any person under the age of 17.

VI. "Parent" means a parent or guardian of a pregnant minor.

132:23 Notification Required.

I. No abortion shall be performed upon an unemancipated minor or upon a female for whom a guardian or conservator has been appointed pursuant to RSA 464-A because of a finding of incompetency, until at least 48 hours after written notice of the pending abortion has been delivered in the manner specified in this section.

II. The written notice shall be addressed to the parent or guardian at the usual place of abode of the parent or guardian and delivered personally to such parent or guardian by the physician or an agent.

III. In lieu of the delivery required under paragraph II, notice may be made by certified mail addressed to the parent or guardian at the usual place of abode with return receipt requested and with restricted delivery to the addressee, which means the postal employee shall only deliver the mail to the authorized addressee.

IV. For purposes of this subdivision, time of delivery shall be deemed to occur at noon on the next day on which regular mail delivery takes place, subsequent to mailing.

132:24 Alternate Notification.

I. If the pregnant minor declares in a signed written statement that she is a victim of sexual abuse, neglect, or physical abuse by either of her parents or her legal guardian, then the attending physician shall give the notice required by this subdivision to a brother or sister of the minor who is over 21 years of age, or to a stepparent or grandparent specified by the minor. The physician who intends to perform the abortion shall certify in the minor's medical record that the physician has received the written declaration of abuse or neglect.

II. Any physician relying in good faith on a written statement under this section shall not be civilly or criminally liable under any provisions of this subdivision for failure to give notice.

132:25 Penalty. Any person who performs an abortion in violation of this subdivision shall be guilty of a class B misdemeanor. Such person may also be sued in a civil action by a person wrongfully denied notice. A person shall not be held liable under this section if the person establishes by written evidence reliance upon evidence sufficient to convince a careful and prudent person that the representations of the pregnant minor regarding information necessary to comply with this section are bona fide and true, or if the person has attempted with reasonable diligence to deliver notice, but has been unable to do so. A physician relying in good faith on a written statement under RSA 132:24 shall not be held liable for failure to give notice.

132:26 Severability. If any provision of this subdivision or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect the provisions or applications of this subdivision which can be given effect without the invalid provisions or applications, and to this end, the provisions of this subdivision are severable.

3 Effective Date. This act shall take effect January 1, 1999.

Speakers

SIGN UP SHEET

To Register Opinion If Not Speaking

Bill # 1324 Date 1/14 FILE COPY

Committee JV

** Please Print All Information **

Name	Address	Phone	Representing	(check one) Pro	Con
Elizabeth Duncan	279 Cartier St Manchester		NHCC & Diocese of NH	✓	
Janet A Wall, Diocesan Respect Life Office			Diocese of Manchester	✓	
Amy Balger, Planned Parenthood of Northern New England					✓
Rep. Philip Cobin	Grafton 11			✓	
Hilary Moskow	Concord	225-6516			✓
Peg Dobbie	Ashland	968-7959	NARAL-NH		✓
Carolyn Jones	Cornish	4463439	NARAL-NH		✓
Jan Menahan	27 Rocky Pt Dr., Bow NH		Self		✓
Ruth Cherry	14 Juniper Ridge Henniker NH	428-3702	NH Women's Action		✓
Susan McLane	203 Pleasant Rd Concord		NARAL		✓
Rep Laura Pantelakos	Parts. NH.				✓
Rep Lerie Morelli, Rock 31, Parts.					✓
Rep. Norma A Sabelle	Rock 13				✓
GRETCHEN GRAPPONE	1 STERLING PLACE BOW 03304				✓
Rep Susan Almy	Lebanon GR14				✓
Jaleah McLane	Concord				✓
Charles Hutchins	Dover, NH			✓	
Sen K Wheeler	District 21				✓
Sen McCarley	District 6				✓
Sen Gatsas	District 11			✓	
Rep Jim McGough	Hills-18			✓	
Mary Sayer	Concord	228 4635			X
Mary Faiella	Northwood NH		self & family	✓	

SIGN UP SHEET

To Register Opinion If Not Speaking

Bill # 1324 Date 1-14-98

Committee Jud FL

** Please Print All Information **

Name	Address	Phone	Representing	(check one) Pro	Con
Rep. John Root	Grafton-6			X	
Cynthia A. McCarthy	Portsmouth		myself		✓
Mitch Kopacz	Hobbs Rd Pelham		Self	✓	
Mike Biundo	110 1/2 Derry St		myself	✓	
J. Gail [illegible]	51 W. Elmwood Ave		self		✓
Gail Peterson	Box 1120, Merrimack NH		Self	X	
Jim Phelan	19 Mendelssohn Dr Hollis		Self	X	
Dick Richelo	P.O. Box 656, #27 Intervale Rd, W. Ton	(603) 654-5492	Self	X	
Al Rubega	77 S. State St. Concord, NH 03301			X	
Dave Marra	35 Carriage lane Milford NH	6725436	Self	X	
Guy Contois	16 melody Ln Pelham NH.			X	
Anthony F Amato	6 thompson, Hookset			X	
Andrea Goldberg	101 School St Concord		self		X
Rep. Amanda Merrill	Straff 8				✓
Daniel C. Itse				✓	
Dan Prizio	557 Beauty Hill Rd Barnstead, NH 03218			✓	

SIGN UP SHEET

To Register Opinion If Not Speaking

Bill # ______________________ Date ______________________

Committee ______________________

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

Name	Address	Phone	Representing	Pro (check one)	Con (check one)
ROLAND A. HUEBER	RT. 1 GILMANTON, BOX 1443	267-8557		X	

Hearing Minutes

HOUSE COMMITTEE ON JUDICIARY AND FAMILY LAW

PUBLIC HEARING ON HB 1324

BILL TITLE: requiring parental notification before abortions may be performed on certain minors.

DATE: Jan. 14, 1998

LOB ROOM: 206-208 **Time Public Hearing Called to Order:** 9:35

Time Adjourned: 12:15

(please circle if present)

Committee Members: Reps. J. McCarthy, Woods, Bickford, J. Brown, Clay, T. Colburn, Jacobson, Keans, Letendre, Mirski, K. Smith, Pfaff, Peterson, Bergin, Wall, DePecol, Allison, L. Johnson, Moynihan, I. Pratt, Richardson and M. Smith.

Bill Sponsors: Reps. Adams, Lyman, Boyce, Flora, Letendre

TESTIMONY

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

Rep. S. Adams, sponsor, supporting

-potential problems - child molestation, molester unknown to parents could arrange for an abortion - 16 year old daughter gets pregnant - takes staff or peer advice and gets abortion unknown to parents - 15 year old complies with wishes and she has complications later - parents will be at a loss

-this bill is needed for basis of "family first" philosophy

Rep. Landy Lyman, sponsor, supporting

-this bill has nothing to do with choice, it is about parental notification

-pressure from pregnancy, money, etc

-years later these girls often have emotional trauma

Question - Rep. A. Peterson - do you think a bill like this would increase back door abortions?
Answer - No
Rep. Barbara Richardson, what about limits of informing, brother, sister, grandmother
Answer - expand to any adult

*Rep. Kathleen Flora, sponsor, supporting

-ask committee to think back to when they were 14 years old and invincible and how wise your decision making was

-632: aggravated felonious sexual assault

-626 criminal code

Rep. Marjorie Smith - how does this relate to education in schools?

Answer - personally in favor

Rep. T. Colburn - this would not restrict having an abortion without parents knowledge
Answer - parental notification

Rep. Andrew Peterson - did you say a child of 14 couldn't make choice
Answer
Rep. Andrew Peterson - page 2 16-22 specific - if it does not get to level of criminality, should it expand
Answer - family member
Rep. Irene Pratt - even if not a written statement, shouldn't physician notify in case of criminality
Answer, yes
Question Marjorie Smith - doesn't notice kick in by bill only with written statement
Answer - keep the family involved
Question - Rep. Irene Pratt - do you see anyone else as an outlet to avoid friction?
Answer - friction always a part of relationships

Rep. Evelyn Letendre - co-sponsor, supporting
-this is not an anti-abortion bill
-bill does not force minor to notify offending parent
-life altering procedure which we should monitor just as we do other acts involving minors

Question: Rep. Susan Clay, could we have more abuse by encouraging the written statement by child making false accusations
Answer - I suppose so - but hope not

*Sheila Evans - opposed - NH Family Planning Council
-cannot mandate trust and communication between family members
-teens who wish to maintain confidentiality will be forced to seek back door procedures

Question: Rep. Irene Pratt - do you track family involvement in decision making?
Answer - communications important value, but not aware of individual tracking

Question - Rep. T. Colburn - does bill require permission or consent?
Answer - the follow through of the bill - those minors most likely not to confide are those most in danger

Question Rep. T. Colburn - would you favor when other people notified?
Answer - no don't want minor making up a reason to seek own option

Question: Rep. K. Smith - what about current laws that protect minors and chance of false charges?
Answer - less need for because no written permission

*Rep. Carol Moore - opposing
-pro-family as a practitioner
-over 70% of parents are notified in states with our without parental notification laws

Philip Morrison, NH Right to Life - supporting
-parents know best when it comes to children
-virtually every other medical procedure requires parental notification
-need input of parents to make most important decision of life

Question - Rep. Lionel Johnson - is this an abortion bill or not?
Answer - no - parents have rights and responsibilities to child

Rep. N. Sabella - oppose
-page 1 findings are questionable
-placing undue burden on young women who make mistakes through their own immaturity or others
-we should be life affirming which does not always mean carrying a pregnancy to term
-full-term pregnancy is more dangerous than abortion
-parental care does not biblically mean only in legal sense
-we all should be concerned about the youth of our society
-we aren't really showing compassion to the young women if we do not choose to deal with the young men who do the impregnating

Question - Rep. Kevin Smith
-which of page 1 do you disagree with?
Answer - some may be fact, some may be opinion
-not going to play word games
-the intention of the bill is not life affirming
-disagree with a) not complete - many adults do not make informed decisions
-this bill is not caring it is punitive

*Monsignor Bolduc - supporting
-more critical when issue impacts minor - parents and legal guardians be allowed to become involved in decision
-secret abortion promotes family problems

Question - Rep. Terry Pfaff - line 24 - page 1 would you be likely to support other issues in bill or eliminate and leave only parental notification?
-eliminate "fetus" for instance
Answer - agree with definitions but support stripped bill

Rep. Martha Fuller Clark - opposing
-seen many times before
-abortion is a private matter between woman and doctor flawed, ill founded

Sen. Rubens, supporting
-pro-choice Republican
- believe parent should be fully informed in all health aspects including taking of medication
-abortion seems to be the only aspect that is different under laws dealing with minors
-other states have other options for by-pass procedure

Rep. Bryce, co-sponsor
-case of gym teacher who impregnated girl took her to clinic and arranged for abortion
-in family had an uncle who abused 3 girls in family and they never told

Question - Rep. Sandra Keans - if they couldn't tell of molestation, how could they tell about pregnancy?
Answer - they were threatened - there is no perfect bill
Answer - need loophole in bill so that don't have to file a criminal question
Rep. Kevin Smith - are there numbers that tell how many abortions are because of sexual abuse?

*Elizabeth Andrews,
-upper middle-class woman who has always had an option
-took 2 years for her to share with parents circumstances of best friends abortion

Stanley Polan, supporting, NH Knights of Columbus, Life Chairman
-bill speaks to value of parents in child's life
-would not support any adult, but someone who stands in place of family
-bill creates opportunity for dialogue

Clare Ebel, Ex. Dir. NHCLU - opposing
-pg 1, line 5 reside with child, not parent
-II rubbish
-line 26, 27 NH has no emancipation law
-line 30 - law refers to adult women not minors
-comatose woman on Long Island (example of meddling guardianship)

Question - Rep. Andrew Peterson - multitude of states passed but under challenge judicial by-pass has been required in all cases
Rep. A. Peterson - constitutionally?
Answer - when no judicial by-pass - been struck down

Ellen Cole - support
-notification not consent
-will support article from Minnesota Public Health
-abortion is only a medical procedure

*Stephen Birchall, lobbyist, Ex. Dir. N.H. Family Planning Council
-flawed and unthought out positions
-definition of "fetus" unique lst and only state

Question: Rep. T. Pfaff - would you be available to work on a bill?
Answer - don't see how this can be cleaned up

Fran Wendleboe, supporting
-clean up bill by making it illegal for any medical procedure, eliminate abortion from the bill
-multitude of areas in law where we limit choice
-thousands of people are waiting to adopt children

Jennifer Bills, NH NARAL - opposition deferred her time to Atty. Sabino, Massachusetts
-the panel is dealing with by-pass
-most likely unconstitutional with no judicial by-pass
-minor living at home is under control
-unwise: notice and consent are one and same in effect
-2/3 over 16 - 80% in younger involve parents
-numbers have not change in Mass as a result
-alternative section will not change behavior - even shown in cases that have been to court
-restricted mail is a joke
-in Mass. 97% of teens found mature

Rev. F. Potter, Episcopal priest, opposing
-75% of women facing pregnancy consult parents
-as a pastor has talked to women who face pregnancy
-AMA Council on Ethical Affairs 1.5 million cases of abuse and many occur because of the pregnancy issue

Rep. Kevin Smith - do you know how many are consulting with parents, where do the numbers come from?
Answer -

Rep. Murch, Nashua
-as a legislative body we continually put restrictions on teenagers
-maybe we should have fetuses wear helmets

Margaret Landsman, Planned Parenthood
-opposing
Question - Rep. Kevin Smith - where do numbers come from on out-of-state?
Answer - Boston University Study

Adam Pricie, Barnstead
-supports, 17 years old
-people commit murder, should we eliminate laws?
-law might decrease abuse, because it would be notice to the public

Patti Baum, opposed, Concord Feminist Health Center
-the center sees many Massachusetts minors, because they cannot speak with their parents
-a 48-hour waiting period can create more difficulty

Ann Conceison, supporting
-need to keep

Mrs. Frances Witcomb, Dover, supporting

Daniel C. Itse, Femont, supporting
-each woman didn't consider pre-marital consequences, why would she consider abortion consequences

Warren Goddard, Portsmouth Right to Life, supporting
-many parents find that teens attempt suicide because of abortion
-this bill needed by families
-no vested interest unpaid volunteers

Respectfully submitted,

Rep. Sandra B. Keans, Clerk

SPEAKING - SUPPORTING

Rep. George Murch, Nashua
Ed Holdgate, 63 Royal Range, Sandown, NHRTL
Fran Wendelboe, RFD #1, New Hampton
Ellen Kolb, 5 Sharon Avenue, Merrimack
Stanley M. Polan, 25 Wethersfield Rd., Nashua, N.H. State Council, Knights of Columbus
Rep. Boyce, Belk #5
Sen. Rubens
Monsignor Norman Bolduc, Diocese of Manchester, 153 Ash St., Manchester
Philip Morrison, 42 Dustin Tavern Rd., Weare, N.H. Right to Life
Evelyn Letendre, Bedford
Rep. Kathleen Flora, Dist #15
Rep. Randy Lyman, Carr. Dist #5

Rep. Stephen Adams, Pittsfield
Warren Goddard, 8 Wilson Road, Portsmouth, N. H. Right to Life
Adam Pricie, 557 Beauty Hill Rd., Barnstead
Ann Conceison, 31 Glastonbury Dr., Nashua
Frances Witcomb, 6 Northway Cir, #17, Dover
Daniel C. Itse, 20 Kelsey Dr., Fremont

SPEAKING - OPPOSING

Margaret Landsman, Planned Parenthood, Bedford
Rev. Frances Potter, 38 Little Pond Rd., Concord
Jennifer Bills, 18 Low Ave., Concord, NARAL-NH
Jamie Ann Sabino 52 Weston Ave., Cambridge, MA
Stephen T. Birchall, 27 Peaslee Rd., Merrimack, NH Family Planning Council
Claire Ebel, 18 Low Ave., Concord, NHCLU
Elizabeth Andres, 26 Tideview Dr., Dover
Rep. Martha Fuller Clark, Portsmouth
Rep. Norma Sabella, Derry
Rep. Carol Moore
Sheila Evans, Concord, NH Family Planning Council
Patti Baum, 38 So. Main St., Conocrd, Concord Feminist Health Ctr.
Rep. Barbara French

#HB 1324
1/14/98

REP. S. ADAMS PRIME- POTENTIAL PROBLEMS @ CHILD MOLESTATION MOCESTER UNKNOWN TO PARENTS COULD ARRANGE FOR ABORTION. ⑥ 16 yr old daughter GETS PREGNANT - TAKES STAFF OR PEER ADVICE & GETS ABORTION UNKNOWN TO PARENTS ⓒ IS YEAR OLD COMPLICES W/ MISTES & SHE HAS COMPLECATIONS LATER - PARENTS WILL BE AT A LOSS.
NEEDED FOR BASIS OF "FAMILY FIRST" PHILOSOPHY

REP. RANDY LYMAN - COSPONSOR - NOTHING TO DO W/ CHOICE. ABOUT PARENTAL NOTIFICATION. PRESSURE FROM PREGNANCY, MONEY, ETC. ~~LATER~~ YEARS LATER OFTEN HAVE EMOTIONAL TRAUMA.
Q AP? DO YOU THINK A BILL LIKE THIS WOULD INCREASE BACK DOOR ABORTIONS?
ANS. NO
BRQ - WHAT ABOUT LIMITS OF INFORMING BROTH, SIS. GRAND.
ANS - EXPAND TO ANY ADULT.

*REP. KATHLEEN FLORA CO-SPONSOR - ASK COMMITTEE TO THINK BACK TO WHEN YOU WERE A ~~TEENAGER~~ 14 YR OLD AND INVINCIBLE AND HOW WISE YOUR DECISION MAKING WAS.
632: AGGRAVATED FELONOUS SEXUAL ASSAULT.
626: CRIMINAL CODE

MSQ HOW DOES THIS RELATE TO EDUCATION IN SCHOOLS?
A. PERSONALLY IN FAVOR.
TCQ THIS WOULD NOT RESTRICT HAVING AN ABORTION WITHOUT PARENTS KNOWLEDGE. ANS. PARENTAL NOTIFIC

APQ: DID YOU SAY A CHILD OF 14 COULDN'T MAKE CHOICE
ANS.
APQ? PAGE 2 16 – 22. SPECIFIC IF IT DOES NOT GET TO LEVEL OF CRIMINALITY. SHOULD IT EXPAND.
ANS. FAMILY MEMBER

Pg 2 – 16 –
IPQ? EVEN IF NOT A WRITTEN STATEMENT SHOULDN'T PHYSICIAN NOTIFY IN CASE OF CRIMINALITY ANS. YES
MS Q? DOESN'T NOTICE KICK IN BY BILL ONLY W WRITTEN STATEMENT ANS. KEEP FAMILY INVOLVED.
TP Q: DO YOU SEE ANYONE ELSE AS AN OUTLET TO AVOID FRICTION
ANS. FRICTION ALWAYS A PART OF RELATIONSHIPS.

REP. EVELYN LEITENDRE CO-SPONSOR – NOT AN ANTI-ABORTION BILL NOT FORCE MINOR TO NOTIFY OFFENDING PARENT. LIFE-ALTERING PROCEDURE WHICH WE SHOULD MONITOR JUST AS WE DO OTHER ACTS INVOLVING MINORS.
SC Q? COULD NOT WE HAVE MORE ABUSE & ENCOURAGING THE WRITTEN STATEMENT BY CHILD MAKING FALSE ACCUSATION
ANS. I SUPPOSE SO – BUT HOPE NOT.

* SHEILA EVANS: OPPOSED NH FAMILY PLANNING COUNCIL CAN NOT MANDATE TRUST & COMMUNICATION BETWEEN FAMILY MEMBERS. TEENS WHO WISH TO MAINTAIN CONFIDENTIALITY WILL BE FORCED TO SEEK BACK DOOR PROCEDURES.

(3)

TPQ? Do you track family involvement in decision making?
Ans. Communications important value but not aware of individual tracking.

TCQ? Does bill require permission or consent?
Ans. The foclow thru of bill: Those minors most likely not to confide are those in most danger.
TCQ Would you favor when other people notified?
Ans. No don't want minor making up reason to seek own option.
KSQ? What about current laws that protect minors and chance of false charges?
Ans. Less reason need for because no written permission

* Rep. Carole Moore oppose - pro-family, as practitioner over 10% notify parents in states w/o notification laws.

Phillip Morrison NH Right to Life support Parents know best when it comes to children. Virtually every other medical procedure requires parental notification. Need input of parents to make ~~a very~~ most important decision of life

LJQ? Is this an abortion bill or not?
Ans. No. Parents have rights & responsibilities to child.

Rep. N. Sabella oppose - Page 1 findings are questionable. Placing undue burden of young women who make mistake thru own immaturity

OR OTHERS.
WE SHOULD BE LIFE AFFIRMING WHICH DOES NOT ALWAYS MEAN CARRYING A PREGNANCY TO TERM.
FULL-TERM PREGNANCY IS MORE DANGEROUS THAN ABORTION. PARENTAL CARE DOES NOT BIBLICALLY MEAN ONLY IN LEGAL SENSE. WE ALL SHOULD BE CONCERNED ABOUT THE YOUTH OF OUR SOCIETY.
WE AREN'T REALLY SHOWING COMPACION TO THE YOUNG WOMEN IF WE DO NOT CHOSE TO DEAL W THE YOUNG MEN WHO DO IMPREGNATING?
KSQ 7 WHICH OF PAGE 1 DO YOU DISAGREE WITH?
ANS. SOME MAY BE FACT, SOME OPINION. NOT GOING TO PLAY WORD GAMES. THE INTENTION OF BILL IS NOT LIFE AFFIRMING DISAGREE W a) - NOT ~~the~~ COMPLETE - MANY ADULTS DO NOT MAKE INFORMED DECISIONS THIS BILL IS NOT CARING IT IS PUNITIVE.

* MONSENIOR BOARD: SUPPORT. CRITICAL THAN WHEN ISSUE IMPACTS MINOR - PARENTS & LEGAL GUARDIANS BE ALLOWED TO BECOME INVOLVED IN DECISION SECRET ABORTION PROMOTES FAMILY PROBLEMS
TPQ LINE 24 pg 1 WOULD YOU BE LIKELY TO SUPPORT OTHER ISSUES IN BILL OR ELIMINATE AND LEAVE ONLY PARENTAL NOTIFICATION? ELIMINATE "FETUS" FOR INSTANCE
ANS: AGREE W DEFINITIONS BUT SUPPORT STRIPPED BILL.

REP. MFCLARK OPPOSITION SEEN MANY TIMES BEFORE - ABORTION PRIVATE MATTER BETWEEN WOMAN & DOCTOR FLAWED, ILL FOUNDED.

SEN RUBENS SUPPORT - PRO-CHOICE REPUBLICAN. BELIEVE PARENT SHOULD BE FULLY INFORMED IN ALL HEALTH ASPECTS INCLUDING TAKING OF MEDICATION. ABORTION SEEMS TO BE ONLY ASPECT THAT IS DIFFERENT UNDER LAWS DEALING W MINORS. OTHER STATES HAVE OTHER OPTIONS FOR BY-PASS PROCEDURE

REP. BOYCE CO-SPONSOR - CASE OF GYM TEACHER WHO IMPREGNATED GIRL TOOK TO CLINIC AND ARRANGED FOR ABORTION IN FAMILY HAD UNCLE WHO ABUSED 3 GIRLS IN FAMILY. & THEY NEVER TOLD.
SKQ? IF THEY COULDN'T TELL OF MOLESTATION HOW COULD THEY TELL ABOUT PREGNANCY?
ANS. THEY WERE ~~THREATENED~~ - NO PERFECT BILL.

ANS NEED LOOPHOLE IN BILL SO THAT DON'T HAVE TO FILE A CRIMINAL QUESTION.
KSQ? ARE THERE NUMBERS THAT TELL ~~HOW~~ MANY ABORTIONS ARE BECAUSE OF SEXUAL ABUSE?

* ELIZABETH ANDREWS: UPPER MIDDLE-CLASS WOMAN WHO HAS ALWAYS HAD OPTION. TOOK 2 YRS TO SHARE W PARENTS ABOUT HER BEST FRIENDS ABORTION.

STANLEY ROLIN SUPPORT NH KNIGHTS OF COLUMBUS LIFE CHAIRMAN. BILL SPEAKS TO VALUE OF PARENTS IN CHILDS LIFE. WOULD NOT SUPPORT ANY ADULT BUT SOMEONE WHO STANDS IN PLACE OF FAMILY. BILL CREATES OPPORTUNITY FOR DIALOGUE.

CLAIRE EBEL EX DIR NHCLU - OPPOSITON.

pg 1 LINE 5 RESIDE w ~~CHILD~~ INDIVIDUAL NOT PARENT

II RUBBISH

LINE 26, 27 NOT HAS NO IMMUNICIPATION LAW

" 30 - ADULT WOMEN NOT MINORS (LAW REFERS TO)

COMOTOSE WOMAN ON LONG ISLAND EXAMPLE OF NEEDING GUARDIANSHIP.

MUCH MORE

APQ? MULTITUDE OF STATES PASSED BUT UNDER CHALLENGE JUDICIAL BY-PASS HAS BEEN REQUIRED IN ALL CASES.

APQ? CONSTITUTIONALLY

ANS WHEN NO MEDICAL BY-PASS - BEEN STRUCK DOWN.

ELLEN COLE SUPPORT NOTIFICATION NOT CONSENT

WILL SUPPORT ARTICLE FROM MINNESOTA PUB. HEALTH - ABORTION DAILY MEDICAL PROCEDURE.

*STEPHEN BIRCHALL. LOBBYIST EX DIR NH FAMILY PLANN COUNCIL

FLAWED & UNTHOUGHT OUT POSITONS.

DEFINITION OF "FETUS" UNIQUE 1ST & ONLY STATE.

~~PROBLEM - DEFINED~~

TPQ - WOULD YOU BE AVAILABLE TO WORK ON BILL?

ANS - DONT SEE HOW THIS CAN BE CLEANED-UP

KEVAN WENDLEBOE: — SUPPORT. CLEAN UP BILL BY MAKING IT ILLEGAL FOR ANY MEDICAL PROCEDURE ELIMINATE ABORTION FROM BILL.

MULTITUDE OF AREAS IN LAW WHERE WE LIMIT CHOICE.

THOUSANDS OF PEOPLE WAITING TO ADOPT.

7

JENNIFER BILLS NH NARAL OPPOSITION DEFER TIME TO

* SABINO ATTY MASS - ~~DEAF~~ PANEL DEALING WITH BY-PASS MOST-LIKELY UNCONSTITUTIONAL WITH NO JUDICIAL BY-PASS. MINOR LIVING AT HOME IS UNDER CONTROL - UNWISE: NOTICE & CONSENT ARE ONE & THE SAME IN EFFECT 2/3 OVER 16 80+% IN YOUNGER INVOLVE PARENTS. NUMBERS HAVE NOT CHANGED IN MASS AS A RESULT
ALTERNATIVE SECTION WILL NOT CHANGE BEHAVIOR - EVEN SHOWN IN CASES THAT HAVE BEEN TO COURT.
RESTRICTED MAIL A JOKE
IN MASS 97% TEENS FOUND MATURE.

HOLDEN NH RIGHT TO LIFE SUPPORT EVERYTIME YOU DEFEAT THIS BILL DESTROY FAMILY

REV. F. POTTER EPISCOPAL PRIEST OPPOSITION
75% WOMEN FACING PREG. CONSULT PARENTS AS A PASTOR HAVE TALKED W WOMEN WHO
AMA COUNCIL ON ETHICAL AFFAIRS ≠ 1.5 MIL CASES OF ABUS
MANY OCCUR AROUND PREG. ISSUE
RSQ? KNOW HOW MANY ARE CONSULTING W PARENTS
WHERE DO NUMBERS COME FROM?
ANS.
REP. MURCH AS A LEGISLATIVE BODY CONSTITUTIONALLY PUT RESTRICTIONS ON TEENAGERS. MAYBE WE SHOULD HAVE FETUSES WEAR HELMETS

8

MARGARET LANDSMAN PLANNED PARENTHOOD OPPOSE -

KSQ? WHERE DO NUMBERS COME FROM ON OUT-OF-STATE?
ANS BOSTON UNIV. STUDY

ADAM CHRIS SUPPORT ITYROD
PEOPLE COMMIT MURDER SHOULD WE ELIMINATE LAWS
LAW MIGHT DECREASE ABUSE. BECAUSE IT WOULD BE
NOTICE TO PUBLIC.

PATTY OPPOSE CONCORD FEMINIST HEALTH CENTER
SEE MANY MASS. MINORS BECAUSE CAN NOT SPEAK
WITH PARENTS.
48 HOUR WAITING PERIOD CAN CREATE MORE DIFFICULTY

ANN CONCEPCION SUPPORT - NEED TO KEEP

MRS. F. WITCOMB SUPPORT

DANIEL SUPPORT EACH WOMAN DIDN'T
CONSIDER PRE-MARITAL CONSEQUENCES WHY WOULD
CONSIDER ABORTION CONSEQ.

WARREN GODDARD PRES RIGHT TO LIFE - MANY PARENTS
FIND TEENS ATTEMPT SUICIDE BECAUSE OF ABORTION
NEEDED BY FAMILIES. NO VESTED INTEREST UNPAID VOLUNTEERS.

HOUSE COMMITTEE ON JUDICIARY AND FAMILY LAW

PUBLIC HEARING ON HB 1324

BILL TITLE: requiring parental notification before abortions may be performed on certain minors.

DATE: 1/14/98

LOB ROOM: Rep's Hall **Time Public Hearing Called to Order:** 9:35

Time Adjourned: 12:15

(please circle if present)

Committee Members: Reps. J. McCarthy, Woods, Bickford, J. Brown, Clay, T. Colburn, Jacobson, Keans, Letendre, Mirski, K. Smith, Pfaff, Peterson, Wall, DePecol, Allison, L. Johnson, Moynihan, I. Pratt, Richardson and M. Smith. BEGIN

Bill Sponsors: Rep. Adams, Lyman, Boyce, Flora, Letendre

TESTIMONY

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

*FLORA
EVENS
MOORE
BOLDUC
MORRISON
ANDREWS
SABINO
LANDSMAN

Testimony

West Key Number
Criminal Law ⇐ 52 et seq.

CJS
Criminal Law § 65 et seq.

ALR
Effect of voluntary drug intoxication upon criminal responsibility. 73 ALR3d 98.
Modern status of rules as to voluntary intoxication as defense to criminal charge. 8 ALR3d 1236.
When intoxication deemed involuntary so as to constitute a defense to criminal charge. 73 ALR3d 195.

626:5 Entrapment. It is an affirmative defense that the actor committed the offense because he was induced or encouraged to do so by a law enforcement official or by a person acting in cooperation with a law enforcement official, for the purpose of obtaining evidence against him and when the methods used to obtain such evidence were such as to create a substantial risk that the offense would be committed by a person not otherwise disposed to commit it. However, conduct merely affording a person an opportunity to commit an offense does not constitute entrapment.

History

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

Annotations

Evidence of predisposition, 3
Particular cases, 4
Purpose, 1
Questions for jury, 2

1. Purpose
General purpose of entrapment defense is to prevent conviction of a crime manufactured by law enforcement officers. State v. Bacon (1974) 114 NH 306, 319 A2d 636.

2. Questions for jury
Entrapment is a question of fact and for the jury, if there is evidence presenting the issue and allowing entrapment to be found. State v. Bacon (1974) 114 NH 306, 319 A2d 636.

3. Evidence of predisposition
In cases where the defense of entrapment is raised, evidence of the defendant's predisposition to commit the crime is relevant and admissible. State v. Little (1981) 121 NH 765, 435 A2d 517.
When the defense of entrapment is raised but the evidence supports a finding that the defendant was ready to commit the crime, the conviction will be upheld. State v. Little (1981) 121 NH 765, 435 A2d 517.
This section, by its terms, does not mandate that the inquiry as to existence of the defense focus solely on the conduct of the police, because in order for the defense to succeed the conduct must be "such as to create a substantial risk that the offense would be committed by a person not otherwise disposed to commit it"; therefore, disposition to commit the offense is relevant to the determination of the existence of the defense. State v. Little (1981) 121 NH 765, 435 A2d 517.
In case where defense of entrapment was raised, trial court did not err in allowing state to introduce rebuttal predisposition evidence, where defendant first raised issue of predisposition and testified to the effect that he was not so predisposed. State v. Little (1981) 121 NH 765, 435 A2d 517.

4. Particular cases
There was no entrapment where defendant's friend telephoned and asked if he could send two men over to buy marijuana, defendant told his friend, and the two men when they arrived, that he maybe had some of his own, the men had asked if defendant had any, and stated they had been talking to defendant's friend after defendant said he was not sure he had any, and defendant then sold the men some of his own. State v. Bacon (1974) 114 NH 306, 319 A2d 636.

Cited
Cited in State v. Linsky (1977) 117 NH 866, 379 A2d 813; State v. Guaraldi (1983) 124 NH 93, 467 A2d 233; State v. Saulnier (1989) 132 NH 412, 566 A2d 1135.

Library References

New Hampshire Criminal Jury Instructions
New Hampshire Criminal Jury Instructions, Instruction #3.05.

West Key Number
Criminal Law ⇐ 37 et seq.

CJS
Criminal Law § 46(1) et seq.

ALR
Adequacy of defense counsel's representation of criminal client regarding entrapment defense. 8 ALR4th 1160.
Availability in state court of defense of entrapment where accused denies committing acts which constitute offense charged. 5 ALR4th 1128.
Burden of proof as to entrapment defense—state cases. 52 ALR4th 775.
Entrapment to commit traffic offense. 34 ALR4th 1167.
Modern status of the law concerning entrapment to commit narcotics offense—state cases. 62 ALR3d 110.

626:6 Consent.
I. The consent of the victim to conduct constituting an offense is a defense if such consent negatives an element of the offense or precludes the harm sought to be prevented by the law defining the offense.
II. When conduct constitutes an offense because it causes or threatens bodily harm, consent to the conduct is a defense if the bodily harm is not serious; or the harm is a reasonably foreseeable hazard of lawful activity.
III. Consent is no defense if it is given by a person legally incompetent to authorize the conduct or by one who, by reason of immaturity, insanity, intoxication or use of drugs is unable and known by the actor to be unable to exercise a reasonable judgment as to the harm involved.

History

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

Annotations

Construction with other laws, 1
Instructions, 3
Reasonable judgment, 2

1. Construction with other laws
Statutory definition of "element of an offense" cannot be read to include the defense of consent. State v. Cooper (1992) 135 NH 258, 603 A2d 499.
Because consent is not a justification, lack of consent is not an element of the offense of sexual assault. State v. Cooper (1992) 135 NH 258, 603 A2d 499.

2. Reasonable judgment
There is no physical element to the "reasonable judgment" to which RSA 626:6, III refers; judgment when used in this way means the action of judging or the mental or intellectual process of forming an opinion or evaluation by discerning and comparing and the absence of ability physically to resist does not bear one way or another on the ability to exercise a reasonable judgment. State v. Jackson (1996) 141 NH —, — A2d —.
RSA 626:6, III eliminates the defense of consent in cases where the victim was, and the perpetrator knew the victim was, unable to exercise reasonable judgment at the time of the charged act. State v. Jackson (1996) 141 NH —, — A2d —.

3. Instructions
Because the trial court, in instructing the jury on consent, improperly included proving "physically helpless to resist" as a means of proving the lack of reasonable judgment, its instruction was erroneous. State v. Jackson (1996) 141 NH —, — A2d —.
If it followed the instructions as given, the jury could have found the absence of ability to exercise reasonable judgment based solely on a finding that the victim was physically helpless to resist but the legislature did not include the physical ability of the victim to resist in its list of conditions that might prevent exercise of the reasonable judgment necessary to consent under RSA 626:6, III, and the instructions as a whole, therefore, did not fairly cover the issues of law in the case. State v. Jackson (1996) 141 NH —, — A2d —.

Cited
Cited in State v. Guaraldi (1983) 124 NH 93, 467 A2d 233; State v. Ayer (1992) 136 NH 191, 612 A2d 923.

Library References

New Hampshire Criminal Jury Instructions
New Hampshire Criminal Jury Instructions, Instruction # 3.03.

West Key Number
Criminal Law ⇐ 39.

CJS
Criminal Law § 42.

626:7 Defenses; Affirmative Defenses and Presumptions.
I. When evidence is admitted on a matter declared by this code to be:
(a) A defense, the state must disprove such defense beyond a reasonable doubt; or
(b) An affirmative defense, the defendant has the burden of establishing such defense by a preponderance of the evidence.
II. When this code establishes a presumption with respect to any fact which is an element of an offense, it has the following consequences:
(a) When there is evidence of the facts which give rise to the presumption, the issue of the existence of the presumed fact must be submitted to the jury, unless the court is satisfied that the evidence as a whole clearly negatives the presumed fact; and
(b) When the issue of the existence of the presumed fact is submitted to the jury, the court shall charge that while the presumed fact must, on all the evidence, be proved beyond a reasonable doubt, the law declares that the jury may regard the facts giving rise to the presumption as sufficient evidence of the presumed fact.

History

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

Annotations

Affirmative defenses, 2
Constitutionality, 1
Defense of consent, 4
Presumption of sanity, 3

1. Constitutionality
This section, placing the burden of proving the affirmative defense of entrapment upon the defendant, does not violate due process, because the burden of proving all the elements of the crime charged beyond a reasonable doubt remains with the state. State v. Little (1981) 121 NH 765, 435 A2d 517.

2. Affirmative defenses
Affirmative defense is defense overriding an element of the offense which need not be negated by State; defendant has burden of proof on a balance of the probabilities. State v. Soucy (1994) 139 NH 349, 653 A2d 561.
In trial for unauthorized taking, where defendant raised statute of limitations issue in a proposed jury instruction, but did not join the issue at trial, and did not point to any evidence in the record to support this theory of defense, the statute of limitations did not become an element of the offense and the court did not err in refusing to give defendant's requested jury instruction that the statute of limitations was an element of the offense. State v. Weeks (1993) 137 NH 687, 635 A2d 439.
Once the state proved beyond a reasonable doubt that defendant knowingly caused the death of her spouse, defendant had the burden of establishing the affirmative defense of insanity by a preponderance of the evidence. State v. Rullo (1980) 120 NH 149, 412 A2d 1009.
Insanity or plea of insanity is affirmative defense to be proved by preponderance of evidence by accused. Novosel v. Helgemoe (1978) 118 NH 115, 384 A2d 124, overruling State v. Bartlett (1861) 43 NH 224.

3. Presumption of sanity
Sanity is properly in nature of a policy presumption because it is inherent in human nature and is natural and normal condition of mankind, and is not properly an element of the crime. Novosel v. Helgemoe (1978) 118 NH 115, 384 A2d 124.

4. Defense of consent
Once defendant charged with sexual assault raises the defense of consent, the burden of proving lack of consent shifts to the state. State v. Cooper (1992) 135 NH 258, 603 A2d 499.

Cited
Cited in State v. Millette (1972) 112 NH 458, 299 A2d 160; State v. Arillo (1982) 122 NH 107, 441 A2d 1163; Pugliese v. Perrin, 567 F.Supp. 1337 (D.N.H. 1983), affirmed, 731 F.2d 85 (1st Cir. 1984); State v. Guaraldi (1983) 124 NH 93, 467 A2d 233; State v. Patten (1985) 126 NH 227, 489 A2d 657; State v. Smith (1985) 127 NH 433, 503 A2d 774; State v. Abbott (1985) 127 NH 444, 503 A2d 791; State v. Jernigan (1990) 133 NH 396, 577 A2d 1214; State v. Wallace (1992) 136 NH 267, 615 A2d 1243.

Library References

New Hampshire Trial Bar News
For article, "Presumptions in New Hampshire Law—A Guide Through the Impenetrable Jungle (Part II)," see 11 N.H. Trial Bar News 31, 35, nn.82, 90, 96, 36, 43 (Fall 1991).

New Hampshire Criminal Jury Instructions
New Hampshire Criminal Jury Instructions, Instruction ## 3.02, 3.10-3.15.

626:8 Criminal Liability for Conduct of Another.
I. A person is guilty of an offense if it is committed by his own conduct or by the conduct of another person for which he is legally accountable, or both.
II. A person is legally accountable for the conduct of another person when:
(a) Acting with the kind of culpability that is sufficient for the commission of the offense, he causes an innocent or irresponsible person to engage in such conduct; or
(b) He is made accountable for the conduct of such other person by the law defining the offense; or
(c) He is an accomplice of such other person in the commission of the offense.
III. A person is an accomplice of another person in the commission of an offense if:

(a) With the purpose of promoting or facilitating the commission of the offense, he solicits such other person in committing it, or aids or agrees or attempts to aid such other person in planning or committing it; or

(b) His conduct is expressly declared by law to establish his complicity.

IV. When causing a particular result is an element of an offense, an accomplice in the conduct causing such result is an accomplice in the commission of that offense, if he acts with the kind of culpability, if any, with respect to that result that is sufficient for the commission of the offense.

V. A person who is legally incapable of committing a particular offense himself may be guilty thereof if it is committed by the conduct of another person for which he is legally accountable, unless such liability is inconsistent with the purpose of the provision establishing his incapacity.

VI. Unless otherwise provided, a person is not an accomplice in an offense committed by another person if:

(a) He is the victim of that offense; or

(b) The offense is so defined that his conduct is inevitably incident to its commission; or

(c) He terminates his complicity prior to the commission of the offense and wholly deprives it of effectiveness in the commission of the offense or gives timely warning to the law enforcement authorities or otherwise makes proper effort to prevent the commission of the offense.

VII. An accomplice may be convicted on proof of the commission of the offense and of his complicity therein, though the person claimed to have committed the offense has not been prosecuted or convicted or has been convicted of a different offense or degree of offense or has an immunity to prosecution or conviction or has been acquitted.

History

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

Annotations

1. Construction

Paragraph IV of this section, governing liability when causing a particular result is an element of an offense, is not independent of paragraph III of this section, which defines when a person is an accomplice, and therefore the elements set forth in paragraph III must be alleged and proven by the state to establish accomplice liability. State v. Horne (1984) 125 NH 254, 480 A2d 121.

This section eradicated the distinctions between principal and accomplice. State v. Thresher (1982) 122 NH 63, 442 A2d 578.

2. Construction with other laws

An individual may not be an accomplice to negligent homicide, since to satisfy the requirements of paragraph III of this section, the state must establish that the accomplice's acts were designed to aid the primary actor in committing the substantive offense, yet under RSA 626:2, II(d) setting forth the necessary accompanying mental state of negligence, the primary actor must be unaware of the risk that his conduct created, and an accomplice could not intentionally aid the primary actor in a crime that the primary actor was unaware that he was committing. State v. Etzweiler (1984) 125 NH 57, 480 A2d 870.

The legislature, in enacting RSA 630:3, I, governing negligent homicide, and this section, did not intend to impose criminal liability upon a person who lends his automobile to an intoxicated driver but does not accompany the driver, when the driver's operation of the borrowed automobile causes death. State v. Etzweiler (1984) 125 NH 57, 480 A2d 870.

3. Extent of liability

An accomplice's liability ought not to extend beyond the criminal purposes that he or she shares. State v. Etzweiler (1984) 125 NH 57, 480 A2d 870.

4. Presence during crime

The circumstances under which a defendant is present at the scene of a crime may be such as to warrant the jury's inferring beyond a reasonable doubt that he sought thereby to make the crime succeed. State v. Goodwin (1978) 118 NH 862, 395 A2d 1234.

Mere presence at the scene of a crime is insufficient to make a person criminally responsible. State v. Goodwin (1978) 118 NH 862, 395 A2d 1234.

5. Affirmative act

The crime of accomplice liability under subparagraph III(a) of this section requires some active participation by the accomplice. State v. Arillo (1988) 131 NH 295, 553 A2d 281.

The crime of accomplice liability under subparagraph III(a) of this section necessitates some active participation by the accomplice. State v. Vaillancourt (1982) 122 NH 1153, 453 A2d 1327.

Knowledge and mere presence at the scene of a crime cannot support a conviction for accomplice liability because they do not constitute sufficient affirmative acts to satisfy the actus reus requirement of subparagraph III(a) of this section. State v. Vaillancourt (1982) 122 NH 1153, 453 A2d 1327.

6. Purpose of accomplice

Under paragraph III of this section, the state has the burden of establishing that the accomplice acted with the purpose of promoting or facilitating the commission of the substantive offense, and this encompasses the requirement that the accomplice's acts were designed to aid the primary actor in committing the offense and that the accomplice had the purpose to make the crime succeed. State v. Etzweiler (1984) 125 NH 57, 480 A2d 870.

To prosecute one as an accomplice, paragraph III of this section requires that the state must prove that the defendant acted with the purpose of promoting or facilitating the offense. State v. Horne (1984) 125 NH 254, 480 A2d 121.

7. Facilitation

Jury could have reasonably concluded that defendant's presence facilitated and encouraged principal's actions where there was evidence that defendant owned the car in which victim was abducted and owned the apartment where rape occurred, and was present during the kidnapping and rape of the victim. State v. Goodwin (1978) 118 NH 862, 395 A2d 1234.

8. Aid

Trial court erred in upholding defendant's indictment for accomplice liability where the state alleged the requisite mens rea but further alleged only that the defendant aided another "by accompanying him to the location of the crime and watching . . .", since accompaniment and observation are not sufficient acts to constitute "aid" under subparagraph III(a) of this section. State v. Vaillancourt (1982) 122 NH 1153, 453 A2d 1327.

9. Guilt of principal

Paragraph VII of this section excludes the guilt of the named principal as an element necessary for the conviction of an accomplice. State v. Kaplan (1983) 124 NH 382, 469 A2d 1354.

Language of paragraph VII of this section that "an accomplice may be convicted on proof of the commission of the offense and of his complicity therein . . ." excludes the guilt of the named principal as an element necessary for the conviction of the accomplice. State v. Jansen (1980) 120 NH 616, 419 A2d 1108.

10. Indictment and information

An indictment sufficiently alleges accomplice liability to an attempted felony if it alleges an attempted felony on the part of the principal and the acts and intent of the accomplice to aid the principal in that activity. State v. Abbis (1984) 125 NH 646, 484 A2d 1156.

Because accomplice liability holds an individual criminally liable for actions done by another, it is important that the prosecution fall squarely within this section. State v. Etzweiler (1984) 125 NH 57, 480 A2d 870.

An information charging the defendant with being an accomplice to receiving stolen property had to set forth the acts that constituted the offense and not merely the language of this section. State v. Lurvey (1982) 122 NH 190, 442 A2d 592.

Language of indictment stating that defendant was indicted for "acting in concert with" another defendant adequately informed defendant that he was charged as an accomplice and could be held criminally liable under this section. State v. Burke (1982) 122 NH 565, 448 A2d 962.

Trial court's interpretation of language in an indictment for robbery and second-degree murder, which alleged that the defendant committed the crimes "in concert with" a codefendant, as charging the defendant as a principal and/or accomplice rather than only as a principal was proper since the "in concert with" language has been interpreted as charging the defendants as accomplices and this section has been interpreted as eradicating the distinctions between principal and accomplice and, therefore, the defendant could have been found guilty of second-degree murder whether he was the principal or accomplice. State v. Thresher (1982) 122 NH 63, 442 A2d 578.

11. Instructions

Where the trial court instructed the jury that if it found that the defendant had committed all of the acts necessary for murder or if he had committed the acts in conjunction with his accomplice, provided he was accountable for his accomplice's acts, then it could find him guilty of murder, because this charge was consistent with this section which eradicated the distinctions between principals and accessories, and because the trial court's interpretation of the indictment as charging the defendant as either a principal or accomplice, rather than only as a principal, was valid, the jury instructions were proper. State v. Thresher (1982) 122 NH 63, 442 A2d 578.

Cited

Cited in State v. Acton (1975) 115 NH 254, 339 A2d 4; State v. Gilbert (1975) 116 NH 665, 348 A2d 713; State v. Shippee (1975) 115 NH 694, 349 A2d 587; State v. Luv Pharmacy, Inc. (1978) 118 NH 398, 388 A2d 190; State v. Bussiere (1978) 118 NH 659, 392 A2d 161; State v. Akers (1979) 119 NH 161, 400 A2d 38; State v. Glidden (1983) 123 NH 126, 459 A2d 1136; State v. McDuffee (1983) 123 NH 184, 459 A2d 251; State v. Mitchell (1983) 124 NH 247, 469 A2d 1310; State v. Palamis (1983) 124 NH 333, 470 A2d 906; State v. Beaudette (1984) 124 NH 579, 474 A2d 1012; State v. Damiano (1984) 124 NH 742, 474 A2d 1045; State v. Champagne (1984) 125 NH 648, 484 A2d 1161; State v. Pierce (1985) 126 NH 84, 489 A2d 109; State v. Wellman (1986) 128 NH 340, 513 A2d 944; State v. Kaplan (1986) 128 NH 662, 517 A2d 1162; State v. Dellorfano (1986) 128 NH 628, 517 A2d 1163; State v. Therrien (1987) 129 NH 765, 533 A2d 346; State v. Riccio (1988) 130 NH 376, 540 A2d 1239; State v. Hamel (1988) 130 NH 615, 547 A2d 223; State v. Prisby (1988) 131 NH 57, 550 A2d 89; State v. Anaya (1991) 134 NH 346, 592 A2d 1142; State v. Alosa (1993) 137 NH 33, 623 A2d 218; State v. Huard (1994) 138 NH 256, 638 A2d 787; State v. Puzzanghera (1995) 140 NH 105, 663 A2d 94; State v. Koehler (1995) 140 NH 469, 669 A2d 788.

Library References

New Hampshire Practice
1 N.H.P. Criminal Practice & Procedure § 324.

New Hampshire Bar Journal
For article, "Accomplice Liability for Unintentional Crime: Etzweiler and Horne Revisited," see 30 N.H.B.J. 95 (1989).

New Hampshire Criminal Jury Instructions
New Hampshire Criminal Jury Instructions, Instruction # 2.07.

West Key Number
Criminal Law ⇐ 59 et seq.

CJS
Criminal Law § 79 et seq.

ALR
Acquittal of principal, or his conviction of lesser degree of offense, as affecting prosecution of accessory, or aider and abettor. 9 ALR4th 972.

Condominium association's liability to unit owner for injuries caused by third person's criminal conduct. 59 ALR4th 489.

CHAPTER 627

JUSTIFICATION

Library References

West Key Number
Criminal Law ⇐ 38.

CJS
Criminal Law §§ 44, 49.

627:1 General Rule. Conduct which is justifiable under this chapter constitutes a defense to any offense. The fact that such conduct is justifiable shall constitute a complete defense to any civil action based on such conduct.

History

Source. 1971, 518:1. 1979, 429:2, eff. Aug. 22, 1979.

Amendments—1979. Substituted "shall constitute a complete defense to any civil action based on such conduct" for "however, does not abolish or impair any remedy for such conduct which is available in any civil action" following "justifiable" at the end of the second sentence.

Cross References

Civil liability for action which would constitute justification, see RSA 507:8-d.

Annotations

1. Commitment proceedings

This section establishes a defense akin to the common-law defense of necessity. State v. O'Brien (1989) 132 NH 587, 567 A2d 582.

Statutory defense of justification does not apply in civil commitment proceedings, and any specific acts alleged in petition may be appropriately considered as prognostic evidence of dangerousness, whether or not the acts are justified

under statutory criteria; however, petitionee in rebuttal may show that the acts alleged in a petition were in fact justified. In re Fasi (1989) 132 NH 478, 567 A2d 178.

Cited

Cited in Pugliese v. Perrin, 567 F. Supp. 1337 (D.N.H. 1983), affirmed, 731 F.2d 85 (1st Cir. 1984); State v. Guaraldi (1983) 124 NH 93, 467 A2d 233; Panas v. Harukis (1987) 129 NH 591, 529 A2d 976; State v. Bruce (1989) 132 NH 465, 566 A2d 1144; State v. O'Brien (1989) 132 NH 587, 567 A2d 582.

LIBRARY REFERENCES

New Hampshire Trial Bar News

For article, "Presumptions in New Hampshire Law—A Guide Through the Impenetrable Jungle (Part II)," see 11 N.H. Trial Bar News 31, 34, 35 nn.82, 112 (Fall 1991).

ALR

Pleading self-defense or other justification in civil assault and battery action. 67 ALR2d 405.

627:2 Public Duty.

I. Any conduct, other than the use of physical force under circumstances specifically dealt with in other sections of this chapter, is justifiable when it is authorized by law, including laws defining functions of public servants or the assistance to be rendered public servants in the performance of their duties; laws governing the execution of legal process or of military duty; and judgments or orders of courts or other tribunals.

II. The justification afforded by this section to public servants is not precluded by the fact that the law, order or process was defective provided it appeared valid on its face or, as to persons assisting public servants, by the fact that the public servant to whom assistance was rendered exceeded his legal authority or that there was a defect of jurisdiction in the legal process or decree of the court or tribunal, provided the actor believed the public servant to be engaged in the performance of his duties or that the legal process or court decree was competent.

HISTORY

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

627:3 Competing Harms.

I. Conduct which the actor believes to be necessary to avoid harm to himself or another is justifiable if the desirability and urgency of avoiding such harm outweigh, according to ordinary standards of reasonableness, the harm sought to be prevented by the statute defining the offense charged. The desirability and urgency of such conduct may not rest upon considerations pertaining to the morality and advisability of such statute, either in its general or particular application.

II. When the actor was reckless or negligent in bringing about the circumstances requiring a choice of harms or in appraising the necessity of his conduct, the justification provided in paragraph I does not apply in a prosecution for any offense for which recklessness or negligence, as the case may be, suffices to establish criminal liability.

HISTORY

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

ANNOTATIONS

Application, 2
Construction, 1
Particular offenses, 4
Requirements, 3

1. Construction

This section establishes a defense akin to the common-law defense of necessity. State v. O'Brien (1989) 132 NH 587, 567 A2d 582.

This section is not meant to excuse illegal actions carried out with good intentions. State v. O'Brien (1989) 132 NH 587, 567 A2d 582.

An individual is protected from prosecution for a criminal act under this section if he commits a criminal act that was urgently necessary to avoid a clear and imminent danger. State v. Fee (1985) 126 NH 78, 489 A2d 606.

This section establishes statutory defense akin to common-law defense of necessity. State v. Dorsey (1978) 118 NH 844, 395 A2d 855.

This section is intended to deal only with harms that are readily apparent and recognizable to the average juror. State v. Dorsey (1978) 118 NH 844, 395 A2d 855.

2. Application

This section cannot lightly be allowed to justify acts taken to foreclose speculative and uncertain dangers, but must be limited to acts directed to the prevention of harm that is reasonably certain to occur. State v. Fee (1985) 126 NH 78, 489 A2d 606.

3. Requirements

In order for the competing harms defense to be available, a number of requirements must be satisfied; the otherwise illegal conduct must be urgently necessary, there must be no lawful alternative, and the harm sought to be avoided must outweigh, according to ordinary standards of reasonableness, the harm sought to be prevented by the violated statute. State v. O'Brien (1989) 132 NH 587, 567 A2d 582.

This section sets up a balancing test; in order for the competing harms defense to be available, the desire or need to avoid the present harm must outweigh the harm sought to be prevented by the violated statute. State v. O'Brien (1989) 132 NH 587, 567 A2d 582.

4. Particular offenses

Trial court correctly ruled that, as a matter of law, competing harms defense was not available to defendant charged with driving a motor vehicle while an habitual offender, where defendant drove a co-employee to the hospital for treatment of a twisted ankle; the relatively minor injury did not demand immediate action necessary to avoid a clear and imminent danger required by this section, and even if the defendant reasonably believed an imminent danger existed, alternative courses of conduct were available. State v. O'Brien (1989) 132 NH 587, 567 A2d 582.

Danger alleged by defendant pharmacist to have been created by possibility of distribution of stolen prescription drugs did not justify conduct of defendant in driving, while under the influence of intoxicating liquor, to pharmacy of which he was in charge, where an alarm had been tripped, since other courses of conduct for dealing with the perceived danger existed. State v. Fee (1985) 126 NH 78, 489 A2d 606.

Danger alleged by defendant pharmacist to have been created by possibility of distribution of stolen prescription drugs did not justify conduct of defendant in driving, while under the influence of intoxicating liquor, to pharmacy of which he was in charge, where an alarm had been tripped, since he was not told of any burglary or that any drugs had been taken, and since he had experience with false alarms in the past, facts which precluded any reasonable certainty of the danger alleged. State v. Fee (1985) 126 NH 78, 489 A2d 606.

Trial court did not err in ruling that defense of competing harms was not available to one charged with criminal trespass for occupying the construction site of a nuclear power plant, where both state legislature and Congress of the United States had made deliberate choices in support of nuclear power. State v. Dorsey (1978) 118 NH 844, 395 A2d 855.

Cited

Cited in State v. Dupuy (1978) 118 NH 848, 395 A2d 861; State v. Koski (1980) 120 NH 112, 411 A2d 1122; State v. Gorham (1980) 120 NH 162, 412 A2d 1017; State v. Brady (1980) 120 NH 899, 424 A2d 407; Brady v. Samaha, 667 F.2d 224 (1st Cir. 1981); State v. Weitzman (1981) 121 NH 83, 427 A2d 3; State v. Williams (1985) 127 NH 79, 497 A2d 858.

LIBRARY REFERENCES

ALR

Automobiles: necessity or emergency as defense in prosecution for driving without operator's license or while license is suspended. 7 ALR5th 73.

"Choice of evils," necessity, duress, or similar defense to state or local criminal charges based on acts of public protest. 3 ALR5th 521.

627:4 Physical Force in Defense of a Person.

I. A person is justified in using non-deadly force upon another person in order to defend himself or a third person from what he reasonably believes to be the imminent use of unlawful, non-deadly force by such other person, and he may use a degree of such force which he reasonably believes to be necessary for such purpose. However, such force is not justifiable if:

(a) With a purpose to cause physical harm to another person, he provoked the use of unlawful, non-deadly force by such other person; or

(b) He was the initial aggressor, unless after such aggression he withdraws from the encounter and effectively communicates to such other person his intent to do so, but the latter notwithstanding continues the use or threat of unlawful, non-deadly force; or

(c) The force involved was the product of a combat by agreement not authorized by law.

II. A person is justified in using deadly force upon another person when he reasonably believes that such other person:

(a) Is about to use unlawful, deadly force against the actor or a third person;

(b) Is likely to use any unlawful force against a person present while committing or attempting to commit a burglary;

(c) Is committing or about to commit kidnapping or a forcible sex offense; or

(d) Is likely to use any unlawful force in the commission of a felony against the actor within such actor's dwelling or its curtilage.

III. A person is not justified in using deadly force on another to defend himself or a third person from deadly force by the other if he knows that he and the third person can, with complete safety:

(a) Retreat from the encounter, except that he is not required to retreat if he is within his dwelling or its curtilage and was not the initial aggressor; or

(b) Surrender property to a person asserting a claim of right thereto; or

(c) Comply with a demand that he abstain from performing an act which he is not obliged to perform; nor is the use of deadly force justifiable when, with the purpose of causing death or serious bodily harm, the actor has provoked the use of force against himself in the same encounter.

(d) If he is a law enforcement officer or a private person assisting him at his direction and was acting pursuant to RSA 627:5, he need not retreat.

HISTORY

Source. 1971, 518:1. 1981, 347:1, 2, eff. Aug. 16, 1981.
Amendments—1981. Paragraph II(d): Added.
Paragraph III(a): Added "or its curtilage" following "dwelling".

ANNOTATIONS

Elements, 4
Instructions, 3
Provocation, 1
Unreasonable belief, 2

1. Provocation

The term "provoke" connotes speech as well as action and a jury may correctly conclude that a defendant's use of words alone to bring about a fight in which he intended at the outset to kill his opponent was sufficient to destroy his legal defense of self-defense. State v. Gorham (1980) 120 NH 162, 412 A2d 1017.

2. Unreasonable belief

A defendant's unreasonable belief that another is likely to use an unlawful force in the commission of a felony against him, even if the belief is honest, will not support a defense of justification for the use of deadly force. State v. Holt (1985) 126 NH 394, 493 A2d 483.

3. Instructions

In appeal from conviction for simple assault in which superior court declined to give requested jury instructions concerning justifications of self-defense, defense of another, and defense of property, all three claims of error were preserved for review where the record showed timely objection made to failure to change justifications of self-defense and defense of property; format of this section combined self-defense and defense of another in same paragraph and parties and court understood objection included instruction on defense of others. State v. Hast (1990) 133 NH 747, 584 A2d 175.

In trial for simple assault, defendant was entitled to jury instruction on defense of others where some evidence was presented that defendant had assaulted victim in response to unlawful unprivileged physical contact by another on defendant's wife. State v. Hast (1990) 133 NH 747, 584 A2d 175.

4. Elements

A victim's aggressive character is not among the elements essential to the defense of self-defense. State v. Newell (1996) 141 NH —, — A2d —.

Cited

Cited in State v. Kawa (1973) 113 NH 310, 306 A2d 791; State v. Pugliese (1980) 120 NH 728, 422 A2d 1319; State v. Arillo (1982) 122 NH 107, 441 A2d 1163; State v. McAvenia (1982) 122 NH 580, 448 A2d 967; State v. Pugliese (1982) 122 NH 1141, 455 A2d 1018; Pugliese v. Perrin, 567 F. Supp. 1337 (D.N.H. 1983), affirmed, 731 F.2d 85 (1st Cir. 1984).

LIBRARY REFERENCES

New Hampshire Trial Bar News

For article, "Presumptions in New Hampshire Law Guide Through the Impenetrable Jungle (Part II)," see N.H. Trial Bar News 31, 34, 35 nn.82, 112 (Fall 1991).

New Hampshire Criminal Jury Instructions

New Hampshire Criminal Jury Instructions, Instruction 3.10-3.16.

West Key Number

Assault and Battery ⇐ 14.
Homicide ⇐ 122.

CJS
Assault and Battery § 22.
Homicide § 108.

ALR
Construction and application of statutes justifying the use of force to prevent the use of force against another. 71 ALR4th 940.
Duty to retreat as condition of self-defense when one is attacked at his office, or place of business or employment. 41 ALR3d 584.
Liability of private citizen or his employer for injury or damage to third person resulting from firing of shots at fleeing criminal. 29 ALR4th 144.
Unintentional killing of or injury to third person during an attempted self-defense. 55 ALR3d 620.
Withdrawal, after provocation of conflict, as reviving right of self-defense. 55 ALR3d 1000.

627:5 Physical Force in Law Enforcement.

I. A law enforcement officer is justified in using non-deadly force upon another person when and to the extent that he reasonably believes it necessary to effect an arrest or detention or to prevent the escape from custody of an arrested or detained person, unless he knows that the arrest or detention is illegal, or to defend himself or a third person from what he reasonably believes to be the imminent use of non-deadly force encountered while attempting to effect such an arrest or detention or while seeking to prevent such an escape.

II. A law enforcement officer is justified in using deadly force only when he reasonably believes such force is necessary:

(a) To defend himself or a third person from what he reasonably believes is the imminent use of deadly force; or

(b) To effect an arrest or prevent the escape from custody of a person whom he reasonably believes:

(1) Has committed or is committing a felony involving the use of force or violence, is using a deadly weapon in attempting to escape, or otherwise indicates that he is likely to seriously endanger human life or inflict serious bodily injury unless apprehended without delay; and

(2) He had made reasonable efforts to advise the person that he is a law enforcement officer attempting to effect an arrest and has reasonable grounds to believe that the person is aware of these facts.

(c) Nothing in this paragraph constitutes justification for conduct by a law enforcement officer amounting to an offense against innocent persons whom he is not seeking to arrest or retain in custody.

III. A private person who has been directed by a law enforcement officer to assist him in effecting an arrest or preventing an escape from custody is justified in using:

(a) Non-deadly force when and to the extent that he reasonably believes such to be necessary to carry out the officer's direction, unless he believes the arrest is illegal; or

(b) Deadly force only when he reasonably believes such to be necessary to defend himself or a third person from what he reasonably believes to be the imminent use of deadly force, or when the law enforcement officer directs him to use deadly force and he believes such officer himself is authorized to use deadly force under the circumstances.

IV. A private person acting on his own is justified in using non-deadly force upon another when and to the extent that he reasonably believes it necessary to arrest or prevent the escape from custody of such other whom he reasonably believes to have committed a felony and who in fact has committed that felony; but he is justified in using deadly force for such purpose only when he reasonably believes it necessary to defend himself or a third person from what he reasonably believes to be the imminent use of deadly force.

V. A guard or law enforcement officer in a facility where persons are confined pursuant to an order of the court or as a result of an arrest is justified in using deadly force when he reasonably believes such force is necessary to prevent the escape of any person who is charged with, or convicted of, a felony, or who is committing the felony of escape from official custody as defined in RSA 642:6. The use of non-deadly force by such guards and officers is justified when and to the extent the person effecting the arrest believes it reasonably necessary to prevent any other escape from the facility.

VI. A reasonable belief that another has committed an offense means such belief in facts or circumstances which, if true, would in law constitute an offense by such person. If the facts and circumstances reasonably believed would not constitute an offense, an erroneous though reasonable belief that the law is otherwise does not make justifiable the use of force to make an arrest or prevent an escape.

VII. Use of force that is not justifiable under this section in effecting an arrest does not render illegal an arrest that is otherwise legal and the use of such unjustifiable force does not render inadmissible anything seized incident to a legal arrest.

VIII. Deadly force shall be deemed reasonably necessary under this section whenever the arresting law enforcement officer reasonably believes that the arrest is lawful and there is apparently no other possible means of effecting the arrest.

History

Source. 1971, 518:1. 1981, 373:1-3, eff. Aug. 22, 1981.
Amendments—1981. Paragraph II(b)(1): Inserted "or is committing" preceding "a felony" and substituted "involving the use of force or violence" for "or" thereafter.
Paragraph V: Amended generally.
Paragraph VIII: Added.

Annotations

Cited
Cited in Blais v. Town of Goffstown (1979) 119 NH 613, 406 A2d 295.

Library References

New Hampshire Practice
1 N.H.P. Criminal Practice & Procedure § 195.

West Key Number
Assault and Battery ⇐ 10.
Homicide ⇐ 103 et seq.

CJS
Assault and Battery §§ 26-29.
Homicide § 100 et seq.

ALR
Peace officer's liability for death or personal injuries caused by intentional force in arresting misdemeanant. 81 ALR3d 238.
Private person's authority, in making arrest for felony, to shoot or kill alleged felon. 32 ALR3d 1078.
Right of peace officer to use deadly force in attempting to arrest fleeing felon. 83 ALR3d 174.

627:6 Physical Force by Persons with Special Responsibilities.

I. A parent, guardian or other person responsible for the general care and welfare of a minor is justified in using force against such minor when and to the extent that he reasonably believes it necessary to prevent or punish such minor's misconduct.

II. A teacher or person otherwise entrusted with the care or supervision of a minor for special purposes is justified on the premises in using necessary force against any such minor, when the minor creates a disturbance, or refuses to leave the premises or when it is necessary for the maintenance of discipline.

III. A person responsible for the general care and supervision of an incompetent person is justified in using force for the purpose of safeguarding his welfare, or, when such incompetent person is in an institution for his care and custody, for the maintenance of reasonable discipline in such institution.

IV. The justification extended in paragraphs I, II, and III does not apply to the malicious or reckless use of force that creates a risk of death, serious bodily injury, or substantial pain.

V. A person authorized by law to maintain decorum or safety in a vessel, aircraft, vehicle, train or other carrier, or in a place where others are assembled may use non-deadly force when and to the extent that he reasonably believes it necessary for such purposes, but he may use deadly force only when he reasonably believes it necessary to prevent death or serious bodily injury.

VI. A person acting under a reasonable belief that another person is about to commit suicide or to inflict serious bodily injury upon himself may use a degree of force on such person as he reasonably believes to be necessary to thwart such a result.

VII. A licensed physician, or a person acting under his direction, may use force for the purpose of administering a recognized form of treatment which he reasonably believes will tend to promote the physical or mental health of the patient, provided such treatment is administered:

(a) With consent of the patient or, if the patient is a minor or incompetent person, with the consent of the person entrusted with his care and supervision; or

(b) In an emergency when the physician reasonably believes that no one competent to consent can be consulted and that a reasonable person concerned for the welfare of the patient would consent.

History

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

Annotations

1. Construction
Paragraph I of this section, justifying use of force by parent or one standing in loco parentis against minor when necessary to prevent or punish misconduct, merely codifies well-recognized precept of Anglo-American jurisprudence. In re Ethan H. (1992) 135 NH 681, 609 A2d 1222.

2. Justification
Honest but objectively unreasonable belief that use of force is necessary to prevent or punish child's misconduct will not support justification defense to charge of second degree assault on child under 13 years of age. State v. Leaf (1993) 137 NH 97, 623 A2d 1329.
Defendant was not justified in striking his stepson with a leather belt at least 10 times on his back, buttocks and thighs as punishment for failing to clean dishes. State v. Leaf (1993) 137 NH 97, 623 A2d 1329.

Cited
Cited in In re Caulk (1984) 125 NH 226, 480 A2d 93; In re Doe (1985) 126 NH 719, 495 A2d 1293; Petition of Doe (1989) 132 NH 270, 564 A2d 433; State v. Bruce (1989) 132 NH 465, 566 A2d 1144.

Library References

West Key Number
Assault and Battery ⇐ 10.
Parent and Child ⇐ 11.

CJS
Assault and Battery §§ 26-29.
Parent and Child §§ 118, 127-129.

ALR
Criminal liability for excessive or improper punishment inflicted on child by parent, teacher, or one in loco parentis. 89 ALR2d 396.
Standard for determination of reasonableness of criminal defendant's belief, for purposes of self-defense claim, that physical force is necessary — modern cases. 73 ALR4th 993.

627:7 Use of Force in Defense of Premises. A person in possession or control of premises or a person who is licensed or privileged to be thereon is justified in using non-deadly force upon another when and to the extent that he reasonably believes it necessary to prevent or terminate the commission of a criminal trespass by such other in or upon such premises, but he may use deadly force under such circumstances only in defense of a person as prescribed in RSA 627:4 or when he reasonably believes it necessary to prevent an attempt by the trespasser to commit arson.

History

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

ANNOTATIONS

Cited

Cited in State v. Arillo (1982) 122 NH 107, 441 A2d 1163; State v. Smith (1983) 123 NH 46, 455 A2d 1041.

LIBRARY REFERENCES

New Hampshire Criminal Jury Instructions

New Hampshire Criminal Jury Instructions, Instruction # 3.11.

ALR

Duty to retreat where assailant is social guest on premises. 100 ALR3d 532.

627:8 Use of Force in Property Offenses. A person is justified in using force upon another when and to the extent that he reasonably believes it necessary to prevent what is or reasonably appears to be an unlawful taking of his property, or criminal mischief, or to retake his property immediately following its taking; but he may use deadly force under such circumstances only in defense of a person as prescribed in RSA 627:4.

HISTORY

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

ANNOTATIONS

1. Construction

At trial for simple assault and resisting arrest, regardless of whether chief of police properly or improperly ordered arresting officer to tow defendant's vehicle, defendant enjoyed no privilege to use self-help to prevent removal of his property or to effect its return nor was he entitled to resist arrest; any such privileges that may have existed at common law have been statutorily superceded. State v. Haas (1991) 134 NH 480, 596 A2d 127.

Cited

Cited in State v. Cavanaugh (1993) 138 NH 193, 635 A2d 1382.

LIBRARY REFERENCES

New Hampshire Criminal Jury Instructions

New Hampshire Criminal Jury Instructions, Instruction # 3.10.

ALR

Liability of private citizen or his employer for injury or damage to third person resulting from firing of shots at fleeing criminal. 29 ALR4th 144.

627:8-a Use of Force by Merchants. A merchant, or his agent, is justified in detaining any person who he has reasonable grounds to believe has committed the offense of willful concealment or shoplifting, as defined by RSA 644:17, on his premises as long as necessary to surrender the person to a peace officer, provided such detention is conducted in a reasonable manner.

HISTORY

Source. 1981, 344:2, eff. Aug. 16, 1981.

ANNOTATIONS

1. Jury instructions

In action based on allegedly improper arrest and detention of plaintiff for shoplifting, trial court's failure to instruct the jury that this section was a complete defense was harmless error, if error at all, since a reasonable jury could only have found that this section was inapplicable because the defendant did not have reasonable grounds to detain plaintiff. Panas v. Harakis (1987) 129 NH 591, 529 A2d 976.

LIBRARY REFERENCES

West Key Number

False Imprisonment ⇐ 8.

CJS

False Imprisonment § 29 et seq.

ALR

Construction and effect, in false imprisonment action, of statute providing for detention of suspected shoplifters. 47 ALR3d 998.

Liability of storekeeper for injury to customer arising out of pursuit of shoplifter. 14 ALR4th 950.

627:8-b Detention Powers of County Fair Security Guards.

I. Any county fair security guard who meets the requirements of paragraph II shall have the power to detain any person who he has reasonable grounds to believe has committed any offense under the laws of the state, on the premises of the county fair association as long as necessary to surrender the person to a peace officer, provided such detention is accomplished in a reasonable manner.

II. Only security guards who have completed a program of police training for part-time police officers, meeting standards established by the New Hampshire police standards and training council pursuant to RSA 188-F:26 and appropriate to a security guard's exercise of limited police powers, shall have the powers of detention granted in paragraph I.

HISTORY

Source. 1987, 85:1, eff. May 6, 1987.

627:9 Definitions. As used in this chapter:

I. "Curtilage" means those outbuildings which are proximately, directly and intimately connected with a dwelling, together with all the land or grounds surrounding the dwelling such as are necessary, convenient, and habitually used for domestic purposes.

II. "Deadly force" means any assault or confinement which the actor commits with the purpose of causing or which he knows to create a substantial risk of causing death or serious bodily injury. Purposely firing a firearm capable of causing serious bodily injury or death in the direction of another person or at a vehicle in which another is believed to be constitutes deadly force.

III. "Dwelling" means any building, structure, vehicle, boat or other place adapted for overnight accommodation of persons, or sections of any place similarly adapted. It is immaterial whether a person is actually present.

IV. "Non-deadly force" means any assault or confinement which does not constitute deadly force.

HISTORY

Source. 1971, 518:1. 1981, 347:3, eff. Aug. 16, 1981.

Amendments—1981. Paragraph I: Former par. I redesignated as par. II and new par. I added.

Paragraph II: Former par. II redesignated as par. IV and former par. I redesignated as par. II.

Paragraph III: Added.

Paragraph IV. Redesignated from former par. II.

CHAPTER 628

RESPONSIBILITY

628:1 Immaturity.

I. Except as provided in paragraph II, a person less than 15 years old is not criminally responsible for his conduct, but may be adjudged to be a juvenile delinquent.

II. A person 13 years of age or older may be held criminally responsible for the following offenses if the person's case is transferred to the superior court under the provisions of RSA 169-B:24:

II. (a)(1) First degree murder as defined in RSA 630:1-a.

(2) Second degree murder as defined in RSA 630:1-b.

(3) Manslaughter as defined in RSA 630:2.

(b) First degree assault as defined in RSA 631:1.

(c) Second degree assault as defined in RSA 631:2.

(d) Kidnapping as defined in RSA 633:1.

(e) Aggravated felonious sexual assault as defined in RSA 632-A:2.

(f) Criminal restraint as defined in RSA 633:2.

(g) Class A felony robbery as defined in RSA 636:1.

(h) Attempted murder.

HISTORY

Source. 1971, 518:1. 1988, 204:6. 1995, 308:113, eff. Jan. 1, 1996.

Amendments—1995. Paragraph II: Amended generally.

—1988. Designated the existing provisions of the section as par. I, added "except as provided in paragraph II" preceding "a person" at the beginning of that paragraph and added par. II.

Application—1995 amendment. 1995, 308:118, eff. Jan. 1, 1996, provided that the amendment to par. II of this section by 1995, 308:113 shall apply to offenses committed on or after Jan. 1, 1996.

CROSS REFERENCES

Delinquent children, see RSA 169-B.
Parole of delinquents, see RSA 170-H.

ANNOTATIONS

Cited

Cited in State v. Guaraldi (1983) 124 NH 93, 467 A2d 233; State v. Benoit (1985) 126 NH 6, 490 A2d 295.

LIBRARY REFERENCES

West Key Number

Infants ⇐ 65 et seq.

CJS

Infants §§ 196, 197, 204.

628:2 Insanity.

I. A person who is insane at the time he acts is not criminally responsible for his conduct. Any distinction between a statutory and common law defense of insanity is hereby abolished and invocation of such defense waives no rights an accused person would otherwise have.

II. The defendant shall have the burden of proving the defense of insanity by clear and convincing evidence.

III. Evidence of insanity is not admissible unless:

(a) The defendant, within 10 days after entering his plea of not guilty or at such later time as the court may for good cause permit, notifies the court and the state of his purpose to rely on such defense; and

(b) Such notice is given at least 30 days before the scheduled commencement of trial.

HISTORY

Source. 1971, 518:1. 1982, 34:1. 1987, 13:1, eff. June 3, 1987.

Amendments—1987. Paragraph II: Amended generally.

—1982. Paragraph II: Former par. II redesignated as subpar. III(a) and new par. II added.

Paragraph III: Former par. II redesignated as introductory clause and subpar. (a), made minor changes in phraseology in that subparagraph and added subpar. (b).

CROSS REFERENCES

Committal of accused acquitted by reason of insanity, see RSA 651:9-a.

Committal of accused for pre-trial psychiatric examination, see RSA 135:17.

Duration of order committing accused acquitted by reason of insanity, see RSA 651:11-a.

Evidence required to commit accused acquitted by reason of insanity, see New Hampshire Constitution, Part 1, Article 15.

Plea of insanity, see RSA 651:8-a.

ANNOTATIONS

1. Constitutionality

Failure of legislature to delineate a legal standard concerning the factual question of criminal insanity is not an unconstitutional delegation of legislative authority. State v. Shackford (1986) 127 NH 695, 506 A2d 315.

2. Presumption of sanity

Sanity is properly in nature of a policy presumption because it is inherent in human nature and is natural and normal condition of mankind, and is not properly an element of the crime. Novosel v. Helgemoe (1978) 118 NH 115, 384 A2d 124.

3. Test

The test for criminal insanity is whether insanity negated criminal intent. State v. Shackford (1986) 127 NH 695, 506 A2d 315.

4. Trial procedure

If accused does not desire a bifurcated hearing, but instead wishes to plead not guilty and raise insanity issue as affirmative defense, he may go forward with his affirmative insanity defense after state has rested upon evidence probative of requisite intent or culpability, and other elements of crime charged, and in such case, jury should be instructed about consequences of finding of not guilty by reason of insanity, and if jury certifies to court that they have acquitted defendant by reason of insanity, court will then proceed to determination of present dangerousness. Novosel v. Helgemoe (1978) 118 NH 115, 384 A2d 124.

5. Alcoholism

Though intoxication has been recognized as a defense to a crime on grounds of insanity in the form of dipsomania, it is

(b) "Organization" means a fraternity, sorority, association, corporation, order, society, corps, athletic group, cooperative, club, or service, social or similar group, whose members are or include students, operating at or in conjunction with an educational institution.

(c) "Student" means any person regularly enrolled on a full-time or part-time basis as a student in an educational institution.

(d) "Student hazing" means any act directed toward a student, or any coercion or intimidation of a student to act or to participate in or submit to any act, when:

(1) Such act is likely or would be perceived by a reasonable person as likely to cause physical or psychological injury to any person; and

(2) Such act is a condition of initiation into, admission into, continued membership in or association with any organization.

II. (a) A natural person is guilty of a class B misdemeanor if such person:

(1) Knowingly participates as actor in any student hazing; or

(2) Being a student, knowingly submits to hazing and fails to report such hazing to law enforcement or educational institution authorities; or

(3) Is present at or otherwise has direct knowledge of any student hazing and fails to report such hazing to law enforcement or educational institution authorities.

(b) An educational institution or an organization operating at or in conjunction with an educational institution is guilty of a misdemeanor if it:

(1) Knowingly permits or condones student hazing; or

(2) Knowingly or negligently fails to take reasonable measures within the scope of its authority to prevent student hazing; or

(3) Fails to report to law enforcement authorities any hazing reported to it by others or of which it otherwise has knowledge.

III. The implied or express consent of any person toward whom an act of hazing is directed shall not be a defense in any action brought under this section.

History

Source. 1993, 155:1, eff. July 1, 1993.

Cross References

Classification of crimes, see RSA 625:9.
Sentences, see RSA 651.

CHAPTER 632

RAPE

[Repealed 1975, 302:2, eff. Aug 6, 1975.]

History

Former RSA 632, comprising RSA 632:1-632:5, which was derived from 1971, 518:1, related to sexual offenses. See now RSA 632-A.

CHAPTER 632-A

SEXUAL ASSAULT AND RELATED OFFENSES

Cross References

Annulment of record of conviction for offense under this chapter, see RSA 651:5.
Confidential communications between victims of sexual assault and counselors, see RSA 173-C.
Involuntary admission for persons charged with felonious sexual assault found not competent to stand trial, see RSA 171-B.
Parole of prisoner convicted of psycho-sexual murder, see RSA 651-A:6.
Physical force in defense of a person, see RSA 627:4.
Testimony of minor in civil proceedings to recover damages on behalf of minor for abuse or assault, see RSA 516:25-a.

Annotations

Cited

Cited in State v. Cressey (1993) 137 NH 402, 628 A2d 696.

Library References

New Hampshire Practice

2 N.H.P. Criminal Practice & Procedure §§ 806, 845, 847.

New Hampshire Bar Journal

For article, "Repressed Memory or False Memory: New Hampshire Courts Consider the Dispute," 35 N.H.B.J. 51 (1994).

West Key Number

Rape ⇔ 1 et seq.

CJS

Rape § 1 et seq.

ALR

Admissibility, in prosecution for sex-related offense, of results of tests on semen or seminal fluids. 76 ALR4th 897.
Assault and battery: sexual nature of physical contact as aggravating offense. 63 ALR3d 225.
Fact that murder-rape victim was dead at time of penetration as affecting conviction for rape. 76 ALR4th 1147.
Incest as included within charge of rape. 76 ALR2d 484.
Mistake or lack of information as to victim's age, as defense to statutory rape. 44 ALR3d 1434.
Necessity or permissibility of mental examination to determine competency or credibility of complainant in sexual offense prosecution. 45 ALR4th 310.

Prosecution of female as principal for rape. 67 ALR4th 1127.
Remoteness in time of other similar offenses committed by accused as affecting admissibility of evidence thereof in prosecution for sex offenses. 88 ALR3d 8.
Time element as affecting admissibility of statement or complaint made by victim of sex crime as res gestae, spontaneous exclamation, or excited utterance. 89 ALR3d 102.
Validity of statute making sodomy a criminal offense. 20 ALR4th 1009.
What constitutes offense of "sexual battery". 87 ALR3d 1250.

632-A:1 Definitions. In this chapter:

I. "Actor" means a person accused of a crime of sexual assault.

I-a. "Affinity" means a relation which one spouse because of marriage has to blood relatives of the other spouse.

I-b. "Genital openings" means the internal or external genitalia including, but not limited to, the vagina, labia majora, labia minora, vulva, urethra or perineum.

I-c. "Pattern of sexual assault" means committing more than one act under RSA 632-A:2 or RSA 632-A:3, or both, upon the same victim over a period of 2 months or more and within a period of 5 years.

II. "Retaliate" means to undertake action against the interests of the victim, including, but not limited to:

(a) Physical or mental torment or abuse.

(b) Kidnapping, false imprisonment or extortion.

(c) Public humiliation or disgrace.

III. "Serious personal injury" means extensive bodily injury or disfigurement, extreme mental anguish or trauma, disease or loss or impairment of a sexual or reproductive organ.

IV. "Sexual contact" means the intentional touching of the victim's or actor's sexual or intimate parts, including breasts and buttocks, and the intentional touching of the victim's or actor's clothing covering the immediate area of the victim's or actor's sexual or intimate parts. Sexual contact includes only that aforementioned conduct which can be reasonably construed as being for the purpose of sexual arousal or gratification.

V. "Sexual penetration" means:

(a) Sexual intercourse; or

(b) Cunnilingus; or

(c) Fellatio; or

(d) Anal intercourse; or

(e) Any intrusion, however slight, of any part of the actor's body or any object manipulated by the actor into genital or anal openings of the victim's body; or

(f) Any intrusion, however slight, of any part of the victim's body into genital or anal openings of the actor's body;

(g) Any act which forces, coerces or intimidates the victim to perform any sexual penetration as defined in subparagraphs (a)-(f) on the actor, on another person, or on himself.

(h) Emission is not required as an element of any form of sexual penetration.

History

Source. 1975, 302:1. 1979, 127:1. 1981, 553:10. 1986, 132:2. 1992, 254:3-5. 1994, 185:1, eff. Jan. 1, 1995.

Amendments—1994. Paragraph I-c: Added.

—**1992.** Paragraph I-b: Added.

Paragraph II: Amended generally.

Paragraph V: Added a new subpar. (g) and redesignated former subpar. (g) as subpar. (h).

—**1986.** Paragraph I-a: Added.

—**1981.** Paragraph V: Amended generally.

—**1979.** Paragraph IV: Inserted "or actor's" following "victim's" wherever it appeared.

Annotations

1. Construction

The mental state required for RSA 632-A:3, II must be found in the definition of sexual penetration; unlike the definition of sexual contact, there is no language in the definition of sexual penetration describing a requisite state of mind. State v. Goodwin (1996) 140 NH 672, 671 A2d 554.

Since culpability applies only to material elements of an offense, purposefulness is required with respect to the act of sexual penetration, but is not required of the statutory variants as to how penetration can be committed. State v. Demmons (1993) 137 NH 716, 634 A2d 998.

Where there is an element of an offense that is defined by statutory variants, and the indictment expresses a specific variant, then the State is bound by the allegation made in the indictment; since sexual penetration can be committed in any of five ways, if the indictment charges defendants with committing this act in two specific statutorily defined ways, the State is bound to prove the penetration alleged. State v. Demmons (1993) 137 NH 716, 634 A2d 998.

If the victim is forced to commit fellatio upon the defendant or the defendant performs the act upon the victim, the act falls within the definition of sexual penetration in paragraph V of this section. State v. vonKlock (1981) 121 NH 697, 433 A2d 1299, overruled on other grounds, State v. Smith (1985) 127 NH 433, 503 A2d 774.

Subparagraph V(e) of this section relates to acts not otherwise covered in paragraph IV and does limit sexual penetration to the genital or anal openings of the victim. State v. Scott (1977) 117 NH 996, 380 A2d 1092.

Cited

Cited in State v. Goodwin (1978) 118 NH 862, 395 A2d 1234; State v. St. John (1980) 120 NH 61, 410 A2d 1126; State v. Mitchell (1983) 124 NH 247, 469 A2d 1310; State v. Lovely (1984) 124 NH 690, 480 A2d 847; State v. Smith (1985) 127 NH 433, 503 A2d 774; Lovely v. Cunningham, 796 F.2d 1 (1st Cir. 1986); State v. Smith (1986) 127 NH 836, 508 A2d 1082; Opinion of the Justices (1987) 129 NH 180, 522 A2d 989; State v. Hood (1989) 131 NH 606, 557 A2d 995; State v. Wood (1989) 132 NH 162, 562 A2d 1312; State v. Pond (1989) 132 NH 472, 567 A2d 992; State v. Fennell (1990) 133 NH 402, 578 A2d 329; State v. Letourneau (1990) 133 NH 565, 578 A2d 865; State v. O'Neill (1991) 134 NH 182, 589 A2d 999; State v. Vaillancourt (1992) 136 NH 206, 612 A2d 1329; State v. Arris (1995) 139 NH 469, 656 A2d 828.

632-A:2 Aggravated Felonious Sexual Assault.

I. A person is guilty of the felony of aggravated felonious sexual assault if he engages in sexual penetration with another person under any of the following circumstances:

(a) When the actor overcomes the victim through the actual application of physical force, physical violence or superior physical strength.

(b) When the victim is physically helpless to resist.

(c) When the actor coerces the victim to submit by threatening to use physical violence

or superior physical strength on the victim, and the victim believes that the actor has the present ability to execute these threats.

(d) When the actor coerces the victim to submit by threatening to retaliate against the victim, or any other person, and the victim believes that the actor has the ability to execute these threats in the future.

(e) When the victim submits under circumstances involving false imprisonment, kidnapping or extortion.

(f) When the actor, without the prior knowledge or consent of the victim, administers or has knowledge of another person administering to the victim any intoxicating substance which mentally incapacitates the victim.

(g) When the actor provides therapy, medical treatment or examination of the victim in a manner or for purposes which are not professionally recognized as ethical or acceptable.

(h) When, except as between legally married spouses, the victim is mentally defective and the actor knows or has reason to know that the victim is mentally defective.

(i) When the actor through concealment or by the element of surprise is able to cause sexual penetration with the victim before the victim has an adequate chance to flee or resist.

(j) When, except as between legally married spouses, the victim is 13 years of age or older and under 16 years of age and:

(1) the actor is a member of the same household as the victim; or

(2) the actor is related by blood or affinity to the victim.

(k) When, except as between legally married spouses, the victim is 13 years of age or older and under 18 years of age and the actor is in a position of authority over the victim and uses this authority to coerce the victim to submit.

(*l*) When the victim is less than 13 years of age.

(m) When at the time of the sexual assault, the victim indicates by speech or conduct that there is not freely given consent to performance of the sexual act.

II. A person is guilty of aggravated felonious sexual assault without penetration when he intentionally touches the genitalia of a person under the age of 13 under circumstances that can be reasonably construed as being for the purpose of sexual arousal or gratification.

III. A person is guilty of aggravated felonious sexual assault when such person engages in a pattern of sexual assault against another person, not the actor's legal spouse, who is less than 16 years of age. The mental state applicable to the underlying acts of sexual assault need not be shown with respect to the element of engaging in a pattern of sexual assault.

History

Source. 1975, 302:1. 1981, 415:2, 3. 1986, 132:1. 1992, 254:6. 1994, 185:2. 1995, 66:1, *eff.* Jan. 1, 1996.

Amendments—1995. Paragraph I(m): Added.

—**1994.** Paragraph III: Added.

—**1992.** Designated the existing introductory paragraph as par. I and substituted "the felony of aggravated felonious sexual assault" for "a class A felony" following "guilty of" in that paragraph, redesignated former pars. I-VI as subpars. (a)-(f), respectively, redesignated former par. VII as subpar. (g) and substituted "provides therapy" for "engages in the" following "actor" and "professionally" for "medically" preceding "recognized" in that subparagraph, and redesignated former pars. VIII-XI as subpars. (h)-(*l*), respectively, and added par. II.

—**1986.** Paragraph X: Amended generally.

Paragraph X-a: Added.

—**1981.** Paragraph VIII: Inserted "except as between legally married spouses" following "when".

Paragraph X: Inserted "except as between legally married spouses" following "when" and "when the actor" preceding "is related" and substituted "13" for "thirteen" and "16" for "sixteen".

Cross References

Bail prohibited, see RSA 597:1-a.

Classification of crimes, see RSA 625:9.

Limitations on civil actions brought by defendant against victim, see RSA 632-A:10-c.

Penalties, see RSA 632-A:10-a, :11.

Registration of criminal offenders, see RSA 651-B.

Sentences, see RSA 651.

Victims permitted to speak before sentencing, see RSA 651:4-a.

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1. Constitutionality

A construction of paragraph IV (now paragraph I(d)) of this section, which includes as one of the prescribed means of coercing sex through threats to retaliate a threat to extort, to embrace the definition of extortion in RSA 637:5, II, which includes threats of economic reprisal, without the objective of acquiring the victim's property, did not constitute an interpretation so novel and unforeseeable as to render retroactive application of the interpretation a violation of the due process clause of the United States Constitution. Lovely v. Cunningham, 796 F.2d 1 (1st Cir. 1986).

In prosecution under paragraph IV (now paragraph I(d)) of this section, predicated on the use or threats of economic reprisal to coerce the victim to engage in sexual acts with the defendant in which the state presented evidence of a plethora of threats by the defendant to cause trouble for the victim with the police and to cause the victim to lose his job unless he continued to provide sexual favors, resulting in apprehension by the victim of being deprived of financial resources, the facts supported the conclusion of the jury that the situation was one involving coercion of the victim by the defendant, rather than a bargain by the victim, in response to pressure by the defendant, to continue sexual favors and, thus, application of the statute to the defendant did not involve an unconstitutional application of the statute to criminalize a lover's quarrel. Lovely v. Cunningham, 796 F.2d 1 (1st Cir. 1986).

Since routine and ordinary penetrations of a child which occur in the course of caring for him or her do not fall within the prohibitions of this section, this section is thus not overbroad because it does not prohibit any protected conduct. State v. Smith (1985) 127 NH 433, 503 A2d 774.

Use of the word "involving" in paragraph V (now paragraph I(e)) of this section does not render that paragraph unconstitutionally vague. State v. Taylor (1981) 121 NH 489, 431 A2d 775.

Paragraph V (now paragraph I(e)) of this section gave fair warning to defendant that the conduct with which he was charged, sexual penetration of a victim whom he had kidnapped or falsely imprisoned, was forbidden. State v. Taylor (1981) 121 NH 489, 431 A2d 775.

Paragraph VII (now paragraph I(h)) of this section is not void for vagueness or overbreadth because of undefined use of the term "mentally defective" since the term is no more vague than many other statutory terms describing criminal offenses, any reasonable person would know that the language was meant to describe people who are of marked subnormal intelligence and the fact that paragraph VII imposes criminal liability only on one who either knows or should have known that the victim was mentally defective bears heavily on the issue of fair warning of the conduct proscribed. State v. Degrenier (1980) 120 NH 919, 424 A2d 412.

2. Construction

Defendant's claim that sexual assault under RSA 632 A:4 requires a showing of sexual penetration is incorrect; if the defendant's view were correct then every sexual assault prosecution would have to prove aggravated felonious sexual assault whenever it sought to make use of circumstance IX (now I(i)) as set forth in RSA 632-A:2, and the crime of sexual assault under circumstance IX (now I(i)) would thus become meaningless; it is not to be presumed that the legislature would pass an act leading to an absurd result and nullifying to an appreciable extent the purpose of the statute. State v. Arris (1995) 139 NH 469, 656 A2d 828.

The term sexual penetration is not a defining element of circumstance IX (now I(i)) of RSA 632-A:2, rather, it simply refers to the conduct proscribed by RSA 632-A:2; a person must commit sexual penetration to be guilty of aggravated felonious sexual assault, but to be guilty of sexual assault, he need only commit sexual contact under circumstances set forth in RSA 632-A:2. State v. Arris (1995) 139 NH 469, 656 A2d 828.

Under this section, although the threat and sexual penetration must be close in time, the threat need not be explicit. State v. Kulikowski (1989) 132 NH 281, 564 A2d 439.

The exact date of the assault is not an element of the aggravated felonious sexual assault crime. State v. Tynan (1989) 132 NH 461, 566 A2d 1142.

Normally, the exact date of the sexual assault is not required for a conviction. State v. LaCasse (1987) 129 NH 651, 531 A2d 327.

This section does not require proof of the exact date of the assault as an element, and therefore a defendant need only be informed that he must meet proof that he committed the assaultive acts at some time during a specified period. State v. Lakin (1986) 128 NH 639, 517 A2d 846.

Sexual contact is not a necessary element of aggravated felonious assault. State v. Smith (1985) 127 NH 433, 503 A2d 774.

This section was not intended to include penetration of a child for benign purposes such as washing, administering an enema, or taking a child's temperature. State v. Smith (1985) 127 NH 433, 503 A2d 774.

This section does not define the offense so as to make proof of exact date essential. State v. Boire (1984) 124 NH 622, 474 A2d 568.

A defendant may be separately indicted for and convicted of proscribed intercourse and fellatio, two separate offenses against the person. State v. Bussiere (1978) 118 NH 659, 392 A2d 151.

A male commits an aggravated felonious sexual assault if he forces a female to commit act of fellatio upon him. State v. Scott (1977) 117 NH 996, 380 A2d 1092.

3. Construction with other laws

Defendant could have been convicted for solicitation of aggravated felonious sexual assault based on his asking prosecution witness to sexually penetrate another female under circumstances involving kidnapping and this required state to prove sexual penetration and every element of kidnapping; and, therefore, solicitation of kidnapping, under indictment, was lesser-included offense of solicitation of aggravated felonious sexual assault, and sentences on both convictions violated double jeopardy protections. State v. Lucius (1995) 140 NH 60, 663 A2d 605.

Multiple sentences for convictions of solicitation of aggravated felonious sexual assault, solicitation of kidnapping, and solicitation of violation of the child pornography laws subjected defendant to multiple punishments for same offense, in violation of the guarantees against double jeopardy of both state and federal constitutions. State v. Lucius (1995) 140 NH 60, 663 A2d 605.

Imposing punishment for both criminal solicitation of aggravated felonious sexual assault and criminal solicitation of violation of child pornography laws does not violate state or federal double jeopardy protections because each offense has numerous elements not contained in other; in fact, only element they have in common is actual asking. State v. Lucius (1995) 140 NH 60, 663 A2d 605.

Argument was rejected that indictments alleging aggravated felonious sexual assault were barred by RSA 626:8, the statute of limitations, because the state relied on threats that had occurred more than six years prior to the date of the arrest warrant; defendant was not prosecuted for merely threatening the victim more than six years prior to the date of the warrant, but for committing aggravated felonious sexual assault within the limitations period. State v. Kulikowski (1989) 132 NH 281, 564 A2d 439.

The distinguishing feature between the crimes of sexual assault and aggravated sexual assault is that a person must commit sexual penetration to be guilty of aggravated felonious sexual assault under this section, but to be guilty of sexual assault under RSA 632-A:4, he need only commit sexual contact under circumstances set forth in this section. State v. vonKlock (1981) 121 NH 697, 433 A2d 1299, overruled on other grounds, State v. Smith (1985) 127 NH 433, 503 A2d 774.

4. Burden of proof

Defendant's conviction for sexual penetration of a mentally defective person was reversed where the State failed to sustain its burden of proof that the victim was mentally defective instructed that retardation was not for lay witnesses to diagnose, and the victim's testimony indicated she had the capacity to legally consent to the act. State v. Call (1994) 139 NH 102, 650 A2d 331.

In a prosecution for sexual penetrations of a mentally defective person, the State has the burden of proving beyond a reasonable doubt that the victim was incapable of legally consenting to the act; and a conviction will be reversed only if no rational trier of fact, viewing the evidence most favorably of the State, could have found guilty beyond a reasonable doubt. State v. Call (1994) 139 NH 102, 650 A2d 331.

In a prosecution for aggravated felonious sexual assault, the state must prove beyond a reasonable doubt that the defendant engaged in sexual penetration with another person when the defendant overcame the victim through the application of physical force, physical violence or superior physical strength. State v. Simpson (1990) 133 NH 704, 582 A2d 619.

5. Mens rea

While the underlying act common to each variant of the offense of aggravated sexual assault is sexual penetration, no mens rea is expressed in this section; notwithstanding this omission, one cannot be convicted of this felony without proof that the act was accompanied by a culpable mental state. State v. Ayer (1992) 136 NH 191, 612 A2d 923.

For conviction of crime of aggravated felonious sexual assault, there is no requirement that the defendant actually know that the victim did not consent. State v. Ayer (1992) 136 NH 191, 612 A2d 923.

Indictment for aggravated felonious assault could properly charge defendant for acting "knowingly," rather than "intentionally" or "purposely," since common-law crime of rape was general-intent, rather than a specific intent, crime; holding in State v. Davis, 108 NH 158 (1967), that same intent was required for rape and attempted rape, is overruled insofar as it is inconsistent. State v. Ayer (1992) 136 NH 191, 612 A2d 923.

Aggravated felonious sexual assault indictment alleging that defendant acted "knowingly", rather than "purposely",

was sufficient, since state only needed to prove defendant acted knowingly. State v. Reynolds (1992) 136 NH 325, 615 A2d 637.

Requisite mental state for conviction of aggravated felonious sexual assault is "knowingly", not "purposely". State v. Lemieux (1992) 136 NH 329, 616 A2d 636.

6. Threats of retaliation

Retaliatory threats, within the meaning of paragraph IV of this section, are not required to be express. State v. Johnson (1988) 130 NH 578, 547 A2d 213.

In the case of defendant convicted of aggravated felonious sexual assault where the victim testified that the defendant had threatened him with loss of employment and housing, institution of criminal charges, and proceedings in court to collect money owed the defendant, the threats directed to the victim amounted to threats of retaliation within the meaning of paragraph IV of this section. State v. Lovely (1984) 124 NH 690, 480 A2d 847.

7. Mentally defective victim

Paragraph VIII of this section prohibits intercourse only with those persons whose mental deficiency is such as to make them incapable of legally consenting to the act. State v. Degrenier (1980) 120 NH 919, 424 A2d 412.

Although the degree of mental defectiveness intended to be covered by paragraph VIII (now paragraph I(h)) of this section may not be entirely clear, the term "mentally defective" is sufficient to give defendant fair warning that, by engaging in sexual intercourse with one who he knows or has reason to know is mentally defective in any recognizable and appreciable degree, he is violating paragraph VIII (now paragraph I(h)). State v. Degrenier (1980) 120 NH 919, 424 A2d 412.

8. Coercion

Coercion of a victim as it is contemplated in RSA 632-A:2, X-a (*see now* RSA 632-A:2, I(k)) can include the subtle persuasion arising from the position of authority; that is, undue influence and psychological manipulation. State v. Carter (1995) 140 NH 114, 663 A2d 101.

A person in a position of authority who uses such authority in any way to coerce the child's submission to sexual activity is subject to prosecution under this section, whether the coercion involves undue influence, physical force, threats, or any combination thereof. State v. Collins (1987) 129 NH 488, 529 A2d 945.

9. Lesser included offenses

The term sexual penetration is not a defining element of circumstance IX (now I(i)) of RSA 632-A:2, rather, it simply refers to the conduct proscribed by RSA 632-A:2, a person must commit sexual penetration to be guilty of aggravated felonious sexual assault, but to be guilty of sexual assault, he need only commit sexual contact under circumstances set forth in RSA 632-A:2. State v. Arris (1995) 139 NH 469, 656 A2d 828.

Sexual assault cannot be a lesser-included offense of aggravated felonious assault. State v. Smith (1985) 127 NH 433, 503 A2d 774.

State v. vonKlock, 121 NH 697 (1981), is overruled to the extent it held that sexual assault is a lesser-included offense of aggravated felonious sexual assault. State v. Smith (1985) 127 NH 433, 503 A2d 774.

A person must necessarily commit the crime of sexual assault before he can commit aggravated felonious sexual assault inasmuch as there is no means by which a person could commit sexual penetration without engaging in sexual contact; therefore, sexual assault is a lesser-included offense of aggravated felonious sexual assault. State v. vonKlock (1981) 121 NH 697, 433 A2d 1299, overruled, State v. Smith (1985) 127 NH 433, 503 A2d 774.

In prosecution for aggravated felonious sexual assault, where there was no physical evidence of rape, the prosecutrix stated that she was raped and the defendant claimed that he hit or pushed the prosecutrix in an attempt to secure the return of his property, but did not rape her, there was sufficient evidence to permit a jury rationally to convict the defendant of the lesser offense of simple assault and acquit him of the greater offense of aggravated felonious sexual assault, and the failure of the trial court to give a requested instruction on the lesser included offense seriously undermined the integrity of the fact finding process and denied the defendant of due process of law. Dukette v. Perrin, 564 F. Supp. 1530 (D.N.H. 1983).

10. Indictment

Three indictments for aggravated felonious sexual assault properly alleged the element of coercion by threatening, where they clearly alleged present coercion occasioned by repeated prior threats. State v. Kulikowski (1989) 132 NH 281, 564 A2d 439.

The omission from the indictment of the name of an under-thirteen victim of an aggravated felonious sexual assault did not, per se, render the indictment constitutionally insufficient, where the omission did not hobble the defendant's preparation of his defense. State v. Day (1987) 129 NH 378, 529 A2d 887.

Although indictment charging defendant with violating paragraph III (now I(c)) of this section did not allege that the victim believed that the actor had the present ability to execute his threats, since it informed defendant of the factual basis of the charge by stating that he forced the prosecutrix to submit to sexual penetration by threatening her with a knife, and she would not have been forced to submit if she had not believed that the defendant had the present ability to carry out his threat, the indictment was constitutionally sufficient. State v. Shute (1982) 122 NH 498, 446 A2d 1162.

11. Defenses

In prosecution for aggravated felonious sexual assault, even court's review of the sterile pages of the trunscript, supported the jury's decision to reject defendant's alibi defense. State v. Giles (1996) 140 NH 714, 672 A2d 1128.

When State alleges that sexual assault occurred sometime within a given time frame, State has obligation to prove the offense occurred within that time frame when defendant asserts a defense based on lack of opportunity within that time frame. State v. Williams (1993) 137 NH 343, 629 A2d 83.

Where State's indictment alleged that sexual assault occurred sometime within two-year time frame and defendant relied on substantial time-based defense of lack of opportunity, trial court abused its discretion in refusing to instruct jury that State must prove offense occurred within the two-year time frame, and reversal was therefore required. State v. Williams (1993) 137 NH 343, 629 A2d 83.

This section implicitly creates a defense in any prosecution, for penetration necessary for the health, hygiene, or safety of a child. State v. Smith (1985) 127 NH 433, 503 A2d 774.

Penetration for a legitimate purpose is a defense to aggravated felonious sexual assault. State v. Smith (1985) 127 NH 433, 503 A2d 774.

12. Elements

Sexual penetration is a material element of any aggravated felonious sexual assault offense under RSA 632-A:2. State v. Melcher (1996) 140 NH 823, 678 A2d 146.

Time is not an element of aggravated felonious sexual assault; however, if the State alleges a particular time frame, it has the obligation to prove that the offense occurred within that time frame when the defendant asserts a defense based on lack of opportunity within that time frame. State v. Carter (1995) 140 NH 114, 663 A2d 101.

Where defendant charged with three counts of aggravated felonious sexual assault did not assert a defense based on lack of opportunity within the time frame specified by the State, the State was not required to prove the time of the assaults. State v. Carter (1995) 140 NH 114, 663 A2d 101.

Social worker's opinion of sexual assault victim's credibility was inadmissible as either expert or lay opinion; as expert testimony it carried prejudicial risks likely to outweigh any probative value, and common sense evaluation of credibility of witnesses was province and obligation of jury. State v. Huard (1994) 138 NH 256, 638 A2d 787.

Time is not an element of aggravated felonious sexual assault. State v. Williams (1993) 137 NH 343, 629 A2d 83.

Sexual penetration is a material element of any aggravated felonious sexual assault offense. State v. Chamberlain (1993) 137 NH 414, 628 A2d 704.

13. Evidence

There was ample evidence to support a jury finding that the defendant assaulted the victim between February 1 and April 20, 1991 where the victim testified that during February, March, and April of 1991, she spent most Friday nights and Saturdays at her grandmother's house, defendant, her grandmother's brother, lived in the house at the time, one Saturday during this period, her grandmother unexpectedly had to work a shift at the shoe factory where she was employed and left the victim home with defendant, and defendant assaulted the victim on that occasion. State v. Giles (1996) 140 NH 714, 672 A2d 1128.

Where indictments alleged three discrete acts, yet the trial court allowed the State to introduce testimony by the victim about hundreds of prior sexual assaults perpetrated by defendant, many of which were identical to crime charged, evidence was precisely of the sort that could create an undue tendency to induce a decision against defendant on some improper basis. State v. Murti (1996) 140 NH 692, 672 A2d 709.

Where, among other things, evidence showed that defendant, who was at one time victim's teacher and hall and lunch monitor, started developing an intimate relationship with victim in junior high school and maintained contact with victim after the school year ended, a rational jury could have concluded that defendant used his position of authority to coerce the victim through undue psychological influence into submitting to the sexual acts. State v. Carter (1995) 140 NH 114, 663 A2d 101.

From defendant's statement to police in which he characterized the victim as a "very introverted" girl who could be "moody [and] emotional at times," and in which he stated that victim would come in after school, spend a lot of time hanging around and talking, victim didn't have a father and defendant always got the feeling that she was looking for some male figure to talk to, and that victim's relationship with her mother was very volatile, a jury could infer that defendant knew of the victim's vulnerability and the potentially great influence over her his position as a teacher afforded him. State v. Carter (1995) 140 NH 114, 663 A2d 101.

Where victim was almost eighteen years of age, and testified that intercourse occurred after foreplay, answered several questions about birth control precautions, and further testified about vaginal bleeding after sexual intercourse, there was sufficient evidence from which a reasonable jury could have found that penetration occurred for purposes of sexual assault statute. State v. Paglierani (1994) 139 NH 37, 648 A2d 209.

Victim's statements concerning her fears that she was going to die and that defendant was going to kill her were not inadmissible at trial for sexual assault and kidnapping, since statements were relevant and consistent with proof of crimes charged, and therefore failure of defendant's attorney to specifically object to statements did not constitute deficient representation. State v. Wisowaty (1993) 137 NH 298, 627 A2d 572.

At trial for kidnapping and aggravated felonious sexual assault, probative value of victim's testimony that she thought her life was in jeopardy substantially outweighed its possible prejudice; bodily injury sufficient to elevate kidnapping to class A felony could include psychological injuries and mental anguish, and elements of aggravated felonious sexual assault could include use of physical force or threats of physical violence, and thus testimony was both relevant and central to proof of crimes charged. State v. Wisowaty (1993) 137 NH 298, 627 A2d 572.

Since no reasonable jury could have found defendant guilty beyond a reasonable doubt, defendant's conviction on charge alleging digital penetration was reversed; child victim not only failed to testify that defendant penetrated her, but explicitly stated that penetration had not taken place. State v. Chamberlain (1993) 137 NH 414, 628 A2d 704.

Court error at aggravated felonious sexual assault trial, allowing witness to testify indirectly that she believed the victim had been sexually assaulted by the defendant, was harmless, where opinion was not directed to specific inconsistency in victim's testimony, was cumulative, and was inconsequential compared to victim's damaging, vivid description of acts defendant forced her to perform. State v. Lemieux (1992) 136 NH 329, 615 A2d 635.

The inconsistent and uncorroborated testimony of a victim is not insufficient, as a matter of law, to support a conviction for aggravated felonious assault. State v. Simpson (1990) 133 NH 704, 582 A2d 619.

Argument was rejected that court at trial for aggravated felonious sexual assault abused its discretion by admitting evidence of "prior bad acts" committed by defendant; evidence at issue constituted very threat which coerced the victim during the assaults in question. State v. Kulikowski (1989) 132 NH 281, 564 A2d 439.

A defendant charged with violating paragraph XI (now paragraph I(i)) of this section must be afforded the opportunity to show, by specific incidents of sexual conduct, that the victim had the experience and ability to contrive a statutory rape charge. State v. Howard (1981) 121 NH 53, 426 A2d 457.

14. Expert testimony

Admission of social worker's opinion of sexual assault victim's credibility was not harmless error, where jury's decision as to defendants' guilt or innocence depended upon victim's credibility, and despite defense counsel's cross-examination, social worker's opinion of victim's credibility was imbued with authenticity because of his expert status. State v. Huard (1994) 138 NH 256, 638 A2d 787.

Testimony of State's expert psychologist at child sexual abuse trial was not sufficiently reliable, and admission of testimony constituted error, where expert's reliance on children's accounts of alleged abuse was substantial, evaluations of children dealt almost exclusively in vague psychological profiles and symptoms and unquantifiable results, and unreliable elements or assumptions in testimony could not be exposed by thorough cross-examination. State v. Cressey (1993) 137 NH 402, 628 A2d 696.

Expert testimony in child sexual abuse case was improper and constituted error requiring reversal of defendant's conviction; testimony went beyond explaining child sexual abuse accommodation syndrome and offering explanation for inconsistent statements and other behaviors of child commonly exhibited by sexually abused children, and was an attempt to prove that the child had been sexually abused. State v. Chamberlain (1993) 137 NH 414, 628 A2d 704.

15. Instructions

The trial court abused its discretion by mixing an element of the charged crime, the victim's physical ability to resist, with an element of the defendant's defense of consent. State v. Jackson (1996) 141 NH —, — A2d —.

If it followed the instructions as given, the jury could have found the absence of ability to exercise reasonable judgment based solely on a finding that the victim was physically helpless to resist but the legislature did not include the physical ability of the victim to resist in its list of conditions that might prevent exercise of the reasonable judgment necessary to consent under RSA 626:6, III, and the instructions as a whole, therefore, did not fairly cover the issues of law in the case. State v. Jackson (1996) 141 NH —, — A2d —.

At trial for aggravated felonious sexual assault, court did not err in refusing to give an instruction on contributing to the delinquency of a minor as a lesser-included offense, since contributing to the delinquency of a minor does not contain the elements of and need not be committed in the process of committing aggravated felonious sexual assault. State v. LaCourse (1986) 127 NH 737, 506 A2d 339.

If the evidence supports it, a defendant charged with aggravated felonious sexual assault is entitled to an instruction that if the jury should find the alleged penetration was necessary for the health, hygiene, or safety of the child, it must find the defendant not guilty. State v. Smith (1985) 127 NH 433, 503 A2d 774.

At trial for aggravated felonious sexual assault, no prejudice resulted from the lack of a jury instruction that penetration necessary for health, hygiene or safety reasons was a valid defense to the charge, since the defense in the case was that the penetration was accidental and the actual jury charge emphasized the requirement that the penetration was purposeful. State v. Smith (1985) 127 NH 433, 503 A2d 774.

Trial court's erroneous jury instruction that sexual assault was a lesser-included offense of aggravated felonious sexual assault did not require reversal of conviction, since trial court correctly defined the elements of the two offenses, and since the jury did not consider the lesser offense, because the defendant was convicted of the greater offense. State v. Smith (1985) 127 NH 433, 503 A2d 774.

Where indictment for aggravated felonious sexual assault charged defendant as both a resident of the victim's household and a blood relative and the trial court instructed the jury that proof of only one of the elements was necessary for a conviction, the instruction, phrased in the disjunctive, was in accord with paragraph X (now paragraph I(k)) of this section, and there was no prejudice occasioned by the discrepancy

between the wording of the indictment and the instruction to the jury. State v. Langdon (1981) 121 NH 1065, 438 A2d 299.

16. Objections

Where defendant failed to make specific objection to legal definition of "member of the same household" in application of sexual assault statute prohibiting sexual penetration of person between ages of thirteen and sixteen who is member of the same household, general objection did not preserve issue for appeal. State v. Paglierani (1994) 139 NH 37, 648 A2d 209.

17. Jury

Where victim lived in defendant's home at time of illicit sexual intercourse, and while there, was subject to parental-like control, a reasonable jury could properly have found that the victim and defendant were members of the same household for purposes of sexual assault statute prohibiting sexual penetration of person between ages of thirteen and sixteen who is member of the same household. State v. Paglierani (1994) 139 NH 37, 648 A2d 209.

18. Proof of authority

The power to grade is not the only weapon in a teacher's arsenal, nor the only proof of authority within the meaning of RSA 632-A:2. State v. Carter (1995) 140 NH 114, 663 A2d 101.

Viewed in the light most favorable to the State, the evidence supported a finding that junior high school teacher's authority over former student continued even after the student's departure from the junior high school where the proximity of the high school and the involvement of its students in activities at the junior high school supported the inference that a junior high school teacher had the right to expect obedience from a high school student; teacher was, therefore, in a position of authority over the victim at the time the sexual acts occurred. State v. Carter (1995) 140 NH 114, 663 A2d 101.

Cited

Cited in State v. Meloon (1976) 116 NH 669, 366 A2d 1176; Kanteles v. Wheelock, 439 F. Supp. 505 (D.N.H. 1977); State v. Scott (1977) 117 NH 996, 380 A2d 1092; State v. Gregoire (1978) 118 NH 140, 384 A2d 132; State v. LaBranche (1978) 118 NH 176, 385 A2d 108; State v. Goodwin (1978) 118 NH 862, 395 A2d 1234; State v. Scarlett (1978) 118 NH 904, 395 A2d 1244; State v. Boisvert (1979) 119 NH 174, 400 A2d 48; State v. Boone (1979) 119 NH 594, 406 A2d 113; State v. Nash (1979) 119 NH 728, 407 A2d 365; State v. Isaac (1979) 119 NH 971, 409 A2d 1354; State v. St. John (1980) 120 NH 61, 410 A2d 1126; State v. Gullick (1980) 120 NH 99, 411 A2d 1113; State v. Staples (1980) 120 NH 278, 415 A2d 320; State v. Gonzales (1980) 120 NH 805, 423 A2d 608; Isaac v. Perrin, 659 F.2d 279 (1st Cir. 1981); State v. Preston (1981) 121 NH 147, 427 A2d 32; State v. Perkins (1981) 121 NH 713, 435 A2d 504; State v. LaClair (1981) 121 NH 743, 433 A2d 1326; State v. Wonyetye (1982) 122 NH 39, 441 A2d 363; State v. Dukette (1982) 122 NH 336, 444 A2d 547; State v. Miskell (1982) 122 NH 842, 451 A2d 383; State v. Niquette (1982) 122 NH 870, 451 A2d 1292; State v. Stone (1982) 122 NH 987, 453 A2d 1272; State v. Chaisson (1983) 123 NH 17, 458 A2d 95; State v. Allard (1983) 123 NH 209, 459 A2d 259; State v. Guaraldi (1983) 124 NH 93, 467 A2d 233; State v. Mitchell (1983) 124 NH 210, 470 A2d 885; State v. Mitchell (1983) 124 NH 247, 469 A2d 1310; State v. Brown (1984) 125 NH 346, 480 A2d 901; State v. Morse (1984) 125 NH 403, 480 A2d 183; State v. Howland (1984) 125 NH 497, 484 A2d 1076; State v. Nadeau (1985) 126 NH 120, 489 A2d 623; State v. Munson (1985) 126 NH 191, 489 A2d 646; State v. Vanguilder (1985) 126 NH 326, 493 A2d 1116; State v. Ober (1985) 126 NH 471, 493 A2d 493; State v. Walsh (1985) 126 NH 610, 495 A2d 1256; State ex rel. McLellan v. Cavanaugh (1985) 127 NH 33, 498 A2d 735; State v. Campbell (1985) 127 NH 112, 498 A2d 330; State v. Guaraldi (1985) 127 NH 303, 500 A2d 360; State v. Decker (1985) 127 NH 468, 503 A2d 796; State v. Jones (1985) 127 NH 515, 503 A2d 802; State v. Parker (1985) 127 NH 525, 503 A2d 809; State v. Dukette (1986) 127 NH 540, 506 A2d 699; State v. Meekins (1986) 127 NH 777, 508 A2d 1048; State v. Lurvey (1986) 127 NH 822, 508 A2d 1074; State v. Smith (1986) 127 NH 836, 508 A2d 1082; State v. Judkins (1986) 128 NH 223, 512 A2d 427; State v. Oropallo (1986) 128 NH 305, 512 A2d 1130; In re Gene B. (1986) 128 NH 321, 512 A2d 432; State v. Chapin (1986) 128 NH 355, 513 A2d 358; State v. Fennell (1986) 128 NH 383, 513 A2d 363; Vermont Mutual Insurance Co. v. Malcolm (1986) 128 NH 521, 517 A2d 800; State v. O'Leary (1986) 128 NH 661, 517 A2d 1174; State v. Wood (1986) 128 NH 739, 519 A2d 277; State v. Heath (1986) 129 NH 102, 523 A2d 82; State v. Howe (1987) 129 NH 120, 523 A2d 94; State v. Duff (1987) 129 NH 731, 532 A2d 1381; State v. Dean (1987) 129 NH 744, 533 A2d 333; State v. Bujnowski (1987) 130 NH 1, 532 A2d 1385; State v. Coppola (1987) 130 NH 148, 536 A2d 1236; State v. Colbath (1988) 130 NH 316, 540 A2d 1212; State v. Munnis (1988) 130 NH 641, 546 A2d 1060; State v. Dube (1988) 130 NH 770, 547 A2d 283; State v. King (1988) 131 NH 173, 551 A2d 973; State v. Knowles (1988) 131 NH 274, 553 A2d 274; State v. Wood (1989) 132 NH 162, 562 A2d 1312; State v. Johnson (1989) 132 NH 279, 564 A2d 444; State v. Blum (1989) 132 NH 396, 566 A2d 1131; State v. Bruce (1989) 132 NH 465, 566 A2d 1144; State v. Pond (1989) 132 NH 472, 567 A2d 992; State v. Hunter (1989) 132 NH 556, 567 A2d 564; State v. Cochran (1990) 132 NH 670, 569 A2d 756; State v. Colbath (1990) 132 NH 708, 571 A2d 260; State v. Allen (1990) 133 NH 306, 577 A2d 801; State v. Jernigan (1990) 133 NH 396, 577 A2d 1214; State v. Fennell (1990) 133 NH 402, 578 A2d 329; State v. Killam (1990) 133 NH 458, 578 A2d 850; State v. Letendre (1990) 133 NH 555, 579 A2d 1223; State v. 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ANNOTATIONS DECIDED UNDER PRIOR LAW

1. Consent

Lack of consent, a necessary element to make a prima facie case of rape, may be proved in a variety of ways, including but not limited to an attempt to escape, outcry or offer of resistance, except where the complaining witness is restrained by fear of violence. State v. Lemire (1975) 115 NH 526, 345 A2d 906.

Since a necessary element to make a prima facie case of rape was lack of consent, a showing of consent would constitute a complete defense to the crime. State v. Lemire (1975) 115 NH 526, 345 A2d 906.

LIBRARY REFERENCES

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1 N.H.P. Criminal Practice & Procedure § 370.

New Hampshire Bar Journal

For article, "Understanding and Representing Adult Clients Who Are Victims of Domestic Abuse," see 35 N.H.B.J. 8. (1994).

New Hampshire Criminal Jury Instructions

New Hampshire Criminal Jury Instructions, Instruction ## 1.20, 2.08.

ALR

Admissibility, in rape case, of evidence that accused raped or attempted to rape person other than prosecutrix. 2 ALR4th 330.

Applicability of rape statute covering children of a specified age, with respect to a child who has passed the anniversary date of such age. 73 ALR2d 874.

Conviction of rape or related sexual offenses on basis of intercourse accomplished under the pretext of, or in the course of, medical treatment. 65 ALR4th 1064.

Multiple instances of forcible intercourse involving same defendant and same victim as constituting multiple crimes of rape. 81 ALR3d 1228.

Rape by fraud or impersonation. 91 ALR2d 591.

Rape or similar offense based on intercourse with woman who is allegedly mentally deficient. 31 ALR3d 1227.

What constitutes penetration in prosecution for rape or statutory rape. 76 ALR3d 163.

632-A:3 Felonious Sexual Assault. A person is guilty of a class B felony if he:

I. Subjects a person to sexual contact and causes serious personal injury to the victim under any of the circumstances named in RSA 632-A:2; or

II. Engages in sexual penetration with a person other than his legal spouse who is 13 years of age or older and under 16 years of age; or

III. Engages in sexual contact with a person other than his legal spouse who is under 13 years of age.

HISTORY

Source. 1975, 302:1. 1981, 415:4. 1985, 228:4, eff. Jan. 1, 1986.

Amendments — 1985. Amended section generally.

— 1981. Inserted "other than his legal spouse" following "person".

CROSS REFERENCES

Bail prohibited, see RSA 597:1-a.
Classification of crimes, see RSA 625:9.
Extended term of imprisonment, see RSA 651:6.
Limitations on civil actions brought by defendant against victim, see RSA 632-A:10-c.
Registration of criminal offenders, see RSA 651-B.
Sentences, see RSA 651.

ANNOTATIONS

1. Privacy rights

Although this section lacked requirement of scienter it did not infringe on party's assumed federally protected privacy right to engage in consensual heterosexual intercourse with adults. Goodrow v. Perrin (1979) 119 NH 483, 403 A2d 864.

There is no privacy right to engage in sexual intercourse with a person the legislature has determined is unable to give consent, even if there is a protected privacy right to engage in heterosexual intercourse with other adults. Goodrow v. Perrin (1979) 119 NH 483, 403 A2d 864.

2. Application

Statutory rape applies to those under the age of sixteen years regardless of their emotional and sexual maturity. State v. Berry (1977) 117 NH 352, 373 A2d 355.

3. Mens rea

The mental state required for RSA 632-A:3, II must be found in the definition of sexual penetration; unlike the definition of sexual contact, there is no language in the definition of sexual penetration describing a requisite state of mind. State v. Goodwin (1996) 140 NH 672, 671 A2d 554.

Whereas specific intent commonly refers to a special mental element above and beyond that required with respect to the criminal act itself, the general intent requirement for rape means that no intent is requisite other than that evidenced by the doing of the acts constituting the offense. State v. Goodwin (1996) 140 NH 672, 671 A2d 554.

Engaging in sexual penetration in any of the statutorily prohibited circumstances is criminal when the actor acts knowingly. State v. Goodwin (1996) 140 NH 672, 671 A2d 554.

It would be illogical if the mens rea for felonious sexual assault involving penetration and aggravated felonious sexual assault involving penetration were different; assuming arguendo that the mental state required for felonious sexual assault was "purposely," it would be more difficult to prove than aggravated felonious sexual assault, even though it carries a lesser penalty. State v. Goodwin (1996) 140 NH 672, 671 A2d 554.

"Knowingly" is the appropriate mens rea for felonious sexual assault involving sexual penetration. State v. Goodwin (1996) 140 NH 672, 671 A2d 554.

On appeal from conviction on two counts of felonious sexual assault for sexual penetration in the form of anal and sexual intercourse, defendant's argument that the jury instruction on transferred intent improperly permitted the jury to convict him on both counts even if he intended to engage only in vaginal intercourse was rejected, since the judge's instruction explicitly stated that the State had "the burden of proof of purposeful penetration of the vagina and purposeful penetration of the anus," and the State was only required to prove that defendant had the culpable mental state to engage in sexual penetration, and that the two acts stated in the indictments had occurred. State v. Demmons (1993) 137 NH 716, 634 A2d 998.

On appeal from conviction on two counts of felonious sexual assault for sexual penetration in the form of anal and sexual intercourse, defendant's arguments that the jury instruction on transferred intent improperly amended the indictment, and that the jury instruction surprised him, prejudicing his defense and violating his constitutional right to a fair trial, were rejected as unfounded because there was no constructive amendment of the indictments since purposefulness is required with respect to the act of sexual penetration alone, and is not carried over to the separate variants. State v. Demmons (1993) 137 NH 716, 634 A2d 998.

The mens rea required for felonious sexual assault is "purposely." State v. Pond (1989) 132 NH 472, 567 A2d 992.

At trial for felonious sexual assault, court properly made no reference to the term "knowingly," which was mere surplusage in the indictments, and appropriately instructed the jury that they must find the defendant acted purposely to find him guilty. State v. Pond (1989) 132 NH 472, 567 A2d 992.

4. Separate acts

Each act of sexual contact under this section constitutes a separate offense of felonious sexual assault when such contact is with a person less than thirteen years of age. State v. Patch (1991) 135 NH 127, 599 A2d 1243.

5. Consent

Delay in making a complaint in a forcible rape case may be considered on question of credibility of complaining witness and of her state of mind regarding consent, but in case of alleged rape of child under age of sixteen, consent is not material; whatever relevance delay may have with respect to credibility was purely question of fact under circumstances of particular case. State v. Berry (1977) 117 NH 352, 373 A2d 355.

6. Defenses

Reasonable and honest belief that person is over age of

NEW HAMPSHIRE
FAMILY
PLANNING
COUNCIL

FILE COPY

To: Judiciary & Family Law Committee
Re: **HB 1324** *"requiring parental notification before abortions may be performed on certain minors"*
1-14-98

The NH Family Planning Council strongly **opposes HB1324.** This bill seeks to mandate what cannot be mandated: trust and communication between parents and their children.

Since 1981 some kind of parental involvement bill has been introduced here in this legislature, and each has been defeated because of the problems with this bill. Consent statutes do not create warm or understanding family relationships. They do not promote medical or psychological health or safety. Young teens who do not want to give up their confidentiality will resort to extreme methods of self-preservation, such as attempting self-induced abortions, delaying treatment by seeking help in other states, and even suicide. Every time we hear yet another story of teens giving birth in restrooms or motels, we are made aware of how desparate and lonely the restricted teen becomes.

In states where consent laws have been passed, the judges grant almost 100 % of the minor's bypass petitions because there really is a good reason when a teen chooses not to confide in a parent. Research shows that courts have invalidated parental involvement under both federal and states' jurisdictions. In California,every court that has considered the statute has found that it violates their constitutional guarantees of privacy. All of this judicial activity has a financial impact for the citizens of NH.- the immediate costs of the minor's bypass procedure, and the sure to come countersuits if this bill is passed into law.

The NH Family Planning Council supports the health and stability of individuals and families by enabling all citizens to take responsibility for their sexual and reproductive lives. This bill undermines the health and well-being of us all. We urge you to once again reject this bill.

Sheila Evans

Sheila Evans, for the NH Family Planning Council

18 Low Avenue • Concord, NH 03301 • (603) 224-4394 • Fax 226-3829

FILE COPY

To: members of Judiciary And Family Law committee
From: Rep. Carol Moore, Merrimack 19
Re: HB 1324

Dear Chairperson McCarthy and other members of the committee:

I am testifying today again in strong opposition to yet another parental notification bill, HB1324. Unlike some people's beliefs about the many of us who oppose this bill, I am pro-family, have spent most of my professional life of almost 30 years working with adolescents and their families, have a child of my own, am concerned about the protection of children, and see abortion as a last resort.

I would like to underscore that this bill addresses a very small portion of NH women. Over 70% of young women who are pregnant do tell a parent and it is important to note that this percentage remains the same in states with or without parental notification. 50% of the women who don't tell a parent are 17 years old. 25% are 16 years old. For many of you sitting here today, you may not be able to imagine your daughter not coming to you if she were to become pregnant. In most cases, as I have said, pregnant adolescents can and do turn to their families for counsel.

In this year's bill, there is a separate category for those adolescents who declare they are victims of abuse by a parent or guardian. In this scenario, the pregnant minor must submit a declaration that she has been victimized, and the attending physician will then turn this most private information over to a sibling or grandparent. Aside from mandating that a minor disclose this information to relatives whom she may also not feel safe with, the bill assumes that these people would be able to attest to the abuse when they may not have any idea of whether it took place or be unable to be honest about it.

There are also other reasons why a minor may not tell her parents about the pregnancy. These are the young women who have been sexually active and can't tell their parents because they risk being beaten, being forced to have an unwanted child, or being kicked out of their homes were they to share the fact of their pregnancy with a parent. Some have been raped and become pregnant by other than a parent or guardian but fear not being believed by a parent. Some are from dysfunctional families due to drug and alcohol abuse, divorce, economic deprivation, and parents who never learned to parent because they were also neglected or abused. Any of these situations can severely impair communication within the family.

Developmentally, a healthy adolescent is beginning to separate emotionally from her family: to test her own ideas and values against those she learned from her family. Even in healthy families, it is often a time of strain and challenge for parents and children- a complicated time for both. In healthy families, the bond is strong enough to pass through this stage with intact communication and respect for each other. In dysfunctional families, however, children have frequently never been able to rely on their parents, a situation heightened by adolescence.

The basic premise behind all the notification bills is that a child may not be mature enough to make this very important decision to have an abortion. However, if she is not mature enough to make the decision to have an abortion, then how can she possibly be mature enough to have a child? The argument is totally flawed. This is why, in almost 100% of the cases where a minor needs outside permission either with a judicial or other by-pass, the authority supports the minor's right to choose.

Pregnancy poses a great threat to teenagers who are at greater physical risk than any other age group. The practical effect of a bill such as this one is that minors have later-term abortions, further increasing the risk, or travel out-of-state, often by hitchhiking or stealing a car in order to obtain an abortion somewhere else.

And who sponsors these bills? They are always introduced by anti-abortion groups- not by child welfare advocates. I keep hoping that instead of directing our energies year after year to similar bills which are continually defeated by large margins, we could work together to turn our focus to better pregnancy prevention, aiding dysfunctional families, and providing positive role models for the relatively few young women who can't talk with their parents. Some of these women are so reluctant to tell their parents that they delay long enough to be forced to have a child that they are not physically or emotionally prepared for: a child having a child who, if she is female, is then more likely to get pregnant as an adolescent. An unplanned pregnancy is stressful for any woman- for an adolescent fearing parental or family rage, punishment, or rejection, it is a nightmare.

Please vote this bill inexpedient to legislate.

New Hampshire Right to Life
P.O. Box 421, Merrimack, NH 03054 (603) 626-7950
nhrtl@ultranet.com http://www.ultranet.com/~nhrtl

FILE COPY

MORRISON

Statement Regarding HB 1324:
An act requiring parental notification before abortions may be performed on certain minors.

One of the biggest news items of this past year here in New Hampshire was the ruling by the state's Supreme Court in the Claremont case. There has already been considerable debate regarding the best way to fund the school system. I find it most interesting, though, that who ever you ask, regardless of the way they believe we should fund our schools, virtually everyone agrees that parents need to retain control over the schools. Most people agree that parents know best what is right for their children when it comes to their education.

The same is true for so many other things in a young person's life; getting a driver's license, getting a tattoo, or getting their ears, or some part of their body, pierced, for example. This is especially true when it regards some type of medical treatment. Heaven help any physician, or other health care provider, who treats a child, except in the most dire of circumstances, without a parent's permission.

Yet, for some reason, when the issue is abortion, it is an entirely different matter. Why has the so-called "right" to an abortion become so sacrosanct that it takes precedence over a parent's rights, and responsibility, to direct the upbringing of their child?

Some people argue that to require a young girl to tell her parents that she is pregnant will only result in some sort of abuse. Yet I ask you, how many of you love your children? Ask yourself honestly, if your daughter were to come to you and tell you she was pregnant, would you beat her up? Would you throw her out of the house and disown her? I would be willing to bet that not one of you sitting on this committee would do such a thing. Why? Because you love your children, in spite of their mistakes.

Now, think about this: Do you think you are the exception?

For those of you with children, think back to when they went off to school for the very first time. Didn't you think it was important to be there with them. I mean, school can be a very frightening place for a 5 or 6 year-old. How about the first time they got their hair cut or whenever they went to the doctor. Those could be traumatic events for a young person to face and I am sure you didn't want them to face them alone. So then, why are people so willing to deny parents the opportunity to be there for their daughters when facing what many people, including abortion advocates, call "one of the most difficult decisions a woman can make." Especially when these girls are not even really women yet. They are still children.

How can you stand by and allow them to face a decision like this without input from their parents? This is a decision that could affect the rest of their lives. Shouldn't they make it with the guidance of the people who love them and who know them best?

The Lack of Parental Involvement: Real Consequences

The personal experiences of Dawn Ravenell, Rachel Ely, Myoshi Callahan, Holly Trimble, and Teresa Wibblesman Fangman are testaments to the very real tragedy that a decision made witbout the benefit of parental involvement can become for a teenager who is confronted with the frightening and stressful fact of an unexpected pregnancy. Their experiences illustrate all too well some of the physical, emotional, and psychological dangers to the adolescent who makes the abortion decision without any parental involvement.

Dawn Ravenell, a 13-year-old girl from Queens, New York, died tragically in 1985 after undergoing a legal abortion. According to the abortion clinic records, Dawn awoke from the anesthesia during the middle of the abortion and began gagging and choking before going into cardiac arrest. A plastic airway was inserted in her throat and she was again sedated. In the recovery room after the abortion, she awoke, began gagging on the unremoved airway, and went into cardiac collapse. She was rushed to a New York hospital where she later died. In 1990, a jury awarded $ 1.22 million dollars to her family. The Ravenell's said they pursued the suit not for the money but for justice. "I wanted to be sure that another child would not suffer the way Dawn did," Mrs. Ravenell said.

New York bas no parental involvement law so Dawn's parents were never told about their daughters pregnancy or abortion. "It was a horrible situation," said the family attorney, Thomas Principe. "Here you have a frightened kid in what was really an abortion factory. She was treated like a piece on an assembly line. "

Rachel Ely was a 17 year-old, unmarried high school student who was afraid to tell her parents that she was pregnant. Rachel bad an abortion on the advice of a high school counselor without her parents' knowledge. Several days after the abortion, Rachel became quite ill and went to another doctor. Thinking the symptoms were not related, she did not tell the doctor about the abortion. Rachel was 1eft permanently paraplegic, forced to use a wheelchair, from a condition later found directly attributable to a post abortion surgical infection. Rachel had not been told that there are alternatives to abortion. Had her parents known their daughter was pregnant, they would have provided her with the alternatives of keeping her child, or placing the child for adoption. Had Rachels parents known of the abortion, they would have raised the possible relationship between the abortion and Rachel's symptoms so that she could get proper treatment quickly.

Myoshi Callahan was 17 when she bad an abortion without her parents' knowledge or consent. At the clinic, she received no counseling whatsoever and felt that her only alternative was abortion. As a result of the side effects resulting from the abortion procedure, Myoshi bad to have a hysterectomy. Myoshi has since told both parents. They have grieved with her for the loss of life and for the ordeal that their daughter went through alone. Myoshi deeply regrets that her parents were not involved.

Holly Trimble was 16 when she became pregnant and decided to have an abortion. Holly's main purpose for the abortion was so that she would not have to tell her parents about her pregnancy. She did not want to hurt them. Because she did not want to hurt them, Holly also could not talk to them about the turmoil of her abortion. Today, Holly deeply regrets her decision. She is certain that, bad she been exposed to information about the development of the unborn child at the time of her decision, she would have carried her baby to term.

Teresa Wibblesman Fangman was 16 when she learned she was pregnant. Teresa received no alternatives counseling and decided to abort her baby, primarily because she was afraid to tell her parents of her pregnancy. She did not want them to know she had disappointed them. The abortion exacted an extreme emotional toll. Five years later, Teresa's 15 year-old sister, impregnated on a date rape, went to her parents for help. With their support, she decided to carry her baby to term and then place the child for adoption. Teresa is convinced that, if she bad known at the time of her abortion decision bow supportive her parents would be to an unexpected pregnancy, she would not have had an abortion.

Parental involvement in an adolescent's decision-making process helps ensure that the girl is fully aware of the physical, emotional, and psychological risks of an abortion and that these risks are minimized or avoided. Minimizing and avoiding such risks can only be beneficial to the adolescent, her family, and to society as a whole.

Sources:

1. Herrmann, "$1.225M awarded in girls abort death," _New York Daily News_, Tuesday, December 11, 1990. P. 13. See also, Carillo, "$1.2M wont bring her back." _New York Post_, Tuesday, December 11, 1990, p.1.

2. Brief Amici Curaie of Focus on the Family, _Hodgson v. Minnesota_, 11 S Ct. 2926 (1990), at App. 1a.

Back to the Political Page

FILE COPY

DIOCESE OF MANCHESTER

Office of the Chancellor

To: John McCarthy, Chairman
& Members of the Judiciary & Family Law Committee
From: Monsignor Norman P. Bolduc, Chancellor, Diocese of Manchester
Re: **HB 1324 -**
Parental Notification Before Abortion May be Performed on Certain Minors
Date: January 14, 1998

I am Monsignor Norman Bolduc, Chancellor of the Roman Catholic Diocese of Manchester. On behalf of the Diocese of Manchester I, along with Mrs. Judith Delisle, Director of the Respect Life Office, would like to offer testimony in **SUPPORT of HB 1324.**

The Diocese of Manchester, like the State of New Hampshire, vigorously advocates and promotes family life and social welfare. This is an essential element both of society as a whole and of the church's mission to the world.

We therefore find the provisions of **HB 1324** to be important to the people of New Hampshire. We believe it is critical that when important issues impact one or all members of a family, families come together to support and offer guidance to one another, particularly so when such an issue affects the life of a minor.

In the case which this bill addresses, namely, the pregnancy of a minor child, we strongly advocate that parents or legal guardians be allowed and encouraged to discuss this situation with the minor in question before any decision is made regarding the outcome of the pregnancy.

Certainly, there are few circumstances more trying for an adolescent than those that surround her pregnancy. The issues involved here, to name but a few, are fear, anger, rejection, uncertainty and embarrassment. At this critical time in the life of an adolescent, the support and guidance of family in any decision is greatly important. In the case of an adolescent pregnancy not only is the psychological, emotional and physical health of the young woman of great concern, but so too is the integrity of family life, especially when parents may not be permitted to participate in such a crucial time in the life of their child.

For a teenager to face such a decision without the input from her parent(s) or legal guardians, that is, from those who generally assist her in other major decisions in her life, this ~~advice~~ circumstance can be an emotionally and psychologically traumatizing experience. In critical moments in their lives

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adolescents feel compelled to consider the views of their parents whether or not they consult them.[1] Vincent M. Rue, Ph.D., Co-Director of the Institute for Abortion Recovery and Research, Portsmouth, NH, has observed that often there is an unspoken wish on the part of an adolescent to speak with her parents about her ambivalence concerning an abortion and to seek their support, even when she believes such a discussion may lead to disagreement or conflict.[2] A secret abortion that is not a subject for discussion often creates a psychological burden for the pregnant teenager and a barrier to her future relationships with those people in her life who are most significant to her.[3]

In conclusion, ~~it is in~~ the interest of the State of New Hampshire to promote family life should include permitting parents or legal guardians to participate in the life-altering decisions of their minor children including an adolescent pregnancy. We very much **support the intent of HB 1324** and respectfully request this committee to support its passage.

1 Everett L. Worthington et al., "The Benefits of Legislation Requiring Parental Involvement Prior to Adolescent Abortion," American Psychologist (December 1989): p. 1543.

2 Vincent M. Rue, "Abortion in Relationship Context," Int'l. Rev. of Nat. Fam. Plann. (Summer 1985): p. 97.

3 Rue, "Abortion in Relationship Context," p. 97.

FILE COPY

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Good morning. Thank you for the opportunity to speak about parental ~~consent~~ notification for women under seventeen years of age seeking abortions.

I consider myself lucky because I have always been able to have a choice about my reproductive freedom. I grew up knowing there were laws to protect decisions I made about my body and my choices. My generation grew up talking openly about sex because we had books titled "Where Do Babies Come From?" "What's Happening to Me?" and let's not forget Judy Blume who eloquently expressed our hidden feelings through characters in "Are You There God, It's ME Margaret" and "Blubber". But all of the talking and openness can not change one's relationship with one's parents, either good or bad.

I am a white, upper middle class, very educated women who would be considered a nice young women by any standard. I played sports in high school and college, was a leader in my sorority, held numerous campus positions, got good grades, and had a very close relationship with my parents. I had the "sex talk" with my parents on several occasions. Have you ever noticed that it was always easier to talk about your friend's sex life with your parents and not your own? Telling them you were having sex was letting them down in some strange way. They probably knew you "did it" but the don't ask, don't tell policy has been around much longer than we think.

It took me two years to tell my parents about my experience with a friend when she had an abortion. She was just like me, which was why we got along so well. She also had the same relationship with her parents. I was not embarrassed, or ashamed to tell my parents. I did not fear that they would find out which friend, but the decision was private and I did not know how they would react. Would they turn out like our friends who claimed to be pro choice and then did not speak to us? Were they church leaders with anti choice bumper stickers on their vehicle like my friend's parents were? How could my friend or I explain a huge cash withdrawal from our savings account to pay for it? How about the fear of telling your parents then having to brave a picket line to get into the clinic? How were we going to get to the clinic and what is my excuse for missing work? My friend even had a hard time telling me and she knew I had been an active pro-choice advocate since high school.

I want you to understand that this was a very difficult decision for my friend to make. Not because she could or would not tell her parents, but because there were so many other issues: money, transportation, timing, lack of support, and fear. She had to wait a week before she could be seen at the clinic, which meant 168 hours of waiting, not 24. Picketers prevented the closest clinic from practicing, so we drove an hour to the next closest one. Her parents were the least of her concern. She did not need the consent of friends and family when she was engaging in sex. That was the choice of her and her partner. So why then, would she need to tell them about her other private decision, her abortion?

If she did not have the loving, open free relationship with her parents that so many hope for before she got pregnant, what makes you think that a pregnancy would pave the road for such a relationship? How could forcing a young woman to tell her parents or a judge make that relationship better? If this law had been in effect when my friend got pregnant, I would be sitting here telling you a much different story. My friend was only seventeen. She would have needed an illegal abortion and with little money in your savings account, god only knows how safe it would have been. Because she was protected and there was an opportunity for a safe, legal abortion, I still have my friend. I urge you to vote against the Parental Notification bill for the sake of myself, my friend, and young women like me who need be able to make safe, reasonable and responsible choices.

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TESTIMONY ON PROPOSED PARENTAL NOTIFICATION LAW HB 1324

This testimony is being submitted by Jamie Ann Sabino, Co-Chair of the Judicial Consent for Minors Lawyer Referral Panel. The Panel consists of Massachusetts attorneys who represent minors seeking judicial consent for an abortion under Massachusetts General Law Ch. 112, sec. 12S. This law, which has been in effect since 1981, requires a minor to obtain the consent of a parent or the court before obtaining an abortion. I keep in regular touch with Panel attorneys, review summaries of hearings, prepare legal updates, and meet with clerks and judges concerning problems in implementing this law.

At the outset, it is highly likely that this bill is unconstitutional as it provides no by-pass, judicial or otherwise, for the minor who can not involve her parents. A young women who can not involve her parents must have the opportunity to show that she is mature enough to make the decision on her own or, if not, that the abortion is in her best interest. Without such a by-pass, young women may be subject to physical, emotional or financial retribution from angry parents.

Even if a by-pass is added, parental involvement laws placed significant burdens on young women who seeking abortions, burdens that are not balanced by any benefit.[1] In theory, parental involvement laws are intended to promote intra-family communication. However, it has been the Massachusetts experience that family communications cannot be legislated. The young women who elect to go to court know they cannot communicate with their parents on the subject of abortion. In many cases, minors go to court because of real and confirmed fears of being forced to leave their homes if their parents were to learn of their pregnancy, of being physically abused by their parents or of being harassed and forced into an unwise teenage marriage. We have also had several cases where the pregnancy was the result of incest. In many other cases, minors in a stressful family situation elect to go to court to protect the fragile family unit from a burden they know will strain it beyond its limit. These cases have included situations where the family has recently suffered death, mental breakdown and hospitalization, serious illness such as a heart attack or a brain tumor and chronic alcoholism. Additionally, some minors fear the stress of the news will cause a permanent rift between their parents where a strained marital relationship exists. Thus, minors seek to protect their families as well as themselves.

The provision which authorizes alternative notification to an adult sibling, step parent or grandparent in cases where the young woman is a victim of sexual abuse, neglect or physical

[1] Although the Massachusetts statute requires consent as opposed to notification, the national experience with the judicial bypass required by both and the effect on the decision making behavior of minors has been the same. The minor who can not seek consent is almost uniformly the minor who fears notice as well.

abuse would alleviate the burden of this statute in very few cases. Abuse, particularly sexual abuse, is a great family secret and very few young women would be willing to make such a statement in writing. Despite the abuse, they fear being removed from their home and all that they know. Notification of another family member in many cases is problematic. The minor would have to be assured that family member would not reveal the information to any other person, particularly any other family member. For many, this is a risk to great to take. Finally, in families where there is serous abuse, it is often not limited to a parent.

Therefore, the only real options for these minors are going to court or obtaining an abortion in a state which does not require parental involvement. These are time consuming and stressful routes for a teenager to take and underscore the inability of parental involvement legislation to mandate family communications. Parental involvement laws penalize young women who come from dysfunctional families or families in crisis. To force young women in such situations to go through the trauma of a court hearing is cruel.

The court hearing places a great deal of emotional stress on the petitioner. Most adults are wary and even afraid of court proceedings. The court experience for these young women is often far more traumatic and stressful than the abortion itself. They may face judges who comport themselves in ways which are highly inappropriate given the delicate nature of these hearings. Judges berate and belittle both the minors and their attorneys. Minors have been chastised for engaging in premarital sexual relations and admonished to keep their legs crossed or to have their boyfriend keep his pants on. Judges have asked minors if they know they are taking the life of an unborn child, despite the fact that the Massachusetts Supreme Judicial Court has promulgated guidelines indicating that this type of inquiry is inappropriate. These types of questions, coupled with overt judicial hostility, often create a climate of terror for these young women.

Even if a judge is not hostile and carefully limits his or her inquiry to determine maturity or best interest of the minor, a young woman is still faced with having to reveal intimate details in an intrinsically intimidating environment. Additionally, many judges feel uncomfortable and embarrassed by these hearings. Some believe that the law forces them to make unwarranted intrusions into a young woman's privacy, others are ill at ease confronting teenage sexuality. This is often indirectly communicated to the minors, increasing the trauma of the experience.

There is an inherent delay in any judicial bypass system. Even under optimum conditions the bypass system causes delays ranging from an average of four or five days to over a month in obtaining medical procedures. Yates and Pliner, Judging Maturity in the Courts: The Massachusetts Consent Statute, 78 Am. J. Pub. Health 646 (1987). Delays are caused by the lack of judges, transportation problems and trouble locating attorneys. Delays clearly increase the risk of the abortion procedure. It is important to note that some of the delay is due to the refusal of judges to hear the petitions. Ten percent of the superior court judges in Massachusetts have recused themselves from these cases. This may result in a county having no available judge for a period of time. There has also been a wealth of anecdotal evidence that the very existence of the law causes minors to delay in seeking medical assistance or judicial authorization. Although we have tried to educate the public about the law, it is difficult and many minors are misinformed. They believe that there is a law either preventing teenagers from obtaining abortions or mandating parental notification.

In addition to scheduling delays, minors have gone to court with their attorneys at the scheduled time to find that the judge is suddenly unavailable. Often no effort was made by the court to reach the attorney or to find a different judge. Whereas this might merely be inconvenient for an adult, it can often be a disaster for a minor who may not have transportation money and who has had to arrange to miss school. Moreover, once in court, minors often have to wait for unreasonably long periods. Attorneys have reported delays up to four hours. It is important to note that even with the most cooperative of court personnel and judges, these delays inhere in the day to day functioning of the judicial system. This is of particular concern in that the hearings are required to be confidential - clearly the longer a minor is in court, the greater her exposure is to others. Additionally, she may be forced to make up excuses to employers and parents. Thus, these delays place these young women in a particularly vulnerable position.

Parental involvement laws, while imposing tremendous burdens on minors, do not promote legitimate state interests. In particular these laws do not promote or encourage family involvement. It is extremely important to note that the majority of minors do choose to involve their parents. Over 2/3 of the minors obtaining abortions in Massachusetts have involved their parents. Information from counselors and clinics indicates that this is approximately the same number of minors who involved their parents prior to the institution of the judicial by-pass law. This failure to increase parental involvement has also been substantiated by a study of minors in Minnesota and Wisconsin. The study showed the relatively the same number of minors, 62% - 65%, in each state involved a parent in the abortion decision. This is despite the fact that Minnesota has a by-pass statute and Wisconsin does not. Blum, et al, The Impact of a Parental Notification Law on Adolescent Abortion Decision Making, 77 Am. J. Pub. Health, 619 (1987). This study also showed that the existence of the law does not dissuade teenagers from engaging in sexual activity as the vast majority are unaware of the law. This finding has been born out by the experience of Massachusetts attorneys. Nor is the system capable of reaching out and aiding immature minors. A random sample of 400 petitions in Massachusetts showed that 97% of the minors who go to court are mature and capable of giving their own consent. Therefore, all of the time, expense and trauma results in the simple affirmation that the overwhelming majority of these young women are mature and capable of giving informed consent.

Finally, this law has had no discernible effect on the outcome of minors' decisions regarding their pregnancy. An examination of abortion and birth statistics for 1981 and 1982 have shown no increase in the number of teenagers giving birth. In both 1980, the last full year prior to implementation, and 1982, the first full year after implementation, the number of minors delivering was almost identical. There has been a gradual and steady decline in childbearing among Massachusetts minors during the ten year period between 1973 and 1982, a decline that was not interrupted by the parental involvement law. There has been a decrease in the number of Massachusetts minors obtaining abortions in Massachusetts, but this decrease is almost exactly equalled by an increase in the number of Massachusetts minors who have obtained abortions elsewhere. Cartoof and Klerman, Parental Consent for Abortion: Impact of the Massachusetts Law, 76 Am. J. Pub. Health 397 (1986). Based on our experience with minors in Massachusetts and the experiences of other attorneys and counselors with whom we have dealt, there is no question in our minds that if out-of-state options are not available to young women they will chose to go to court in even greater numbers than they already do. The number of court hearings will soar, placing an increased burden on the courts of any state that adopts a parental involvement law. This was confirmed by the experience of Bristol County, a Massachusetts

county which borders Rhode Island. Referrals to Panel attorneys tripled after Rhode Island passed a judicial/parental involvement law.

This cumbersome and ineffectual system results in substantial costs to the state and its taxpayers. Over the past seventeen years, 600-900 petitions a year have been filed in Massachusetts. Each petition takes a significant amount of time of the clerk who must receive the call from the minor or attorney, arrange a time for the hearing with a judge, assist in the preparation of the papers for the matter (petition, appointment of attorney, confidential affidavit), arrange for the papers to be brought to the judge, in some cases sit in on the hearing, prepare the order after the hearing and provide the appropriate attested copies. Judges must interrupt their busy schedules to hear these petitions as expeditiously as possible, perhaps interrupting a jury trial if no other judge is available. The law also provides that the petitioner has the right to court-appointed counsel. Even at the low rates at which appointed attorneys are compensated in Massachusetts, each petition results in a state paid attorney's bill ranging from $60 to $100.

The proposed bill HB 1324, also raises a serious concern that a young woman's confidentiality might be breached and people other than her parents told of the intended abortion. Personal notification,as provided in section II, would be unwieldy and time consuming and unlikely to be utilized by most physicians. They would, instead, resort to section III, and use the mail. Although the section requires that the physician utilized the restricted delivery option so that the letter should be delivered only to the authorized addressee, any attorney or business person who has utilized this method of delivery can tell you that in practice, letters are often given to persons other than the addressee.

The Massachusetts experience has shown that there is little to gain from a parental involvement law and much to lose both financially and in human terms.

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Testimony for House Bill 1324

January 14, 1998

I am Margaret Landsman, NH Public Affairs Director for Planned Parenthood of Northern New England. I am here today to testify on House Bill 1324 which, if put into law, would require parental notification for women under the age of 17 and women who are deemed legally "incompetent."

Planned Parenthood is dedicated to the health of our young people, to ensuring that young people have open communication with their parents or guardians. Indeed, local Planned Parenthood educational programs help parents who should be the primary sexuality educators for their children, help them cope with questions about sex and sexuality from their children.

Unfortunately, there is no magic formula for parent-teen communication. House Bill 1324 is dangerous because it presumes to create such a magic formula at a time when a young woman—facing a crisis pregnancy—needs guidance and counsel, not the strong arm of the law.

First and foremost, most teens involve their parents in a decision to have an abortion and they inform them now *without legal mandates*. In the small number of cases where they don't, there are compelling reasons. Not all families can meet the needs of their members. It's teens from these dysfunctional families who will be most damaged by the proposed parental notification law. Additionally, Title X providers—that includes Planned Parenthood clinics in New Hampshire—are required by statute to "encourage" family participation in all cases.

Mandatory parental notification bills such as HB 1324 can threaten the health of young people. Studies indicate that requiring notice of parents for sensitive health care, including reproductive health care, deters young people from obtaining those services. Thus, you've put them at risk of unintended pregnancy and sexually transmitted infection. Responsible education on birth control methods can greatly reduce those risks. If we are to put our efforts anywhere—it should be on helping more young people make responsible decisions, not fewer.

In a neighboring state—Massachusetts—pregnant teens faced with a mandatory parental consent (with a judicial bypass option) opted to go out of state for abortions. While the number of abortions to Massachusetts teens declined by 29%, the exact corresponding number of teens traveled to other states for abortions. Farther west—in Missouri—teens faced with parental notification mandates delayed making the decision and the proportion of second trimester abortions increased by 36%. Delaying this decision puts a young woman at greater risk of complications.

We do not live in an ideal world. Family communication about sensitive, intimate topics is not always an option. When teens are faced with difficult decisions about reproductive choices, it's imperative that they get support and guidance from responsible adults. Unfortunately, HB 1324 provides no such assurances—from either parents or an already overburdened court system. We ask that the Committee vote ought-not-to-pass on HB 1324.

###

FACT OF THE DAY

The Realities of Parental Notification Laws in Other States

Safety

- Second Trimester abortions increased by 18% in Minnesota, following enactment of a parental consent law. ("Our Daughters' Decisions," Alan Guttmacher Institute, 1992)
- Thirty percent of minors who did not tell their parents they planned to have an abortion had experienced violence in their family. In addition, they feared that violence would occur if the parents knew, and would be forced to leave home. (FPP, 24:5, 1992)
- The following medical associations oppose this legislation:
  American Medical Association, American Public Health Association, Society for Adolescent Medicine, American College of Obstetricians and Gynecologists, American Academy of Pediatrics, and American Academy of Family Physicians.

Communication with Parents: The state can not legislate parent/child communications!

- In 1990, a study comparing a state mandating parental involvement law (Minnesota) and one that does not (Wisconsin) **revealed NO significant difference in the proportion of young women who involve their parents between Minnesota, a state that mandates parental notification and Wisconsin, a state that does not.** (FPP, 22:Jul/Aug, 1990)
- Most abortion-seeking minors tell one or both parents of their intentions even without a parental notification law. (AGI 1992 Report)

Judicial By-Pass

- In Ohio, **Judaical by-pass can take up to 22 days, pushing many young women into riskier second trimester abortions.** ("Adolescent Abortion & Mandated Parental Involvement: The Impact of Back Alley Laws on Young Women" Center for Population Options, 1992)
- Judicial by-pass fails to ensure anonymity, because a **young woman routinely comes into contact with up to 23 different people** as she goes through the judicial system trying to obtain an abortion. ("Adolescent Abortion & Mandated Parental Involvement: The Impact of Back Alley Laws on Young Women" Center for Population Options, 1992)
- None of the judges, guardians, lawyers, or health professionals who are responsible for implementing the court by-pass procedure in Minnesota identified any positive effect of the law. ("Parental Notice Laws: Their Catastrophic Impact on Teenagers' Right to Abortion")

FACT OF THE DAY

The American Medical Association Opposes Mandatory Parental Consent and Notification Laws

"Parents are generally supportive and understanding and provide helpful guidance to their children. In some cases, however, parents may respond abusively to the knowledge that their minor child is pregnant or is considering an abortion. In addition, privacy in matters of health care is a profound need of minors as well as adults. Accordingly, the Council concludes that, while minors should be encouraged to discuss their pregnancy with their parents and other adults, minors should *not* be required to involve their parents before deciding whether to undergo an abortion."

Council on Ethics and Judicial Affairs, American Medical Association (June, 1992)
(Reported in JAMA, January 6, 1993)

CONCORD
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January 14, 1998
Testimony re: HB 1324
Parental Notification required for minors to obtain abortion services

Chair and Members of the Judiciary and Family Law Committee;

My name is Patti Baum and I am a healthworker representing the Concord Feminist Health Center. The Health Center is a licensed, non-profit facility which provides well-woman gynecological care, abortion services, and education to the community regarding health care issues.

I am writing to express my opposition to HB 1324 and offer the following for your consideration "Protecting minors from their own immaturity" by requiring them to have parental, guardian or familial consent to receive an abortion and, delaying an abortion until written notification is received will not solve the issues this bill attempts to address. I assure you, this will only create roadblocks in a process that is already difficult for any woman finding herself with an unwanted pregnancy and will not serve as a vehicle for a better "family structure."

The Health Center has seen first hand the results of such a law in our neighbor state, Massachusetts. For years, we and other abortion providers in NH have met the needs of young women who have chosen to have an abortion, and have had to travel miles out of state simply to avoid the potential consequences of involving her parents. In speaking with these young women, it is not because they wish to travel such a distance to our facility, but in fact, they choose to come to our facility because the fear of involving their parents is greater. Having such a procedure closer to home would obviously make it less frightening. Can you imagine what that fear must be like? To travel hours to and from an appointment in a town and state you are completely unfamiliar with? If they thought that involving their parents or guardians would make it easier, do you not believe they would have done so? These young women are mature enough to know that they are not prepared to go through with an unwanted pregnancy.

It is the Health Center's policy to discuss their choice not to involve their parents. It is sometimes incest that keeps them from telling, for fear of the ramifications; it is sometimes fear of physical abuse, and, it is sometimes fear of an expression of

disappointment by parents who were not understanding to begin with about the pressures of being an adolescent. This bill attempts to offer a solution to such a situation by asking her to involve another family member which assumes that she has other family she can trust and, that it is safe for her to bring others into an already hostile situation. If a minor woman does not wish to involve her parents, this bill would require her to sign a declaration reporting physical or sexual abuse. Asking her to do so at a time when she may not be emotionally ready to confront that reality seems only to place additional pressure on a young woman who should not have to struggle with such difficulties to begin with.

In regards to attaching any waiting period to abortion--why risk putting any one in a situation where they may need to obtain a 2nd trimester abortion because she had to wait for paperwork to reach her home and then wait 48 hours before her appointment. No other surgery would require such delays and certainly none that would put a patient in a more difficult situation. This bill seems to want to solve one issue while creating potential for others. In my experience, there is no evidence that having anyone wait an additional 48 hours for an abortion alters the determining factors in her decision making.

If the desire is to enhance family relations so that children can seek out their parents support during a difficult time, perhaps encouraging parenting skills education would be the avenue to explore. Legislation surely will not change relationships and enhance communication. Placing the burden of changing family dynamics on children is an unfair hardship this bill would force them to endure.

Thank you.

Impact of the Minnesota Parental Notification Law on Abortion and Birth

ABSTRACT

Background. The impact of the Minnesota Parental Notification Law on abortion and birth was examined.

Methods. Using linear models, outcome parameters were compared before and after enactment of the law. Time by age group interactions also were examined.

Results. The pre-enactment to post-enactment change in the Minnesota abortion rate reflected a greater decline for minors (≤17 years old) than for 18–19 year-olds (who were not under the law). An increase in abortion rate occurred for women ages 20–44. The law appeared to have had no impact on birth rate in minors. Following the enactment of the law, the rate of early abortions (≤12 weeks) declined among minors more than the rate of late abortions (>12 weeks). This resulted in a pre-enactment to post-enactment increase in the ratio of late-to-early abortions among minors.

Conclusions. These data suggest that parental notification facilitated pregnancy avoidance in 15–17 year-old Minnesota women. Abortion rates declined unexpectedly while birth rates continued to decline in accordance with a long-term trend. (*Am J Public Health* 1991;81:294–298)

James L. Rogers, PhD, Robert F. Boruch, PhD, George B. Stoms, BA, and Dorothy DeMoya, DNSc

Introduction

Laws requiring parental consent or parental notification prior to legal induced abortion for minor women, collectively called parental involvement laws, exist or have been proposed in numerous states. As of July 1990, laws in the United States requiring parental consent were in effect in Alabama, Indiana, Louisiana, Massachusetts, Missouri, North Dakota, and Rhode Island. Laws requiring parental notice were in effect in Arkansas, Idaho, Utah, and West Virginia; and parental involvement statutes were under challenge in Arizona, California, Georgia, Illinois, Kentucky, Mississippi, Nevada, Pennsylvania, and Tennessee. National attention focused on these laws when statutes from Minnesota and Ohio were heard by the US Supreme Court during its October 1989 term resulting in a decision largely supporting these laws. The present paper concerns the Minnesota law, enacted in August 1981 and enjoined in March 1986. This law required a minor woman to notify both parents at least 48 hours prior to an abortion or else seek court approval.

Few empirical studies have evaluated the impact of parental involvement statutes on minor women. Cartoof and Klerman[1] determined that abortions to minors in Massachusetts declined dramatically (43 percent) following the enactment of a parental consent law. However, during this time an approximately equal number of women migrated to surrounding states to obtain abortions. Blum[2] found that under parental notification in Minnesota, communication with parents about a minor's planned abortion occurred more often than had been reported by Clary[3] in a Minneapolis/St. Paul study predating the law. But Blum found that patterns of communication differed little from those among teenagers simultaneously surveyed in the neighboring state of Wisconsin (without such a law).

Common negative claims about parental involvement laws are that they force minors to leave the state to obtain abortions (as in Massachusetts), and that they result in increased birth rates, late abortions and medical complications. These effects are presumably related to a minor's reluctance to discuss her pregnancy with parents.[4] Positive claims about these laws are that they promote responsibility (by encouraging teenagers to "think before they act"), foster parent-child communication, facilitate mature decision making, and may reveal medical history information that would otherwise remain unknown to the physician.[5,6]

Empirical evaluation of assertions like these will necessitate multiple studies under a variety of circumstances and localities. The Cartoof and Klerman study[1] was conducted in Massachusetts, located in close proximity to states without parental involvement laws. This made it possible for minors to avoid the law altogether by crossing state lines. In Minnesota, the distance from out-of-state abortion facilities appears to have worked against mi-

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gration. Blum determined that "[i]n counterdistinction to the Massachusetts data, there is little evidence to indicate large numbers of Minnesota youths are leaving the state for abortion (data available on request to author)."[2] It cannot be assumed that findings characterized by one set of background factors, such as proximity to out-of-state abortion facilities, will generalize to other settings.

In this study, the statewide impact of the Minnesota Parental Notification Law upon the incidence rate of abortion and birth, as well as upon the ratio of abortions to births and the ratio of early to late abortions, is examined.

Methods

Data

Abortion and birth incidence data were provided by the Minnesota Center for Health Statistics (MCHS). The data exclude all observations of unknown age and are restricted to residents of Minnesota. Live births to Minnesota residents are included regardless of whether the birth occurred inside or outside of Minnesota. Induced abortions reflect only those occurring in Minnesota.

Population estimates by age and gender are provided by the Minnesota Center for Health Statistics that computed them using a modified version of the cohort-component method for all years following the 1980 census.[7]

Throughout this report "birth(s)" and "abortion(s)" will refer to live birth(s) and induced abortions(s), respectively.

Outcome Measurements

The report utilizes six outcome measurements: four rates and two ratios.

- The abortion rate, the late abortion rate (>12 weeks), the early abortion rate (≤12 weeks) and the birth rate refer to the number of reported abortions (or births) in one year divided by the population estimate of females, in thousands, for that same year.
- The abortion-to-birth ratio refers to the number of abortions in a year divided by the number of births. Alternatively, this may be thought of as the abortion rate divided by the birth rate for a given year.
- The late-to-early abortion ratio refers to the number of late abortions in a year divided by the number of early abortions. Again, this may be thought of as the late abortion rate divided by the early abortion rate for a given year.

Measures of Effect

Each rate and ratio was examined using a linear model.[8,9] Serving as a dependent variable, the rate (or ratio) was modeled as a function of age category (≤17, 18–19 or 20–44 years old), the year of occurrence (1975 through 1987), and the age by year interaction.

First, each model was employed to determine whether a given rate (or ratio) three years before and four years after enactment of the Minnesota Parental Notification Law differed within each age category. Because the modeling was performed in the log scale, the pre-enactment (1978 to 1980) and post-enactment (1982 to 1985) values represent the geometric mean of the individual values comprising the pre-enactment and post-enactment periods. (The antilog of the arithmetic mean of log values corresponds to the geometric mean of the same measurement in the original scale. That is, antiln [ln a + ln b]/2 = $\sqrt{[ab]}$.)

Second; three additional contrasts were constructed to detect the presence of any age group by time interaction that might exist for a given rate or ratio. These contrasts reflect whether the pre-enactment to post-enactment *change* was different among minors than among 18–19 year-olds, or 20–44 year-olds, or among 18–19 year-olds than women 20–44 years old. It was assumed that a change due to the law, rather than to general factors operating in all age groups, would be most pronounced among women 17 years of age or younger; less evident among 18 and 19 year-old women who would have recently been, but would not presently be under the law (pregnancy at age 17 may mean birth at age 18); and least present among older women not subject to the law for at least two years.

Models

The mechanics underlying the linear models[8,9] used to construct the six contrasts described above were as follows. The model parameters, representing age category (two parameters capturing three age classifications), year (12 parameters capturing 13 years), and the age by year interaction (24 parameters reflecting the cross-product of age and year), were regressed against the *natural log* of the rate or ratio under question. Rows of each model's design matrix were combined to form the six contrasts. When the abortion rate, late abortion rate, early abortion rate, or birth rate served as the dependent variable, weighted least squares estimates and asymptotic variances for the estimates were obtained. When the abortion-to-birth ratio or late-to-early abortion ratio served as the dependent variable, maximum likelihood was used to obtain estimates and asymptotic variances. PROC CATMOD of Version 6.03 of the Statistical Analysis Software (SAS)[10] was employed to fit the models.

For ease of interpretation, the authors elected to display each contrast effect as a quotient (contrast ratio) in the original scale rather than a difference in the log scale. For any given contrast, this means that rather than presenting in tables the difference between two natural log values, it is the antilog of this difference that has been presented. It is evident that the difference between two identical log values will be "zero" while the corresponding contrast ratio will be unity (one). That is, (ln A) − (ln A) = 0 implies that the antilog is unity. Thus, contrast ratios equal to unity imply equivalence between the contrasted values.

Results

Table 1 contains the outcome measures examined in this study. For each outcome measure, Table 2 contains the contrast ratios that compare the pre-enactment and post-enactment periods. Contrast ratios greater than unity imply an increase in the outcome measure (abortion rate, birth rate, etc.) after enactment of the law and contrast ratios less than unity imply a decrease. Similarly, Table 3 contains ratios that reflect the age by time interactions. Here, a contrast ratio less than unity indicates a greater pre-enactment to post-enactment decline in the younger age group of the two being compared; a contrast ratio greater than unity indicates a greater increase.

Abortion Rate

Deviations from unity for the contrast ratios that compare pre-enactment and post-enactment periods (Table 2) are substantial in all age groups. Whereas the yearly abortion rates after the law's enactment increased for women 20–44 years old (who were substantially removed from its impact), abortion rates declined in both 15–17 and 18–19 year-olds during this same period. The pre-enactment to post-enactment decline was substantially greater for 15–17 than 18–19 year-old women, and for 18–19 year-old women than 20–44 year-old women (Table 3).

TABLE 1—Outcome Measures and Population Estimates for Minnesota Women, 1976 to 1987*

Outcome Measure	Age (years)	1976	1977	1978	1979	1980	1981	1982	1983	1984	1985	1986	1987
Abortion Rate†	15–17	18.60	18.25	19.24	19.57	18.08	14.25	12.80	13.03	14.54	14.42	15.46	
	18–19	35.71	38.72	40.28	38.37	36.45	33.08	35.05	34.07	31.89	30.83		
	20–44	11.48	12.36	13.41	14.13	14.00	13.96	13.11	14.21	14.48	14.29	14.17	
Birth Rate†	15–17	17.80	17.71	17.46	17.38	16.54	14.56	16.00	15.01	15.52	15.03		
	18–19	55.10	55.60	57.03	59.48	59.33	56.57	48.76	48.85	47.18	42.65	43.68	
	20–44	75.79	76.14	76.05	79.60	79.48	78.13	75.18	75.57	75.92	74.00	72.67	
Abortions/ Births	15–17	0.85	1.03	1.09	1.12	0.93	0.86	0.88	0.81	0.97	0.93	1.03	
	18–19	0.57	0.64	0.65	0.66	0.65	0.64	0.86	0.72	0.72	0.75	0.71	
	20–44	0.15	0.17	0.18	0.18	0.18	0.18	0.17	0.19	0.19	0.19	0.19	
Early Abortion Rate†	15–17	14.73	14.97	15.79	15.34	12.93	11.37	9.86	9.66	11.24	11.38	12.65	
	18–19	25.89	30.49	33.31	33.58	32.88	30.92	27.83	28.42	28.13	28.04	28.23	
	20–44	10.23	11.24	12.19	12.71	12.74	12.85	11.87	12.89	13.04	12.85	12.84	
Late Abortion Rate†	15–17	3.88	3.28	3.51	4.23	3.13	2.89	2.94	3.36	3.30	3.04	2.80	
	18–19	5.39	5.25	5.41	6.69	5.78	5.59	5.44	6.63	5.94	5.85	4.56	
	20–44	1.25	1.11	1.23	1.42	1.27	1.31	1.24	1.53	1.44	1.44	1.31	
Late/Early Abortions	15–17	0.26	0.22	0.22	0.28	0.24	0.25	0.30	0.35	0.28	0.27	0.22	
	18–19	0.21	0.17	0.16	0.20	0.18	0.18	0.20	0.23	0.21	0.22	0.17	
	20–44	0.12	0.10	0.10	0.11	0.10	0.10	0.10	0.12	0.11	0.11	0.10	
Population	15–17	115722	115282	113600	108143	103981	104371	100131	100912	101172	101846		
	18–19	85110	85825	88047	83984	79883	76788	77004	73784	74295	74375	74788	
	20–44	700327	722182	747058	761209	778081	787138	799912	811693	819042	821954	828167	

*Raw data provided by the Minnesota Center for Health Statistics.
†Abortion, birth, early abortion and late abortion rates are expressed as the number of abortions or births per 1000 women.
NOTE: Early abortions: ≤12 weeks; Late abortions: >12 weeks.

Birth Rate

Birth rates decreased in all age categories following enactment of the law (Table 2). However, the decline was most pronounced in 15–17 and 18–19 year-old women. Table 3 reveals that the pre-enactment to post-enactment change among 15–17 and 18–19 year-old women was similar, with both age groups evidencing a substantially greater decline than found among women ages 20–44.

Ratio of Abortions to Births

A marked drop in the abortion-to-birth ratio occurred after the law in 15–17 year-old women when compared to both 18–19 year-old women and 20–44 year-old women (see Tables 2 and 3). In Figure 1, the abortion rate and birth rate are plotted separately for 15–17 year-old women along with the abortion-to-birth ratio (abortion rate/birth rate) in order to examine the relative importance of abortions and births to the markedly declining abortion-to-birth ratio in this age group. It is evident that birth rates continue a modest and nearly linear decline, apparently unaffected by the law ($r = -0.89$ between birth rate and year). On the other hand, the abortion rate falls dramatically after the enactment of the law in August 1981. Together, these facts indicate that the drop in the 15–17 year-old abortion-to-birth ratio is due to a disproportionately greater decrease in the abortion rate (numerator).

Early and Late Abortions

The early abortion rate closely tracks the overall abortion rate (Tables 2 and 3). The pre-enactment to post-enactment late abortion rate substantially declines for women of 15–17 years, increases for women of 20–44 years, and remains nearly constant for women of 18–19 years (Table 2). The pre-enactment to post-enactment change in the late abortion rate, when compared between age groups, evidences a greater decline in late abortions for 15–17 than for either 18–19 or 20–44 year-old women (Table 3).

The late-to-early abortion ratio increased after the enactment of the law in all age groups (Table 2). However, the increase was greater among 15–17 year-old women than 20–44 year-old women (Table 3). Figure 2 reveals that a steep decline in early abortions, not an increase in late abortions, accounts for the increased late-to-early abortion ratio in 15–17 year-old women.

Discussion

Data presented in this study are compatible with the hypothesis that, initially, parental notification facilitated pregnancy avoidance in 15–17 year-old Minnesota women. Abortion rates fell markedly in this age group relative to older women. Birth rates also fell, but only in keeping with a long-term trend established before enactment of the law. One possibility is that when minor women are restricted from abortion without notifying parents or seeking court approval, and are geographically prohibited from easy access to out-of-state abortions,[2] they are more likely to take measures to avoid pregnancy.

Although the data are compatible with this hypothesis, other explanations are possible. For example, a growing concern over human immunodeficiency virus infection, and/or awareness and availability of birth control may explain in part or in full these findings. However,

TABLE 2—Contrasts Between Pre- and Post-Enactment Periods*

Outcome Measures	Age (years)	Pre-Enactment**	Post-Enactment†	Contrast Ratio (Post/Pre) With 95% CI
Abortion Rate††	15–17	19.012	13.695	0.717 (0.692, 0.743)
	18–19	38.181	34.638	0.907 (0.883, 0.932)
	20–44	13.280	13.931	1.049 (1.034, 1.064)
Birth Rate††	15–17	17.883	15.510	0.876 (0.848, 0.906)
	18–19	57.339	50.213	0.876 (0.857, 0.895)
	20–44	77.992	76.191	0.977 (0.971, 0.983)
Abortions/ Births	15–17	1.076	0.879	0.817 (0.777, 0.859)
	18–19	0.666	0.690	1.036 (1.000, 1.074)
	20–44	0.170	0.183	1.074 (1.057, 1.091)
Early Abortion Rate ††	15–17	15.343	10.507	0.686 (0.658, 0.715)
	18–19	32.413	28.749	0.887 (0.861, 0.914)
	20–44	12.032	12.554	1.043 (1.027, 1.059)
Late Abortion Rate††	15–17	3.669	3.114	0.852 (0.788, 0.921)
	18–19	5.750	5.867	1.020 (0.952, 1.089)
	20–44	1.247	1.375	1.103 (1.052, 1.157)
Late/Early Abortions	15–17	0.238	0.296	1.245 (1.140, 1.359)
	18–19	0.177	0.204	1.150 (1.057, 1.241)
	20–44	0.104	0.110	1.058 (1.008, 1.112)

*Raw data provided by the Minnesota Center for Health Statistics.
**Geometric mean, years 1978–80, Table 1.
†Geometric mean, years 1982–85, Table 1.
††Abortion, birth, early abortion and late abortion rates are expressed as the number of abortions or births per 1000 women.
NOTES: 1) Early abortions: ≤12 weeks; Late abortions: >12 weeks.
2) Pre-enactment (1978–80) to post-enactment (1982–85) means are compared (post/pre) in the form of contrast ratios. A contrast ratio of one implies no pre-enactment to post-enactment change.

TABLE 3—Age by Time Interactions*

Outcome Measures	Age Group Comparison	Post- / Pre-enactment Ratios** Younger	Older	Contrast Ratio (younger/older) with 95% CI
Abortion Rate	15–17 vs 18–19	0.717	0.907	0.791 (0.758, 0.827)
	15–17 vs 20–44	0.717	1.049	0.684 (0.658, 0.710)
	18–19 vs 20–44	0.907	1.049	0.865 (0.839, 0.892)
Birth Rate	15–17 vs 18–19	0.876	0.876	1.003 (0.962, 1.045)
	15–17 vs 20–44	0.876	0.977	0.899 (0.867, 0.931)
	18–19 vs 20–44	0.876	0.977	0.896 (0.876, 0.917)
Abortions/Births	15–17 vs 18–19	0.817	1.036	0.788 (0.741, 0.839)
	15–17 vs 20–44	0.817	1.074	0.761 (0.722, 0.802)
	18–19 vs 20–44	1.036	1.074	0.965 (0.928, 1.003)
Early Abortions	15–17 vs 18–19	0.686	0.887	0.772 (0.735, 0.812)
	15–17 vs 20–44	0.686	1.043	0.658 (0.629, 0.685)
	18–19 vs 20–44	0.887	1.043	0.850 (0.822, 0.879)
Late Abortions	15–17 vs 18–19	0.852	1.020	0.835 (0.753, 0.927)
	15–17 vs 20–44	0.852	1.103	0.772 (0.705, 0.846)
	18–19 vs 20–44	1.020	1.103	0.925 (0.850, 1.006)
Late/Early Abortions	15–17 vs 18–19	1.245	1.150	1.082 (0.963, 1.215)
	15–17 vs 20–44	1.245	1.058	1.177 (1.064, 1.302)
	18–19 vs 20–44	1.150	1.058	1.086 (0.994, 1.191)

*Raw data provided by the Minnesota Center for Health Statistics.
**Post- / pre-enactment ratios are from Table 2.
NOTES: 1) Early abortions: ≤12 weeks; Late abortions: >12 weeks.
2) Post-enactment to pre-enactment ratios (Table 2) are compared across age groups (younger/older) to examine age by time interactions. A contrast ratio of "one" implies equivalent post- / pre-enactment ratios for both age groups (no interaction).

the abrupt nature of the change in abortion rate, a phenomenon found also in Massachusetts by Cartoof and Klerman,[1] makes these rival hypotheses less tenable. In any event, the data argue against Clary's[3] concern that more minors might carry pregnancies to term as an indirect effect of the parental notification law. If such were the case, it seems unlikely that birth rates would have continued to decline in 15–17 year-olds along the linear trend line established prior to the law, or that the decline in birth rates would be nearly identical between 15–17 and 18–19 year-old women.

The pre-enactment to post-enactment increase in the proportion of late (>12 weeks) to early (≤12 weeks) abortions was greater for 15–17 than for 20–44 year-old women. At least two hypotheses may explain this finding. First, the law may have been more successful in preventing pregnancy among minors who would have had early abortions than among minors who would have had late abortions. A second possibility is that the law caused delays for a greater percentage of a declining number of minors seeking abortions. Regardless, the claim that the law caused more minors to obtain late abortions is unsubstantiated. In fact, the reverse is true. For ages 15–17 the number of late abortions per 1,000 women decreased following the enactment of the law. Therefore, an increased medical hazard due to a rising number of late abortions was not realized.

In this paper no effort has been made to confront the philosophical and legal issues surrounding parental involvement laws. Rather, the authors have pursued a limited task, that of empirical evaluation within a framework of defined outcome parameters. This study is consistent with the hypothesis that conception among minor women may be reduced immediately following enactment of parental notification legislation when migratory abortion across state lines is not a viable alternative. However, generalizations to other states must be made cautiously, as Minnesota is a unique state with a low minority population and a low pregnancy rate even before the parental notice legislation. The authors emphasize that replication in states other than Minnesota will be required to sustain the hypothesis. □

Acknowledgments

The authors wish to thank the Minnesota Center for Health Statistics, particularly James Wigginton and Carol Vargas for their consid-

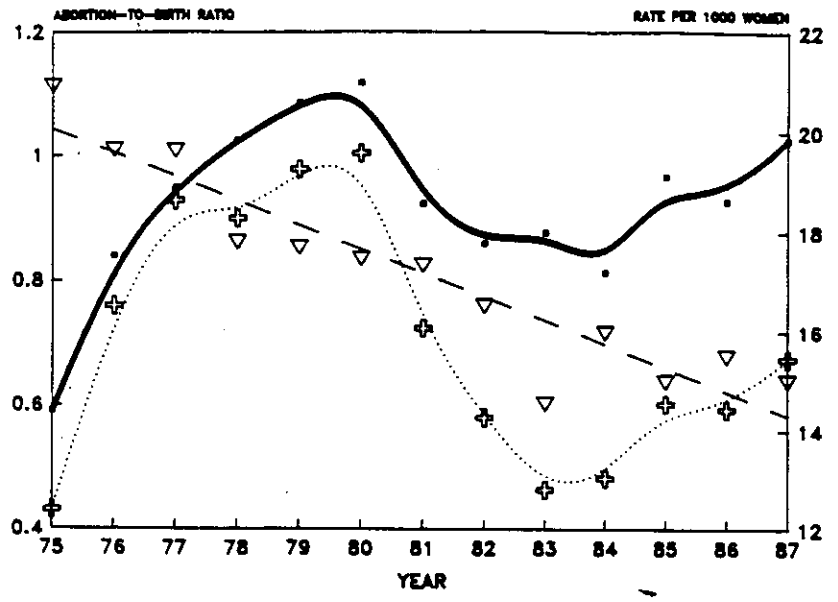

FIGURE 1—Abortion and Birth Rates per 1000 15–17 Year-Old Women and Abortion/Birth Rate Ratio, 1975–87
—Abortion/Birth Ratio
···✣··· Abortion Rate
–▽– Birth Rate

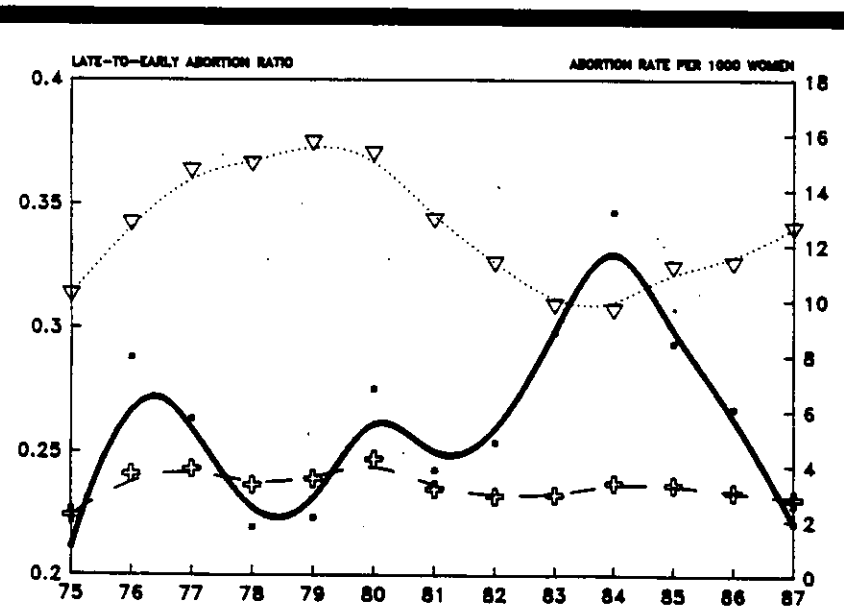

FIGURE 2—Early and Late Abortion Rates per 1000 15–17 Year-old Women and Late/Early Abortion Rate Ratio 1975–87
—Late/Early Ratio
–✣– Early Abortion Rate
···▽··· Late Abortion Rate

erable work in providing these data in a form suitable for the current analysis. The authors also thank Americans United for Life for purchasing the data from the Minnesota Center for Health Statistics and providing it to the authors. Preparation of this study was supported in part by an Aldeen Grant from Wheaton College.

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Exploiting the Bells' Tragic Situation

BY DAVE ANDRUSKO

FROM PAGE 2

So, what can we conclude? Let us agree that the Bells are every bit the loving parents they say they are. Had they known that their daughter was pregnant at the time she grew so gravely ill, surely instead of merely trying to coax their daughter into going to a doctor - - which apparently was the case - - they would have insisted. What else? In his recent column on Becky Bell, Cal Thomas quotes Dr. John Curry, former head of the Tissue Bank at Bethesda Naval Hospital. Curry observed (as noted above) that while there was "massive infection in the lungs and elsewhere, there is no evidence of infection on the outside of or within the uterus." The bug that killed her, Curry said, "could have been treated had it been detected within the first six days." He also added that the infection was "unlikely to originate from a contaminated abortion procedure."

When Mrs. Bell went through her daughter's personal effects, she found a list of abortion facilities and adoption centers. Becky Bell had other options besides abortion and she considered them actively for months. Also lost in the discussion is that in all the years notification and consent bills have been on the books, Becky's case is the only one that pro-abortionists have been able to find which - - if misrepresented thoroughly enough - - could lend even a semblance of credibility to their side of the debate. By contrast teenage girls have died and been crippled precisely **because** they were not required to involve their parents or because others maneuvered to get around telling the parents.

4 GOOD REASONS TO PASS PARENTAL CONSENT/ NOTIFICATION LAWS!

Maryland abortionist Gene Crawford punctured the uterus and cervix of 16-year-old Erica Kae Richardson, leaving her on the operating table for four hours without treatment. Miss Richardson later bled to death. Her aunt had helped her get the abortion without her parents' knowledge. An abortionist performed a late-term abortion on Dawn Ravenell, 13, without notifying her parents. Ravenell went into shock and had a heart attack. She lapsed into a coma, and was declared brain dead one week later. The junior high teacher of 14-year-old Erin Preston arranged and paid for the girl's abortion, deliberately deceiving Erin's mother, who had asked the school to inform her of all matters relating to her daughter. Mrs. Preston learned of the abortion only after she was summoned to her daughter's bedside as she was undergoing emergency surgery for post-abortion complications. And to cite just one more example, Rachel Ely had an abortion at 17 without telling her parents. She felt flu-like pains in her chest which she did not associate with the abortion. She actually had a post-abortion surgical infection, which developed into a blood clot and lodged in her brain. Ely then had a stroke, and today is in a wheelchair.

I have three daughters and I think I have some small sense of the ordeal the Bells are going through. We know that the mother in particular has not come to grips with her daughter's death. In reporter Sharpe's words, "Rebecca's mother still treats her daughter as though she is still alive." The details are too heartbreaking to recollect . . . so I won't. What we must remember about the pro-abortionists is that they have no shame. They will exploit the misery, the anguish, the guilt and remorse of anyone, provided it gives them ammunition in their war to keep the slaughter going full tilt. Indiana's parental consent law is premised on the notion that teens are immature and that they need their parents' counsel about something as monumentally important as a new life growing within them. Becky's ambivalence - - the adoption option one day, abortion the next - - is typical of teens. Likewise for her radical misreading of how her parents would have reacted had she told them she was pregnant. Cal Thomas' conclusion was right on the money. "The medical cause of Becky Bell's death may have been pneumonia, but the underlying cause remains unclear. One thing is clear: Her death was not due to Indiana's parental consent law."

AUG. 16, 1990

dha

N.H. Rep.
Battles-Pierce, Marjorie A.

FILE COPY

6 Northway Circle #67
Dover, NH 03820-2441

January 14, 1998

To: Judiciary & Family Law Committee

Re: HB 1324 Requiring parental notification for minors' abortions

My name is Frances Witcomb, from Dover, supporting HB 1324 with evidence that Becky Bell did not die because of parental notification/consent laws in her home state of Indiana, as her parents and their pro-abortion organizations claimed.

According to the official autopsy report, Bill and Karen Bell's secretly pregnant 17 year-old daughter, Rebecca, died in 1988 of "a massive lung infection, with NO evidence of an induced abortion, legal or otherwise."

The Bells' claim that Becky "died from an illegal abortion," is also contradicted by Dr. John Curry, former head of the Tissue Bank at Bethesda Naval Hospital (as quoted by Cal Thomas, in Aug. 1990). Curry observed that while there was "massive infection in the lungs and elsewhere, there is no evidence of infection on or outside of or in the uterus." The bug that killed her, Curry said, "could have been treated had it been detected within the first six days."

According to a coroner's report, Becky went to a party the previous weekend, where illegal drugs were used. She came home very ill, telling her mom that, "I'm so sick. I feel like somebody put something in my drink."

If Mrs. Bell had known Becky was pregnant at the time of her grave illness, she would not have **suggested** medical care, she would have **insisted** on it.

On the Friday Becky died, she talked with her closest friend, Heather Clark, about their trip to an abortion clinic in Kentucky, the next day. Instead, uncontested evidence from Miss Clark is that Becky was suffering a spontaneous miscarriage.

When Becky hemorrhaged on Friday, the Bells took her to the hospital, where they first learned about the pregnancy. After Becky died, the Bell's began to spread the story that she had asked someone at the party to induce an "illegal" chemical abortion. The forensic evidence does not support that story.

Becky's sexual activity was known to her mom, who went with her for pregnancy tests, that were negative. When Becky eventually became pregnant, her state required the consent of one parent to have an abortion, or petition a court for permission. Her personal effects included lists of abortion and adoption centers, proving that Becky had thought about other options.

"Teenage girls have died and been crippled simply because they were not required to involve their parents, or because others manuevered to get around telling their parents," wrote Dave Andrusko, in National Right to Life News, 8/16/90, pp. 2, 14.

HB 1324 is a sensible parental notification act about parental rights, and protecting children. Please give it your most thoughtful support.

Thank you.

Frances R. Witcomb
(Mrs. Charles W.)

FACT OF THE DAY

FILE COPY

The Realities of Parental Notification Laws in Other States

Safety

- Second Trimester abortions increased by 18% in Minnesota, following enactment of a parental consent law. ("Our Daughters' Decisions," Alan Guttmacher Institute, 1992)
- Thirty percent of minors who did not tell their parents they planned to have an abortion had experienced violence in their family. In addition, they feared that violence would occur if the parents knew, and would be forced to leave home. (FPP, 24:5, 1992)
- The following medical associations oppose this legislation:
American Medical Association, American Public Health Association, Society for Adolescent Medicine, American College of Obstetricians and Gynecologists, American Academy of Pediatrics, and American Academy of Family Physicians.

Communication with Parents: The state can not legislate parent/child communications!

- In 1990, a study comparing a state mandating parental involvement law (Minnesota) and one that does not (Wisconsin) **revealed NO significant difference in the proportion of young women who involve their parents between Minnesota, a state that mandates parental notification and Wisconsin, a state that does not.** (FPP, 22:Jul/Aug, 1990)
- Most abortion-seeking minors tell one or both parents of their intentions even without a parental notification law. (AGI 1992 Report)

Judicial By-Pass

- In Ohio, **Judaical by-pass can take up to 22 days, pushing many young women into riskier second trimester abortions.** ("Adolescent Abortion & Mandated Parental Involvement: The Impact of Back Alley Laws on Young Women" Center for Population Options, 1992)
- Judicial by-pass fails to ensure anonymity, because a **young woman routinely comes into contact with up to 23 different people** as she goes through the judicial system trying to obtain an abortion. ("Adolescent Abortion & Mandated Parental Involvement: The Impact of Back Alley Laws on Young Women" Center for Population Options, 1992)
- None of the judges, guardians, lawyers, or health professionals who are responsible for implementing the court by-pass procedure in Minnesota identified any positive effect of the law. ("Parental Notice Laws: Their Catastrophic Impact on Teenagers' Right to Abortion")

FILE COPY

NEW HAMPSHIRE FAMILY PLANNING COUNCIL

18 Low Ave. Concord, NH 03301
Fax: 603. 226. 3829
Voice: 603. 224. 4394
Steven T. Birchall, DMA
Executive Director

To: Members of the New Hampshire House of Representatives Committee on the Judiciary and Family Law
From: New Hampshire Family Planning Council
Date: January 14, 1998
Subject: HB 1324 (Parental Notification Regarding Abortions on Minors)

We oppose HB 1324 for the following reasons:

1. **Establishes facts and definitions on highly controversial issues**
2. **Fails to recognize the realities of unsatisfactory family life**
3. **Moves Power to Grant Exceptions From Judges to Physicians**
4. **Notification process cumbersome**
5. **Contains Politically Charged Definitions and Declarations of Fact**

Since 1981, similar legislation has been filed in nearly every session of the legislature. Each time, the legislation has failed because of a lack of any compelling reason to enact it. The reality of family life is that when communications between parents and their children are lacking, no law can force these discussions to take place. HB 1324 will solve no problems for any families. To the contrary it has the potential to create new problems for some families.

Looking more deeply into this bill, we can see that it contains provisions that would engrave political agendas and religious teachings into law. In the section on purpose and findings, "The legislature finds as fact that:"

- "Immature minors often lack the ability to make fully informed choices that take into account both immediate and long-range consequences." This statement of supposed fact implies that minors are always incapable of making choices without parental consent. Many parents, teachers, and clergy would maintain that the process of maturation during adolescence is one of evolving ability to make choices, that this ability is not fixed, and that the goal is to guide adolescents into making better choices over time. What purpose does the State of New Hampshire have in declaring this "fact" of young people's inability to make good decisions? That statement attacks the dignity and accomplishments of all youth.
- "The medical, emotional, and psychological consequences of abortion are serious and can be lasting..." Where is the related statement of "fact" that the consequences of not having an abortion are equally serious and lasting? What purpose does the State of New Hampshire have in making

only this particular "fact" a part of the legal code? What other laws might follow in the future from this onerous declaration?

- "Parents who are aware that their minor daughter has had an abortion may better ensure that she receives adequate medical attention after her abortion." The implication is that all parents will in fact do so. We know as a society that this is not the case, and a law claiming this as "fact" is ludicrous.
- The bill defines abortion in a highly charged religious/political context: "'Abortion' means the use of any means to terminate the pregnancy of a female known to be pregnant with knowledge that the termination with those means will, with reasonable likelihood, cause the death of the fetus." Some people claim, incorrectly, that the action of birth control pills is to induce an early abortion. This definition in the law would provide legal means for them to cause incredible legal mischief in an attempt to ban birth control pills. Since the definition includes "any means" it opens the door to litigation based on fear-induced abortions and other claims possibly based on foods, social situations, loud sounds, bright lights, scary movies, and so on. Again, why is this definition included here when the RSAs already define abortion elsewhere?
- The bill defines fetus in such a way as to give legal basis for granting citizenship to a fertilized egg. "'Fetus' means any individual human organism from fertilization until birth." Would this be a precedent-setting legal definition? Do we need to open this topic to endless litigation at taxpayer expense? Why does the bill contain this definition?

Why are so many of these unnecessary facts and definitions included in this bill? Not one of them is necessary to enact a parental consent law. Their inclusion raises too many questions. For this reason alone, we recommend that the committee report it as Inexpedient to Legislate.

Not all parents are perfect, and some may suffer from undiagnosed personality disorders. This bill covers only cases of sexual and physical abuse, but not psychological abuse by parents. The bill lacks any provision for a judge to grant an exception in the case of abusive or estranged parents. Instead, it assigns responsibility to the physician to obtain permission from another close relative. In other states, the courts provide this kind of exception granted by judges, and that process works well to protect pregnant minors and their fetuses from further abuse. To take this protection away from minors would be appalling. The authors of this legislation might give consideration to the wide range of personalities and political philosophies among physicians. Some would be very strict, others very lenient. But, at a time when many politicians are complaining of the tyranny of the unelected judges, and proposing constitutional amendments to reverse court decisions, we should be careful about handing that kind of authority to people who do not even hold public office.

The bill requires a 48 hour waiting period after notification. "The written notice shall be addressed to the parent or guardian at the usual place of abode of the parent or guardian and delivered personally to such

parent or guardian by the physician or an agent." Why must the physician deliver it in person? The next paragraph offers alternative delivery via certified mail, but the language effectively adds several days to the process by defining time and date of delivery. Since people frequently are not able to go to the post office to sign for certified mail for several days, and the return receipt must find its way back to the physician, the 48 hour waiting period has the potential to extend for an indefinite time. Abusive parents would make use of the time to create untold misery. The distraught minor might resort to illegal and unsafe providers, or attempt suicide.

Like it or not, pregnant minors are parents themselves. So are the fathers. This bill does not mention the rights – and responsibilities of minors who have become fathers. It does not even mention the parents of the father and their rights and responsibilities. If parents of minors have rights, then the minor parents have rights and responsibilities. What this bill does not address or encourage is the process of reaching a consensus among the four parents on how to deal with a difficult situation. This bill destroys new families before they have a chance to begin by giving all control to the parents of the minor female.

In conclusion, we find this HB 1324 filled with serious problems that might have been avoided. Moreover, its basic premise creates new problems rather than solving existing problems.

Steven T. Birchall, DMA
Executive Director

FILE COPY

HB 1324

Requiring parental notification before abortions may be performed on certain minors.

For the record, my name is Kathleen M. Flora, representing Hillsborough District 15, the town of Bedford.

I ask for only a few minutes of your time this morning for a few brief points on this issue. I preface my remarks with the disclaimer that I am not an attorney, nor do I ever wish to be one. So I will not attempt to address in a complex fashion the legal ramifications of this bill. I wish instead to ask you to take a journey in time with me.

I would like to ask you to think back.. to 1966 in my case, to a time when you were 14 years old. Close your eyes if it is helpful. Think about yourself at 14, your dreams, your aspirations, how you made decisions, what was important to you. Capture that picture and try if you can, to capture that feeling of invincibility and promise. Try to remember the times when the game or dance on Friday night was the most important thing in your world, and at the same time, when the whole wide world was you oyster. You knew you were going to grow up to be something very special, you just didn't know what that something might be yet. This was a time when you were very smart in your own mind, a time when you knew it all and your parents couldn't possibly understand your world, after all, they are ancient. But, at the same time, this was a time when you were supremely vulnerable, when you were trying on a newly minted identity, and were easily hurt or swayed by your peers and what they thought of you. Come on. You can all get back there if you try.

Now, imagine you are a 14 year old girl. For about half of you, this should be easy, I still feel like 18 sometimes, so perhaps you do too. For you gentlemen, take a leap of the imagination and place yourself into the mind and heart of that 14 year old girl who cares about school, being popular or fitting in, dance class, her babysitting job and her boyfriend. Now imagine, as I do, that you're that 14 year old girl and you find that you are pregnant.

What are you feeling? What emotions swirl around in your head? What will you do?

You're scared, you're panicked. You may feel shame, fear, remorse, disbelief. If you are anything like the teens I encountered in High school, you try to bargain with God, "Please don't let this be so, I'll never do it again!"

Whoa! Can you imagine the way it feels to wake up in the morning knowing you are the chief character in a life changing drama... And you not only have to play the main role, but you also have to be the scriptwriter, designing the outcome so that no one gets hurt.

I ask you, At 14, do you have that capacity? Can you think through all the ramifications of your decision? Do you have the experience needed to arrive art a sound decision? Doyou even know what resources are available to you to help you deal with this issue?

I know, in my case, probably not.

When I was 28, I had been married for 4 years and had just given birth to my son, Mark. When he was 6 weeks old, I went back to work part time as a teacher ~~in Frontier High School, in Chalmers, Indiana,~~ teaching Career Education to 9th graders. On the first day of school, when talking about our life's dreams and hopes, one of my students, a 14 year old girl, shared a picture with the class of her 9 month old baby daughter. Her dreams for herself were all wrapped up in the dreams she had for the little child in her care. I myself was struggling mightily to understand my new role as a mother, how to meet the demands of my life now profoundly and forever changed. ~~I knew the enormity of my situation. I had a life in my hands~~. Yet, as this young girl spoke, she exhibited none of the understanding of this enormity of her situation. Instead, she spoke as though talking of a doll she had been given for Christmas. She did not seem to grasp how her own life would be forever and mystically bound to the little girl in the picture she shared with us.

I don't tell this story to persuade you either way on the rightness or wrongness of her decision to keep or abort her child. But, I bring up this story to illustrate for you the immense difference between the mind of a 14 year old and the mind of a 28 year old adult who along with her life partner has made a conscious choice to raise a family.

~~I was equipped to handle my decision~~. I do not believe that this young girl could have made her decision on whether or not to keep her baby, without the guidance of caring adults.

Now if you will bear with me, I would like to inject one more point into the mix here. As a 14 year old young girl who finds herself pregnant in New Hampshire, you are not only a pregnant teen with a momentous decision to make. You are also, according to New Hampshire law, the victim of a felony. What, you say, a felony, a crime! But, I agreed to have sex with my boyfriend! Yes, a felony! If you are 14 and pregnant in New Hampshire, you are by virtue of your pregnant state, the victim of a serious crime of sexual assault.

According to the New Hampshire Criminal Code, Chapter 632-A:2, Section III, you are the victim of aggravated felonious sexual assault ~~if you and your boyfriend engaged in sex over the course of a two month time period, and you are the victim~~ OR Perpetrator of felonious sexual assault if you are 13 years of age or older and under the age of 16. What about your privacy rights? What about your consent? Don't they count here? No they do not. In the case of Goodrow vs Perrin of 1979, the courts held that "there is no right to engage in sexual intercourse with a person the legislature has determined is unable to give consent, even if there is a protected privacy right to engage in heterosexual intercourse with other

adults. And in the case of the State vs. Berry, 1977, the courts held that in the case of alleged rape of a child under age 16, consent is not material.

Chapter 626:6 III of the New Hampshire Criminal Code states that "consent is no defense if it is given by a person legally incompetent to authorize the conduct or by one who by reason of immaturity ...is unable to exercise a reasonable judgement as to the harm involved. "

Now, in New Hampshire we work very, very hard to protect our children from becoming the victims of crime. We do not allow the sexual abuse of children. We do not even allow our children under 18 to get a tattoo without parental permission and a child under 17 may not smoke, or buy cigarettes. But, we allow a young girl, the victim of a felony, who finds herself pregnant, to choose an abortion eliminating any physical trace of the crime, or to keep her baby without consulting any adult in the process. Talk about discrimination against this young girl! This to me smacks of the same double standard we lived by in the 50's which held these young girls up as shameful, not to be dealt with, to be swept under the rug, thrown out of the house, sent away and hidden with a maiden aunt who lives out of town or thrown out of the family.

If we as a legislature are willing to protect our children from tattoos and cigarettes, but not willing to stand by these young girls who are victims of a crime and afford them the protection, the responsible guidance, the caring of their parents or other responsible adult at the most stressful time in their young lives. Shame on us! We have the responsibility to stand by them. ~~We must afford them the guidance of a responsible adult~~.

According to the pamphlet recently distributed by the New Hampshire Bar Association entitled "Beyond High School: A Guide to Your Rights and Responsibilities" on p. 44, "When you become a parent, whether married or unmarried, you share with the other parent the rights and responsibilities for the care, custody, nurturing, companionship and support of your children until they reach the age of majority, 18. As parents, you will make decisions about schooling, religious training, medical treatment and all the other elements required for raising children. These are automatically your rights as a parent under New Hampshire Law."

I ask you to **reaffirm** these rights to the parents in the case of consent for the termination of pregnancy of a minor, even as I urge you to shift the legislature from the antiquated attitudes of the 50's which leaves young girls to stand alone at a very critical time. I ask you to stand behind and in support of the mental, emotional and physical care of these young girls who for whatever reason are faced with an adult decisions. Thank you!

All property acquired during the marriage belongs to both of you and can be divided if you get divorced, regardless of whether title is only one spouse's name. Property owned prior to the marriage can be taken into consideration at that time. If you have been married more than a very few years, there is a presumption that the Court will divide the property equally, but other factors can influence the division.

Whether you are married or living together, it is a crime to force your spouse or partner to engage in any kind of sexual contact or activity. It is also against the law for your partner to injure you or threaten you so that you fear for your physical safety. If your partner or ex-partner, or someone you have dated, has done any of these things to you, you may seek the help and protection of the police and the courts. There are many crisis services throughout the state which can help you learn your legal options when faced with domestic violence.

Children

Parental Rights and Responsibilities

When you become a parent, whether married or unmarried, you share with the other parent the rights and responsibilities for the care, custody, nurturing, companionship and support of your children until they reach the age of majority, 18. As parents, you will make decisions about schooling, religious training, medical treatment and all the other elements required for raising children. These are automatically your rights as a parent under New Hampshire law.

If, however, you are unmarried and the mother of your child has not acknowledged that you are the father, you may need to first establish that you are the father before you are able to exercise your rights as a parent. A paternity action may be brought in the superior court. Blood or DNA tests will usually prove conclusively whether you are the father.

You may also ask the court to step in when you and the other parent cannot agree about custody, visitation or support issues. This is done either through a divorce action or a petition to establish custody, support and visitation.

Children have a right to receive financial support from a parent who is not a member of the household due to separation, divorce or desertion. If you are a parent or guardian and

have dependent children who are entitled to child support payments, New Hampshire's Division of Human Services has an Office of Child Support that can locate an absent parent, determine paternity, establish a child support order, and/or review an order to see if it meets guideline amounts.

Child support services are available to any parent or guardian with whom the child lives. There is no charge for these services. To receive more information on these services contact a Division of Human Services' Child Support Office near you.

Termination of Parental Rights

If you fail to fulfill your responsibilities as a parent, your parental rights can be limited or even ended entirely in certain situations. The court can limit your rights where there are charges of abuse or neglect and can terminate your parental rights where extended and serious breaches of parental responsibilities have occurred. This may happen when, for example, you have abandoned, neglected, or abused your child.

Adoption

An adult does not have to be married to adopt a child. A child over the age of twelve years must agree to be adopted. In all adoptions, the mother and the legal father of the child must agree to the adoption. In some cases, there are additional or different people who have to consent to the adoption. If you are considering adoption, you should contact an attorney.

Domestic Violence

It is against the law for your spouse/partner (whether male or female) to injure you or threaten you so that you fear for your physical safety. In addition, a spouse or partner cannot force sexual contact or relations on you against your will or destroy or threaten to destroy your property. You should not live or stay with a person who threatens your safety in any of these ways. You have the right to live in a safe environment. If any member of your household or your spouse, ex-spouse, partner, or ex-partner, or someone you have dated has done any of these things to you, you may seek the help and protection of the police and the courts.

The district and superior courts and the Family Division have the power to issue a domestic violence restraining order that

West Key Number
Criminal Law ⇐ 52 et seq.

CJS
Criminal Law § 65 et seq.

ALR
Effect of voluntary drug intoxication upon criminal responsibility. 73 ALR3d 98.

Modern status of rules as to voluntary intoxication as defense to criminal charge. 8 ALR3d 1236.

When intoxication deemed involuntary so as to constitute a defense to criminal charge. 73 ALR3d 195.

626:5 Entrapment. It is an affirmative defense that the actor committed the offense because he was induced or encouraged to do so by a law enforcement official or by a person acting in cooperation with a law enforcement official, for the purpose of obtaining evidence against him and when the methods used to obtain such evidence were such as to create a substantial risk that the offense would be committed by a person not otherwise disposed to commit it. However, conduct merely affording a person an opportunity to commit an offense does not constitute entrapment.

History

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

Annotations

Evidence of predisposition, 3
Particular cases, 4
Purpose, 1
Questions for jury, 2

1. Purpose
General purpose of entrapment defense is to prevent conviction of a crime manufactured by law enforcement officers. State v. Bacon (1974) 114 NH 306, 319 A2d 636.

2. Questions for jury
Entrapment is a question of fact and for the jury, if there is evidence presenting the issue and allowing entrapment to be found. State v. Bacon (1974) 114 NH 306, 319 A2d 636.

3. Evidence of predisposition
In cases where the defense of entrapment is raised, evidence of the defendant's predisposition to commit the crime is relevant and admissible. State v. Little (1981) 121 NH 765, 435 A2d 517.

When the defense of entrapment is raised but the evidence supports a finding that the defendant was ready to commit the crime, the conviction will be upheld. State v. Little (1981) 121 NH 765, 435 A2d 517.

This section, by its terms, does not mandate that the inquiry as to existence of the defense focus solely on the conduct of the police, because in order for the defense to succeed the conduct must be "such as to create a substantial risk that the offense would be committed by a person not otherwise disposed to commit it"; therefore, disposition to commit the offense is relevant to the determination of the existence of the defense. State v. Little (1981) 121 NH 765, 435 A2d 517.

In case where defense of entrapment was raised, trial court did not err in allowing state to introduce rebuttal predisposition evidence, where defendant first raised issue of predisposition and testified to the effect that he was not so predisposed. State v. Little (1981) 121 NH 765, 435 A2d 517.

4. Particular cases
There was no entrapment where defendant's friend telephoned and asked if he could send two men over to buy marijuana, defendant told his friend, and the two men when they arrived, that he maybe had some of his own, the men had asked if defendant had any, and stated they had been talking to defendant's friend after defendant said he was not sure he had any, and defendant then sold the men some of his own. State v. Bacon (1974) 114 NH 306, 319 A2d 636.

Cited
Cited in State v. Linsky (1977) 117 NH 866, 379 A2d 813; State v. Guaraldi (1983) 124 NH 93, 467 A2d 233; State v. Saulnier (1989) 132 NH 412, 566 A2d 1136.

Library References

New Hampshire Criminal Jury Instructions
New Hampshire Criminal Jury Instructions, Instruction #3.05.

West Key Number
Criminal Law ⇐ 37 et seq.

CJS
Criminal Law § 45(1) et seq.

ALR
Adequacy of defense counsel's representation of criminal client regarding entrapment defense. 8 ALR4th 1160.

Availability in state court of defense of entrapment where accused denies committing acts which constitute offense charged. 5 ALR4th 1128.

Burden of proof as to entrapment defense—state cases. 52 ALR4th 775.

Entrapment to commit traffic offense. 34 ALR4th 1167.

Modern status of the law concerning entrapment to commit narcotics offense—state cases. 62 ALR3d 110.

626:6 Consent.

I. The consent of the victim to conduct constituting an offense is a defense if such consent negatives an element of the offense or precludes the harm sought to be prevented by the law defining the offense.

II. When conduct constitutes an offense because it causes or threatens bodily harm, consent to the conduct is a defense if the bodily harm is not serious; or the harm is a reasonably foreseeable hazard of lawful activity.

III. Consent is no defense if it is given by a person legally incompetent to authorize the conduct or by one who, by reason of immaturity, insanity, intoxication or use of drugs is unable and known by the actor to be unable to exercise a reasonable judgment as to the harm involved.

History

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

Annotations

Construction with other laws, 1
Instructions, 3
Reasonable judgment, 2

1. Construction with other laws
Statutory definition of "element of an offense" cannot be read to include the defense of consent. State v. Cooper (1992) 135 NH 258, 603 A2d 499.

Because consent is not a justification, lack of consent is not an element of the offense of sexual assault. State v. Cooper (1992) 135 NH 258, 603 A2d 499.

2. Reasonable judgment
There is no physical element to the "reasonable judgment" to which RSA 626:6, III refers; judgment when used in this way means the action of judging or the mental or intellectual process of forming an opinion or evaluation by discerning and comparing and the absence of ability physically to resist does not bear one way or another on the ability to exercise a reasonable judgment. State v. Jackson (1996) 141 NH —, — A2d —.

RSA 626:6, III eliminates the defense of consent in cases where the victim was, and the perpetrator knew the victim was, unable to exercise reasonable judgment at the time of the charged act. State v. Jackson (1996) 141 NH —, — A2d —.

3. Instructions
Because the trial court, in instructing the jury on consent, improperly included proving "physically helpless to resist" as a means of proving the lack of reasonable judgment, its instruction was erroneous. State v. Jackson (1996) 141 NH —, — A2d —.

If it followed the instructions as given, the jury could have found the absence of ability to exercise reasonable judgment based solely on a finding that the victim was physically helpless to resist but the legislature did not include the physical ability of the victim to resist in its list of conditions that might prevent exercise of the reasonable judgment necessary to consent under RSA 626:6, III, and the instructions as a whole, therefore, did not fairly cover the issues of law in the case. State v. Jackson (1996) 141 NH —, — A2d —.

Cited
Cited in State v. Guaraldi (1983) 124 NH 93, 467 A2d 233; State v. Ayer (1992) 136 NH 191, 612 A2d 923.

Library References

New Hampshire Criminal Jury Instructions
New Hampshire Criminal Jury Instructions, Instruction # 3.03.

West Key Number
Criminal Law ⇐ 39.

CJS
Criminal Law § 42.

626:7 Defenses; Affirmative Defenses and Presumptions.

I. When evidence is admitted on a matter declared by this code to be:

(a) A defense, the state must disprove such defense beyond a reasonable doubt; or

(b) An affirmative defense, the defendant has the burden of establishing such defense by a preponderance of the evidence.

II. When this code establishes a presumption with respect to any fact which is an element of an offense, it has the following consequences:

(a) When there is evidence of the facts which give rise to the presumption, the issue of the existence of the presumed fact must be submitted to the jury, unless the court is satisfied that the evidence as a whole clearly negatives the presumed fact; and

(b) When the issue of the existence of the presumed fact is submitted to the jury, the court shall charge that while the presumed fact must, on all the evidence, be proved beyond a reasonable doubt, the law declares that the jury may regard the facts giving rise to the presumption as sufficient evidence of the presumed fact.

History

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

Annotations

Affirmative defenses, 2
Constitutionality, 1
Defense of consent, 4
Presumption of sanity, 3

1. Constitutionality
This section, placing the burden of proving the affirmative defense of entrapment upon the defendant, does not violate due process, because the burden of proving all the elements of the crime charged beyond a reasonable doubt remains with the state. State v. Little (1981) 121 NH 765, 435 A2d 517.

2. Affirmative defenses
Affirmative defense is defense overriding an element of the offense which need not be negated by State; defendant has burden of proof on a balance of the probabilities. State v. Soucy (1994) 139 NH 349, 653 A2d 561.

In trial for unauthorized taking, where defendant raised statute of limitations issue in a proposed jury instruction, but did not join the issue at trial, and did not point to any evidence in the record to support this theory of defense, the statute of limitations did not become an element of the offense and the court did not err in refusing to give defendant's requested jury instruction that the statute of limitations was an element of the offense. State v. Weeks (1993) 137 NH 687, 635 A2d 439.

Once the state proved beyond a reasonable doubt that defendant knowingly caused the death of her spouse, defendant had the burden of establishing the affirmative defense of insanity by a preponderance of the evidence. State v. Rullo (1980) 120 NH 149, 412 A2d 1009.

Insanity or plea of insanity is affirmative defense to be proved by preponderance of evidence by accused. Novosel v. Helgemoe (1978) 118 NH 115, 384 A2d 124, overruling State v. Bartlett (1861) 43 NH 224.

3. Presumption of sanity
Sanity is properly in nature of a policy presumption because it is inherent in human nature and is natural and normal condition of mankind, and is not properly an element of the crime. Novosel v. Helgemoe (1978) 118 NH 115, 384 A2d 124.

4. Defense of consent
Once defendant charged with sexual assault raises the defense of consent, the burden of proving lack of consent shifts to the state. State v. Cooper (1992) 135 NH 258, 603 A2d 499.

Cited
Cited in State v. Millette (1972) 112 NH 458, 299 A2d 150; State v. Arillo (1982) 122 NH 107, 441 A2d 1163; Pugliese v. Perrin, 567 F.Supp. 1337 (D.N.H. 1983), affirmed, 731 F.2d 85 (1st Cir. 1984); State v. Guaraldi (1983) 124 NH 93, 467 A2d 233; State v. Patten (1986) 126 NH 227, 489 A2d 657; State v. Smith (1985) 127 NH 433, 503 A2d 774; State v. Abbott (1985) 127 NH 444, 503 A2d 791; State v. Jernigan (1990) 133 NH 396, 577 A2d 1214; State v. Wallace (1992) 136 NH 267, 615 A2d 1243.

Library References

New Hampshire Trial Bar News
For article, "Presumptions in New Hampshire Law—A Guide Through the Impenetrable Jungle (Part II)," see 11 N.H. Trial Bar News 31, 35, nn 82, 90, 96, 36, 43 (Fall 1991).

New Hampshire Criminal Jury Instructions
New Hampshire Criminal Jury Instructions, Instruction ## 3.02, 3.10-3.15.

626:8 Criminal Liability for Conduct of Another.

I. A person is guilty of an offense if it is committed by his own conduct or by the conduct of another person for which he is legally accountable, or both.

II. A person is legally accountable for the conduct of another person when:

(a) Acting with the kind of culpability that is sufficient for the commission of the offense, he causes an innocent or irresponsible person to engage in such conduct; or

(b) He is made accountable for the conduct of such other person by the law defining the offense; or

(c) He is an accomplice of such other person in the commission of the offense.

III. A person is an accomplice of another person in the commission of an offense if:

(a) With the purpose of promoting or facilitating the commission of the offense, he solicits such other person in committing it, or aids or agrees or attempts to aid such other person in planning or committing it; or

(b) His conduct is expressly declared by law to establish his complicity.

IV. When causing a particular result is an element of an offense, an accomplice in the conduct causing such result is an accomplice in the commission of that offense, if he acts with the kind of culpability, if any, with respect to that result that is sufficient for the commission of the offense.

V. A person who is legally incapable of committing a particular offense himself may be guilty thereof if it is committed by the conduct of another person for which he is legally accountable, unless such liability is inconsistent with the purpose of the provision establishing his incapacity.

VI. Unless otherwise provided, a person is not an accomplice in an offense committed by another person if:

(a) He is the victim of that offense; or

(b) The offense is so defined that his conduct is inevitably incident to its commission; or

(c) He terminates his complicity prior to the commission of the offense and wholly deprives it of effectiveness in the commission of the offense or gives timely warning to the law enforcement authorities or otherwise makes proper effort to prevent the commission of the offense.

VII. An accomplice may be convicted on proof of the commission of the offense and of his complicity therein, though the person claimed to have committed the offense has not been prosecuted or convicted or has been convicted of a different offense or degree of offense or has an immunity to prosecution or conviction or has been acquitted.

History

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

Annotations

1. Construction

Paragraph IV of this section, governing liability when causing a particular result is an element of an offense, is not independent of paragraph III of this section, which defines when a person is an accomplice, and therefore the elements set forth in paragraph III must be alleged and proven by the state to establish accomplice liability. State v. Horne (1984) 125 NH 254, 480 A2d 121.

This section eradicated the distinctions between principal and accomplice. State v. Thresher (1982) 122 NH 63, 442 A2d 578.

2. Construction with other laws

An individual may not be an accomplice to negligent homicide, since to satisfy the requirements of paragraph III of this section, the state must establish that the accomplice's acts were designed to aid the primary actor in committing the substantive offense, yet under RSA 626:2, II(d) setting forth the necessary accompanying mental state of negligence, the primary actor must be unaware of the risk that his conduct created, and an accomplice could not intentionally aid the primary actor in a crime that the primary actor was unaware that he was committing. State v. Etzweiler (1984) 125 NH 57, 480 A2d 870.

The legislature, in enacting RSA 630:3, I, governing negligent homicide, and this section, did not intend to impose criminal liability upon a person who lends his automobile to an intoxicated driver but does not accompany the driver, when the driver's operation of the borrowed automobile causes death. State v. Etzweiler (1984) 125 NH 57, 480 A2d 870.

3. Extent of liability

An accomplice's liability ought not to extend beyond the criminal purposes that he or she shares. State v. Etzweiler (1984) 125 NH 57, 480 A2d 870.

4. Presence during crime

The circumstances under which a defendant is present at the scene of a crime may be such as to warrant the jury's inferring beyond a reasonable doubt that he sought thereby to make the crime succeed. State v. Goodwin (1978) 118 NH 862, 395 A2d 1234.

Mere presence at the scene of a crime is insufficient to make a person criminally responsible. State v. Goodwin (1978) 118 NH 862, 395 A2d 1234.

5. Affirmative act

The crime of accomplice liability under subparagraph III(a) of this section requires some active participation by the accomplice. State v. Arillo (1988) 131 NH 295, 553 A2d 281.

The crime of accomplice liability under subparagraph III(a) of this section necessitates some active participation by the accomplice. State v. Vaillancourt (1982) 122 NH 1153, 453 A2d 1327.

Knowledge and mere presence at the scene of a crime cannot support a conviction for accomplice liability because they do not constitute sufficient affirmative acts to satisfy the actus reus requirement of subparagraph III(a) of this section. State v. Vaillancourt (1982) 122 NH 1153, 453 A2d 1327.

6. Purpose of accomplice

Under paragraph III of this section, the state has the burden of establishing that the accomplice acted with the purpose of promoting or facilituting the commission of the substantive offense, and this encompasses the requirement that the accomplice's acts were designed to aid the primary actor in committing the offense and that the accomplice had the purpose to make the crime succeed. State v. Etzweiler (1984) 125 NH 57, 480 A2d 870.

To prosecute one as an accomplice, paragraph III of this section requires that the state must prove that the defendant acted with the purpose of promoting or facilitating the offense. State v. Horne (1984) 125 NH 254, 480 A2d 121.

7. Facilitation

Jury could have reasonably concluded that defendant's presence facilitated and encouraged principal's actions where there was evidence that defendant owned the car in which victim was abducted and owned the apartment where rape occurred, and was present during the kidnapping and rape of the victim. State v. Goodwin (1978) 118 NH 862, 395 A2d 1234.

8. Aid

Trial court erred in upholding defendant's indictment for accomplice liability where the state alleged the requisite mens rea but further alleged only that the defendant aided another "by accompanying him to the location of the crime and watching . . .", since accompaniment and observation are not sufficient acts to constitute "aid" under subparagraph III(a) of this section. State v. Vaillancourt (1982) 122 NH 1153, 453 A2d 1327.

9. Guilt of principal

Paragraph VII of this section excludes the guilt of the named principal as an element necessary for the conviction of an accomplice. State v. Kaplan (1983) 124 NH 382, 469 A2d 1354.

Language of paragraph VII of this section that "an accomplice may be convicted on proof of the commission of the offense and of his complicity therein . . ." excludes the guilt of the named principal as an element necessary for the conviction of the accomplice. State v. Jansen (1980) 120 NH 616, 419 A2d 1108.

10. Indictment and information

An indictment sufficiently alleges accomplice liability to an attempted felony if it alleges an attempted felony on the part of the principal and the acts and intent of the accomplice to aid the principal in that activity. State v. Abbin (1984) 125 NH 646, 484 A2d 1156.

Because accomplice liability holds an individual criminally liable for actions done by another, it is important that the prosecution fall squarely within this section. State v. Etzweiler (1984) 125 NH 57, 480 A2d 870.

An information charging the defendant with being an accomplice to receiving stolen property had to set forth the acts that constituted the offense and not merely the language of this section. State v. Lurvey (1982) 122 NH 190, 442 A2d 592.

Language of indictment stating that defendant was indicted for "acting in concert with" another defendant adequately informed defendant that he was charged as an accomplice and could be held criminally liable under this section. State v. Burke (1982) 122 NH 565, 448 A2d 962.

Trial court's interpretation of language in an indictment for robbery and second-degree murder, which alleged that the defendant committed the crimes "in concert with" a codefendant, as charging the defendant as a principal and/or accomplice rather than only as a principal was proper since the "in concert with" language has been interpreted as charging the defendants as accomplices and this section has been interpreted as eradicating the distinctions between principal and accomplice and, therefore, the defendant could have been found guilty of second-degree murder whether he was the principal or accomplice. State v. Thresher (1982) 122 NH 63, 442 A2d 578.

11. Instructions

Where the trial court instructed the jury that if it found that the defendant had committed all of the acts necessary for murder or if he had committed the acts in conjunction with his accomplice, provided he was accountable for his accomplice's acts, then it could find him guilty of murder, because this charge was consistent with this section which eradicated the distinctions between principals and accessories, and because the trial court's interpretation of the indictment as charging the defendant as either a principal or accomplice, rather than only as a principal, was valid, the jury instructions were proper. State v. Thresher (1982) 122 NH 63, 442 A2d 578.

Cited

Cited in State v. Acton (1975) 115 NH 254, 339 A2d 4; State v. Gilbert (1975) 115 NH 665, 348 A2d 713; State v. Shippee (1975) 115 NH 694, 349 A2d 587; State v. Luv Pharmacy, Inc. (1978) 118 NH 398, 388 A2d 190; State v. Bussiere (1978) 118 NH 659, 392 A2d 151; State v. Akers (1979) 119 NH 161, 400 A2d 38; State v. Glidden (1983) 123 NH 126, 459 A2d 1136; State v. McDuffee (1983) 123 NH 184, 459 A2d 251; State v. Mitchell (1983) 124 NH 247, 469 A2d 1310; State v. Palamis (1983) 124 NH 333, 470 A2d 906; State v. Beaudette (1984) 124 NH 579, 474 A2d 1012; State v. Damiano (1984) 124 NH 742, 474 A2d 1045; State v. Champagne (1984) 125 NH 648, 484 A2d 1161; State v. Pierce (1985) 126 NH 84, 489 A2d 109; State v. Wellman (1986) 128 NH 340, 513 A2d 944; State v. Kaplan (1986) 128 NH 562, 517 A2d 1162; State v. Dellorfano (1986) 128 NH 628, 517 A2d 1163; State v. Therrien (1987) 129 NH 765, 533 A2d 346; State v. Riccio (1988) 130 NH 376, 540 A2d 1239; State v. Hamel (1988) 130 NH 615, 547 A2d 223; State v. Prisby (1988) 131 NH 57, 550 A2d 89; State v. Anaya (1991) 134 NH 346, 592 A2d 1142; State v. Alosa (1993) 137 NH 33, 623 A2d 218; State v. Huard (1994) 138 NH 256, 638 A2d 787; State v. Puzzanghera (1996) 140 NH 105, 663 A2d 94; State v. Koehler (1995) 140 NH 469, 669 A2d 788.

Library References

New Hampshire Practice
1 N.H.P. Criminal Practice & Procedure § 324.

New Hampshire Bar Journal
For article, "Accomplice Liability for Unintentional Crime: Etzweiler and Horne Revisited," see 30 N.H.B.J. 95 (1989).

New Hampshire Criminal Jury Instructions
New Hampshire Criminal Jury Instructions, Instruction # 2.07.

West Key Number
Criminal Law ⇐ 59 et seq.

CJS
Criminal Law § 79 et seq.

ALR
Acquittal of principal, or his conviction of lesser degree of offense, as affecting prosecution of accessory, or aider and abettor. 9 ALR4th 972.

Condominium association's liability to unit owner for injuries caused by third person's criminal conduct. 59 ALR4th 489.

CHAPTER 627

JUSTIFICATION

Library References

West Key Number
Criminal Law ⇐ 38.

CJS
Criminal Law §§ 44, 49.

627:1 General Rule. Conduct which is justifiable under this chapter constitutes a defense to any offense. The fact that such conduct is justifiable shall constitute a complete defense to any civil action based on such conduct.

History

Source. 1971, 518:1. 1979, 429:2, eff. Aug. 22, 1979.

Amendments—1979. Substituted "shall constitute a complete defense to any civil action based on such conduct" for "however, does not abolish or impair any remedy for such conduct which is available in any civil action" following "justifiable" at the end of the second sentence.

Cross References

Civil liability for action which would constitute justification, see RSA 507:8-d.

Annotations

1. Commitment proceedings

This section establishes a defense akin to the common-law defense of necessity. State v. O'Brien (1989) 132 NH 587, 567 A2d 582.

Statutory defense of justification does not apply in civil commitment proceedings, and any specific acts alleged in petition may be appropriately considered as prognostic evidence of dangerousness, whether or not the acts are justified

under statutory criteria; however, petitioner in rebuttal may show that the acts alleged in a petition were in fact justified. In re Fasi (1989) 132 NH 478, 567 A2d 178.

Cited

Cited in Pugliese v. Perrin, 567 F. Supp. 1337 (D.N.H. 1983), affirmed, 731 F.2d 85 (1st Cir. 1984); State v. Guaraldi (1983) 124 NH 93, 467 A2d 233; Panas v. Harakis (1987) 129 NH 591, 529 A2d 976; State v. Bruce (1989) 132 NH 465, 566 A2d 1144; State v. O'Brien (1989) 132 NH 587, 567 A2d 582.

LIBRARY REFERENCES

New Hampshire Trial Bar News

For article, "Presumptions in New Hampshire Law—A Guide Through the Impenetrable Jungle (Part II)," see 11 N.H. Trial Bar News 31, 34, 35 nn.82, 112 (Fall 1991).

ALR

Pleading self-defense or other justification in civil assault and battery action. 67 ALR2d 405.

627:2 Public Duty.

I. Any conduct, other than the use of physical force under circumstances specifically dealt with in other sections of this chapter, is justifiable when it is authorized by law, including laws defining functions of public servants or the assistance to be rendered public servants in the performance of their duties; laws governing the execution of legal process or of military duty; and judgments or orders of courts or other tribunals.

II. The justification afforded by this section to public servants is not precluded by the fact that the law, order or process was defective provided it appeared valid on its face or, as to persons assisting public servants, by the fact that the public servant to whom assistance was rendered exceeded his legal authority or that there was a defect of jurisdiction in the legal process or decree of the court or tribunal, provided the actor believed the public servant to be engaged in the performance of his duties or that the legal process or court decree was competent.

HISTORY

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

627:3 Competing Harms.

I. Conduct which the actor believes to be necessary to avoid harm to himself or another is justifiable if the desirability and urgency of avoiding such harm outweigh, according to ordinary standards of reasonableness, the harm sought to be prevented by the statute defining the offense charged. The desirability and urgency of such conduct may not rest upon considerations pertaining to the morality and advisability of such statute, either in its general or particular application.

II. When the actor was reckless or negligent in bringing about the circumstances requiring a choice of harms or in appraising the necessity of his conduct, the justification provided in paragraph I does not apply in a prosecution for any offense for which recklessness or negligence, as the case may be, suffices to establish criminal liability.

HISTORY

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

ANNOTATIONS

Application, 2
Construction, 1
Particular offenses, 4
Requirements, 3

1. Construction

This section establishes a defense akin to the common-law defense of necessity. State v. O'Brien (1989) 132 NH 587, 567 A2d 582.

This section is not meant to excuse illegal actions carried out with good intentions. State v. O'Brien (1989) 132 NH 587, 567 A2d 582.

An individual is protected from prosecution for a criminal act under this section if he commits a criminal act that was urgently necessary to avoid a clear and imminent danger. State v. Fee (1985) 126 NH 78, 489 A2d 606.

This section establishes statutory defense akin to common-law defense of necessity. State v. Dorsey (1978) 118 NH 844, 395 A2d 855.

This section is intended to deal only with harms that are readily apparent and recognizable to the average juror. State v. Dorsey (1978) 118 NH 844, 395 A2d 855.

2. Application

This section cannot lightly be allowed to justify acts taken to foreclose speculative and uncertain dangers, but must be limited to acts directed to the prevention of harm that is reasonably certain to occur. State v. Fee (1985) 126 NH 78, 489 A2d 606.

3. Requirements

In order for the competing harms defense to be available, a number of requirements must be satisfied; the otherwise illegal conduct must be urgently necessary, there must be no lawful alternative, and the harm sought to be avoided must outweigh, according to ordinary standards of reasonableness, the harm sought to be prevented by the violated statute. State v. O'Brien (1989) 132 NH 587, 567 A2d 582.

This section sets up a balancing test; in order for the competing harms defense to be available, the desire or need to avoid the present harm must outweigh the harm sought to be prevented by the violated statute. State v. O'Brien (1989) 132 NH 587, 567 A2d 582.

4. Particular offenses

Trial court correctly ruled that, as a matter of law, competing harms defense was not available to defendant charged with driving a motor vehicle while an habitual offender, where defendant drove a co-employee to the hospital for treatment of a twisted ankle; the relatively minor injury did not demand immediate action necessary to avoid a clear and imminent danger required by this section, and even if the defendant reasonably believed an imminent danger existed, alternative courses of conduct were available. State v. O'Brien (1989) 132 NH 587, 567 A2d 582.

Danger alleged by defendant pharmacist to have been created by possibility of distribution of stolen prescription drugs did not justify conduct of defendant in driving, while under the influence of intoxicating liquor, to pharmacy of which he was in charge, where an alarm had been tripped, since other courses of conduct for dealing with the perceived danger existed. State v. Fee (1985) 126 NH 78, 489 A2d 606.

Danger alleged by defendant pharmacist to have been created by possibility of distribution of stolen prescription drugs did not justify conduct of defendant in driving, while under the influence of intoxicating liquor, to pharmacy of which he was in charge, where an alarm had been tripped, since he was not told of any burglary or that any drugs had been taken, and since he had experience with false alarms in the past, facts which precluded any reasonable certainty of the danger alleged. State v. Fee (1985) 126 NH 78, 489 A2d 606.

Trial court did not err in ruling that defense of competing harms was not available to one charged with criminal trespass for occupying the construction site of a nuclear power plant, where both state legislature and Congress of the United States had made deliberate choices in support of nuclear power. State v. Dorsey (1978) 118 NH 844, 395 A2d 855.

Cited

Cited in State v. Dupuy (1978) 118 NH 848, 395 A2d 861; State v. Koski (1980) 120 NH 112, 411 A2d 1122; State v. Gorham (1980) 120 NH 162, 412 A2d 1017; State v. Brady (1980) 120 NH 899, 424 A2d 407; Brady v. Samaha, 667 F.2d 224 (1st Cir. 1981); State v. Weitzman (1981) 121 NH 83, 427 A2d 3; State v. Williams (1985) 127 NH 79, 497 A2d 858.

LIBRARY REFERENCES

ALR

Automobiles: necessity or emergency as defense in prosecution for driving without operator's license or while license is suspended. 7 ALR5th 73.

"Choice of evils," necessity, duress, or similar defense to state or local criminal charges based on acts of public protest. 3 ALR5th 621.

627:4 Physical Force in Defense of a Person.

I. A person is justified in using non-deadly force upon another person in order to defend himself or a third person from what he reasonably believes to be the imminent use of unlawful, non-deadly force by such other person, and he may use a degree of such force which he reasonably believes to be necessary for such purpose. However, such force is not justifiable if:

(a) With a purpose to cause physical harm to another person, he provoked the use of unlawful, non-deadly force by such other person; or

(b) He was the initial aggressor, unless after such aggression he withdraws from the encounter and effectively communicates to such other person his intent to do so, but the latter notwithstanding continues the use or threat of unlawful, non-deadly force; or

(c) The force involved was the product of a combat by agreement not authorized by law.

II. A person is justified in using deadly force upon another person when he reasonably believes that such other person:

(a) Is about to use unlawful, deadly force against the actor or a third person;

(b) Is likely to use any unlawful force against a person present while committing or attempting to commit a burglary;

(c) Is committing or about to commit kidnapping or a forcible sex offense; or

(d) Is likely to use any unlawful force in the commission of a felony against the actor within such actor's dwelling or its curtilage.

III. A person is not justified in using deadly force on another to defend himself or a third person from deadly force by the other if he knows that he and the third person can, with complete safety:

(a) Retreat from the encounter, except that he is not required to retreat if he is within his dwelling or its curtilage and was not the initial aggressor; or

(b) Surrender property to a person asserting a claim of right thereto; or

(c) Comply with a demand that he abstain from performing an act which he is not obliged to perform; nor is the use of deadly force justifiable when, with the purpose of causing death or serious bodily harm, the actor has provoked the use of force against himself in the same encounter.

(d) If he is a law enforcement officer or a private person assisting him at his direction and was acting pursuant to RSA 627:5, he need not retreat.

HISTORY

Source. 1971, 518:1. 1981, 347:1, 2, eff. Aug. 16, 1981.

Amendments—1981. Paragraph II(d): Added.

Paragraph III(a): Added "or its curtilage" following "dwelling".

ANNOTATIONS

Elements, 4
Instructions, 3
Provocation, 1
Unreasonable belief, 2

1. Provocation

The term "provoke" connotes speech as well as action and a jury may correctly conclude that a defendant's use of words alone to bring about a fight in which he intended at the outset to kill his opponent was sufficient to destroy his legal defense of self-defense. State v. Gorham (1980) 120 NH 162, 412 A2d 1017.

2. Unreasonable belief

A defendant's unreasonable belief that another is likely to use an unlawful force in the commission of a felony against him, even if the belief is honest, will not support a defense of justification for the use of deadly force. State v. Holt (1985) 126 NH 394, 493 A2d 483.

3. Instructions

In appeal from conviction for simple assault in which superior court declined to give requested jury instructions concerning justifications of self-defense, defense of another, and defense of property, all three claims of error were preserved for review where the record showed timely objection made to failure to change justifications of self-defense and defense of property; format of this section combined self-defense and defense of another in same paragraph and parties and court understood objection included instruction on defense of others. State v. Hast (1990) 133 NH 747, 584 A2d 175.

In trial for simple assault, defendant was entitled to jury instruction on defense of others where some evidence was presented that defendant had assaulted victim in response to unlawful unprivileged physical contact by another on defendant's wife. State v. Hast (1990) 133 NH 747, 584 A2d 175.

4. Elements

A victim's aggressive character is not among the elements essential to the defense of self-defense. State v. Newell (1996) 141 NH —, — A2d —.

Cited

Cited in State v. Kawa (1973) 113 NH 310, 306 A2d 791; State v. Pugliese (1980) 120 NH 728, 422 A2d 1319; State v. Arillo (1982) 122 NH 107, 441 A2d 1163; State v. McAvenia (1982) 122 NH 580, 448 A2d 967; State v. Pugliese (1982) 122 NH 1141, 455 A2d 1018; Pugliese v. Perrin, 567 F. Supp. 1337 (D.N.H. 1983), affirmed, 731 F.2d 85 (1st Cir. 1984).

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For article, "Presumptions in New Hampshire Law Guide Through the Impenetrable Jungle (Part II)," see N.H. Trial Bar News 31, 34, 35 nn.82, 112 (Fall 1991).

New Hampshire Criminal Jury Instructions

New Hampshire Criminal Jury Instructions, Instruction 3.10-3.16.

West Key Number

Assault and Battery ⇐ 14.
Homicide ⇐ 122.

CJS
Assault and Battery § 22.
Homicide § 108.

ALR
Construction and application of statutes justifying the use of force to prevent the use of force against another. 71 ALR4th 940.
Duty to retreat as condition of self-defense when one is attacked at his office, or place of business or employment. 41 ALR3d 584.
Liability of private citizen or his employer for injury or damage to third person resulting from firing of shots at fleeing criminal. 29 ALR4th 144.
Unintentional killing of or injury to third person during an attempted self-defense. 55 ALR3d 620.
Withdrawal, after provocation of conflict, as reviving right of self-defense. 55 ALR3d 1000.

627:5 Physical Force in Law Enforcement.

I. A law enforcement officer is justified in using non-deadly force upon another person when and to the extent that he reasonably believes it necessary to effect an arrest or detention or to prevent the escape from custody of an arrested or detained person, unless he knows that the arrest or detention is illegal, or to defend himself or a third person from what he reasonably believes to be the imminent use of non-deadly force encountered while attempting to effect such an arrest or detention or while seeking to prevent such an escape.

II. A law enforcement officer is justified in using deadly force only when he reasonably believes such force is necessary:

(a) To defend himself or a third person from what he reasonably believes is the imminent use of deadly force; or

(b) To effect an arrest or prevent the escape from custody of a person whom he reasonably believes:

(1) Has committed or is committing a felony involving the use of force or violence, is using a deadly weapon in attempting to escape, or otherwise indicates that he is likely to seriously endanger human life or inflict serious bodily injury unless apprehended without delay; and

(2) He had made reasonable efforts to advise the person that he is a law enforcement officer attempting to effect an arrest and has reasonable grounds to believe that the person is aware of these facts.

(c) Nothing in this paragraph constitutes justification for conduct by a law enforcement officer amounting to an offense against innocent persons whom he is not seeking to arrest or retain in custody.

III. A private person who has been directed by a law enforcement officer to assist him in effecting an arrest or preventing an escape from custody is justified in using:

(a) Non-deadly force when and to the extent that he reasonably believes such to be necessary to carry out the officer's direction, unless he believes the arrest is illegal; or

(b) Deadly force only when he reasonably believes such to be necessary to defend himself or a third person from what he reasonably believes to be the imminent use of deadly force, or when the law enforcement officer directs him to use deadly force and he believes such officer himself is authorized to use deadly force under the circumstances.

IV. A private person acting on his own is justified in using non-deadly force upon another when and to the extent that he reasonably believes it necessary to arrest or prevent the escape from custody of such other whom he reasonably believes to have committed a felony and who in fact has committed that felony: but he is justified in using deadly force for such purpose only when he reasonably believes it necessary to defend himself or a third person from what he reasonably believes to be the imminent use of deadly force.

V. A guard or law enforcement officer in a facility where persons are confined pursuant to an order of the court or as a result of an arrest is justified in using deadly force when he reasonably believes such force is necessary to prevent the escape of any person who is charged with, or convicted of, a felony, or who is committing the felony of escape from official custody as defined in RSA 642:6. The use of non-deadly force by such guards and officers is justified when and to the extent the person effecting the arrest believes it reasonably necessary to prevent any other escape from the facility.

VI. A reasonable belief that another has committed an offense means such belief in facts or circumstances which, if true, would in law constitute an offense by such person. If the facts and circumstances reasonably believed would not constitute an offense, an erroneous though reasonable belief that the law is otherwise does not make justifiable the use of force to make an arrest or prevent an escape.

VII. Use of force that is not justifiable under this section in effecting an arrest does not render illegal an arrest that is otherwise legal and the use of such unjustifiable force does not render inadmissible anything seized incident to a legal arrest.

VIII. Deadly force shall be deemed reasonably necessary under this section whenever the arresting law enforcement officer reasonably believes that the arrest is lawful and there is apparently no other possible means of effecting the arrest.

History

Source. 1971, 518:1. 1981, 373:1-3, eff. Aug. 22, 1981.
Amendments—1981. Paragraph II(b)(1): Inserted "or is committing" preceding "a felony" and substituted "involving the use of force or violence" for "or" thereafter.
Paragraph V: Amended generally.
Paragraph VIII: Added.

Annotations

Cited
Cited in Blais v. Town of Goffstown (1979) 119 NH 613, 406 A2d 295.

Library References

New Hampshire Practice
1 N.H.P. Criminal Practice & Procedure § 195.

West Key Number
Assault and Battery ⇐ 10.
Homicide ⇐ 103 et seq.

CJS
Assault and Battery §§ 26-29.
Homicide § 100 et seq.

ALR
Peace officer's liability for death or personal injuries caused by intentional force in arresting misdemeanant. 86 ALR3d 238.
Private person's authority, in making arrest for felony, to shoot or kill alleged felon. 32 ALR3d 1078.
Right of peace officer to use deadly force in attempting to arrest fleeing felon. 83 ALR3d 174.

627:6 Physical Force by Persons with Special Responsibilities.

I. A parent, guardian or other person responsible for the general care and welfare of a minor is justified in using force against such minor when and to the extent that he reasonably believes it necessary to prevent or punish such minor's misconduct.

II. A teacher or person otherwise entrusted with the care or supervision of a minor for special purposes is justified on the premises in using necessary force against any such minor, when the minor creates a disturbance, or refuses to leave the premises or when it is necessary for the maintenance of discipline.

III. A person responsible for the general care and supervision of an incompetent person is justified in using force for the purpose of safeguarding his welfare, or, when such incompetent person is in an institution for his care and custody, for the maintenance of reasonable discipline in such institution.

IV. The justification extended in paragraphs I, II, and III does not apply to the malicious or reckless use of force that creates a risk of death, serious bodily injury, or substantial pain.

V. A person authorized by law to maintain decorum or safety in a vessel, aircraft, vehicle, train or other carrier, or in a place where others are assembled may use non-deadly force when and to the extent that he reasonably believes it necessary for such purposes, but he may use deadly force only when he reasonably believes it necessary to prevent death or serious bodily injury.

VI. A person acting under a reasonable belief that another person is about to commit suicide or to inflict serious bodily injury upon himself may use a degree of force on such person as he reasonably believes to be necessary to thwart such a result.

VII. A licensed physician, or a person acting under his direction, may use force for the purpose of administering a recognized form of treatment which he reasonably believes will tend to promote the physical or mental health of the patient, provided such treatment is administered:

(a) With consent of the patient or, if the patient is a minor or incompetent person, with the consent of the person entrusted with his care and supervision; or

(b) In an emergency when the physician reasonably believes that no one competent to consent can be consulted and that a reasonable person concerned for the welfare of the patient would consent.

History

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

Annotations

1. Construction
Paragraph I of this section, justifying use of force by parent or one standing in loco parentis against minor when necessary to prevent or punish misconduct, merely codifies well-recognized precept of Anglo-American jurisprudence. In re Ethan H. (1992) 136 NH 681, 609 A2d 1222.

2. Justification
Honest but objectively unreasonable belief that use of force is necessary to prevent or punish child's misconduct will not support justification defense to charge of second degree assault on child under 13 years of age. State v. Leaf (1993) 137 NH 97, 623 A2d 1329.
Defendant was not justified in striking his stepson with a leather belt at least 10 times on his back, buttocks and thighs as punishment for failing to clean dishes. State v. Leaf (1993) 137 NH 97, 623 A2d 1329.

Cited
Cited in In re Caulk (1984) 125 NH 226, 480 A2d 93; In re Doe (1985) 126 NH 719, 495 A2d 1293; Petition of Doe (1989) 132 NH 270, 564 A2d 433; State v. Bruce (1989) 132 NH 465, 566 A2d 1144.

Library References

West Key Number
Assault and Battery ⇐ 10.
Parent and Child ⇐ 11.

CJS
Assault and Battery §§ 26-29.
Parent and Child §§ 118, 127-129.

ALR
Criminal liability for excessive or improper punishment inflicted on child by parent, teacher, or one in loco parentis. 89 ALR2d 396.
Standard for determination of reasonableness of criminal defendant's belief, for purposes of self-defense claim, that physical force is necessary — modern cases. 73 ALR4th 993.

627:7 Use of Force in Defense of Premises.

A person in possession or control of premises or a person who is licensed or privileged to be thereon is justified in using non-deadly force upon another when and to the extent that he reasonably believes it necessary to prevent or terminate the commission of a criminal trespass by such other in or upon such premises, but he may use deadly force under such circumstances only in defense of a person as prescribed in RSA 627:4 or when he reasonably believes it necessary to prevent an attempt by the trespasser to commit arson.

History

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

ANNOTATIONS

Cited

Cited in State v. Arillo (1982) 122 NH 107, 441 A2d 1163; State v. Smith (1983) 123 NH 46, 455 A2d 1041.

LIBRARY REFERENCES

New Hampshire Criminal Jury Instructions

New Hampshire Criminal Jury Instructions, Instruction # 3.11.

ALR

Duty to retreat where assailant is social guest on premises. 100 ALR3d 532.

627:8 Use of Force in Property Offenses. A person is justified in using force upon another when and to the extent that he reasonably believes it necessary to prevent what is or reasonably appears to be an unlawful taking of his property, or criminal mischief, or to retake his property immediately following its taking; but he may use deadly force under such circumstances only in defense of a person as prescribed in RSA 627:4.

HISTORY

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

ANNOTATIONS

1. Construction

At trial for simple assault and resisting arrest, regardless of whether chief of police properly or improperly ordered arresting officer to tow defendant's vehicle, defendant enjoyed no privilege to use self-help to prevent removal of his property or to effect its return nor was he entitled to resist arrest; any such privileges that may have existed at common law have been statutorily superceded. State v. Haas (1991) 134 NH 480, 596 A2d 127.

Cited

Cited in State v. Cavanaugh (1993) 138 NH 193, 635 A2d 1382.

LIBRARY REFERENCES

New Hampshire Criminal Jury Instructions

New Hampshire Criminal Jury Instructions, Instruction # 3.10.

ALR

Liability of private citizen or his employer for injury or damage to third person resulting from firing of shots at fleeing criminal. 29 ALR4th 144.

627:8-a Use of Force by Merchants. A merchant, or his agent, is justified in detaining any person who he has reasonable grounds to believe has committed the offense of willful concealment or shoplifting, as defined by RSA 644:17, on his premises as long as necessary to surrender the person to a peace officer, provided such detention is conducted in a reasonable manner.

HISTORY

Source. 1981, 344:2, eff. Aug. 16, 1981.

ANNOTATIONS

1. Jury instructions

In action based on allegedly improper arrest and detention of plaintiff for shoplifting, trial court's failure to instruct the jury that this section was a complete defense was harmless error, if error at all, since a reasonable jury could only have found that this section was inapplicable because the defendant did not have reasonable grounds to detain plaintiff. Panas v. Harakis (1987) 129 NH 591, 529 A2d 976.

LIBRARY REFERENCES

West Key Number

False Imprisonment ⇐ 8.

CJS

False Imprisonment § 29 et seq.

ALR

Construction and effect, in false imprisonment action, of statute providing for detention of suspected shoplifters. 47 ALR3d 998.

Liability of storekeeper for injury to customer arising out of pursuit of shoplifter. 14 ALR4th 950.

627:8-b Detention Powers of County Fair Security Guards.

I. Any county fair security guard who meets the requirements of paragraph II shall have the power to detain any person who he has reasonable grounds to believe has committed any offense under the laws of the state, on the premises of the county fair association as long as necessary to surrender the person to a peace officer, provided such detention is accomplished in a reasonable manner.

II. Only security guards who have completed a program of police training for part-time police officers, meeting standards established by the New Hampshire police standards and training council pursuant to RSA 188-F:26 and appropriate to a security guard's exercise of limited police powers, shall have the powers of detention granted in paragraph I.

HISTORY

Source. 1987, 85:1, eff. May 6, 1987.

627:9 Definitions. As used in this chapter:

I. "Curtilage" means those outbuildings which are proximately, directly and intimately connected with a dwelling, together with all the land or grounds surrounding the dwelling such as are necessary, convenient, and habitually used for domestic purposes.

II. "Deadly force" means any assault or confinement which the actor commits with the purpose of causing or which he knows to create a substantial risk of causing death or serious bodily injury. Purposely firing a firearm capable of causing serious bodily injury or death in the direction of another person or at a vehicle in which another is believed to be constitutes deadly force.

III. "Dwelling" means any building, structure, vehicle, boat or other place adapted for overnight accommodation of persons, or sections of any place similarly adapted. It is immaterial whether a person is actually present.

IV. "Non-deadly force" means any assault or confinement which does not constitute deadly force.

HISTORY

Source. 1971, 518:1. 1981, 347:3, eff. Aug. 16, 1981.

Amendments—1981. Paragraph I: Former par. I redesignated as par. II and new par. I added.

Paragraph II: Former par. II redesignated as par. IV and former par. I redesignated as par. II.

Paragraph III: Added.

Paragraph IV: Redesignated from former par. II.

CHAPTER 628

RESPONSIBILITY

628:1 Immaturity.

I. Except as provided in paragraph II, a person less than 15 years old is not criminally responsible for his conduct, but may be adjudged to be a juvenile delinquent.

II. A person 13 years of age or older may be held criminally responsible for the following offenses if the person's case is transferred to the superior court under the provisions of RSA 169-B:24:

II. (a)(1) First degree murder as defined in RSA 630:1-a.

(2) Second degree murder as defined in RSA 630:1-b.

(3) Manslaughter as defined in RSA 630:2.

(b) First degree assault as defined in RSA 631:1.

(c) Second degree assault as defined in RSA 631:2.

(d) Kidnapping as defined in RSA 633:1.

(e) Aggravated felonious sexual assault as defined in RSA 632-A:2.

(f) Criminal restraint as defined in RSA 633:2.

(g) Class A felony robbery as defined in RSA 636:1.

(h) Attempted murder.

HISTORY

Source. 1971, 518:1. 1988, 204:6. 1995, 308:113, eff. Jan. 1, 1996.

Amendments—1995. Paragraph II: Amended generally.

—1988. Designated the existing provisions of the section as par. I, added "except as provided in paragraph II" preceding "a person" at the beginning of that paragraph and added par. II.

Application—1995 amendment. 1995, 308:118, eff. Jan. 1, 1996, provided that the amendment to par. II of this section by 1995, 308:113 shall apply to offenses committed on or after Jan. 1, 1996.

CROSS REFERENCES

Delinquent children, see RSA 169-B.

Parole of delinquents, see RSA 170-H.

ANNOTATIONS

Cited

Cited in State v. Guarald (1983) 124 NH 93, 467 A2d 233; State v. Benoit (1985) 126 NH 6, 490 A2d 295.

LIBRARY REFERENCES

West Key Number

Infants ⇐ 65 et seq.

CJS

Infants §§ 196, 197, 204.

628:2 Insanity.

I. A person who is insane at the time he acts is not criminally responsible for his conduct. Any distinction between a statutory and common law defense of insanity is hereby abolished and invocation of such defense waives no right an accused person would otherwise have.

II. The defendant shall have the burden of proving the defense of insanity by clear and convincing evidence.

III. Evidence of insanity is not admissible unless:

(a) The defendant, within 10 days after entering his plea of not guilty or at such later time as the court may for good cause permit, notifies the court and the state of his purpose to rely on such defense; and

(b) Such notice is given at least 30 days before the scheduled commencement of trial.

HISTORY

Source. 1971, 518:1. 1982, 34:1. 1987, 13:1, eff. June 2, 1987.

Amendments—1987. Paragraph II: Amended generally.

—1982. Paragraph II: Former par. II redesignated as subpar. II(a) and new par. II added.

Paragraph III: Former par. II redesignated as introductory clause and subpar. (a), made minor changes in phraseology in that subparagraph and added subpar. (b).

CROSS REFERENCES

Committal of accused acquitted by reason of insanity, see RSA 651:9-a.

Committal of accused for pre-trial psychiatric examination, see RSA 135:17.

Duration of order committing accused acquitted by reason of insanity, see RSA 651:11-a.

Evidence required to commit accused acquitted by reason of insanity, see New Hampshire Constitution, Part I, Article 15.

Plea of insanity, see RSA 651:8-a.

ANNOTATIONS

1. Constitutionality

Failure of legislature to delineate a legal standard concerning the factual question of criminal insanity is not an unconstitutional delegation of legislative authority. State v. Shackford (1986) 127 NH 695, 506 A2d 315.

2. Presumption of sanity

Sanity is properly in nature of a policy presumption because it is inherent in human nature and is natural and normal condition of mankind, and is not properly an element of the crime. Novosel v. Helgemoe (1978) 118 NH 115, 384 A2d 124.

3. Test

The test for criminal insanity is whether insanity negated criminal intent. State v. Shackford (1986) 127 NH 695, 506 A2d 315.

4. Trial procedure

If accused does not desire a bifurcated hearing, but instead wishes to plead not guilty and raise insanity issue as affirmative defense, he may go forward with his affirmative insanity defense after state has rested upon evidence probative of requisite intent or culpability, and other elements of crime charged, and in such case, jury should be instructed about consequences of finding of not guilty by reason of insanity, and if jury certifies to court that they have acquitted defendant by reason of insanity, court will then proceed to determination of present dangerousness. Novosel v. Helgemoe (1978) 118 NH 115, 384 A2d 124.

5. Alcoholism

Though intoxication has been recognized as a defense to a crime on grounds of insanity in the form of dipsomania, it is

(b) "Organization" means a fraternity, sorority, association, corporation, order, society, corps, athletic group, cooperative, club, or service, social or similar group, whose members are or include students, operating at or in conjunction with an educational institution.

(c) "Student" means any person regularly enrolled on a full-time or part-time basis as a student in an educational institution.

(d) "Student hazing" means any act directed toward a student, or any coercion or intimidation of a student to act or to participate in or submit to any act, when:

(1) Such act is likely or would be perceived by a reasonable person as likely to cause physical or psychological injury to any person; and

(2) Such act is a condition of initiation into, admission into, continued membership in or association with any organization.

II. (a) A natural person is guilty of a class B misdemeanor if such person:

(1) Knowingly participates as actor in any student hazing; or

(2) Being a student, knowingly submits to hazing and fails to report such hazing to law enforcement or educational institution authorities; or

(3) Is present at or otherwise has direct knowledge of any student hazing and fails to report such hazing to law enforcement or educational institution authorities.

(b) An educational institution or an organization operating at or in conjunction with an educational institution is guilty of a misdemeanor if it:

(1) Knowingly permits or condones student hazing; or

(2) Knowingly or negligently fails to take reasonable measures within the scope of its authority to prevent student hazing; or

(3) Fails to report to law enforcement authorities any hazing reported to it by others or of which it otherwise has knowledge.

III. The implied or express consent of any person toward whom an act of hazing is directed shall not be a defense in any action brought under this section.

History

Source. 1993, 155:1, eff. July 1, 1993.

Cross References

Classification of crimes, see RSA 625:9.
Sentences, see RSA 651.

CHAPTER 632

RAPE

[Repealed 1975, 302:2, eff. Aug 6, 1975.]

History

Former RSA 632, comprising RSA 632:1-632:5, which was derived from 1971, 518:1, related to sexual offenses. See now RSA 632-A.

CHAPTER 632-A

SEXUAL ASSAULT AND RELATED OFFENSES

Cross References

Annulment of record of conviction for offense under this chapter, see RSA 651:5.
Confidential communications between victims of sexual assault and counselors, see RSA 173-C.
Involuntary admission for persons charged with felonious sexual assault found not competent to stand trial, see RSA 171-B.
Parole of prisoner convicted of psycho-sexual murder, see RSA 651-A:8.
Physical force in defense of a person, see RSA 627:4.
Testimony of minor in civil proceedings to recover damages on behalf of minor for abuse or assault, see RSA 516:25-a.

Annotations

Cited

Cited in State v. Cressey (1993) 137 NH 402, 628 A2d 696.

Library References

New Hampshire Practice

2 N.H.P. Criminal Practice & Procedure §§ 806, 845, 847.

New Hampshire Bar Journal

For article, "Repressed Memory or False Memory: New Hampshire Courts Consider the Dispute," 35 N.H.B.J. 51 (1994).

West Key Number

Rape ⇐ 1 et seq.

CJS

Rape § 1 et seq.

ALR

Admissibility, in prosecution for sex-related offense, of results of tests on semen or seminal fluids. 75 ALR4th 897.
Assault and battery: sexual nature of physical contact as aggravating offense. 63 ALR3d 225.
Fact that murder-rape victim was dead at time of penetration as affecting conviction for rape. 76 ALR4th 1147.
Incest as included within charge of rape. 76 ALR2d 484.
Mistake or lack of information as to victim's age, as defense to statutory rape. 44 ALR3d 1434.
Necessity or permissibility of mental examination to determine competency or credibility of complainant in sexual offense prosecution. 45 ALR4th 310.

Prosecution of female as principal for rape. 67 ALR4th 1127.
Remoteness in time of other similar offenses committed by accused as affecting admissibility of evidence thereof in prosecution for sex offenses. 88 ALR3d 8.
Time element as affecting admissibility of statement or complaint made by victim of sex crime as res gestae, spontaneous exclamation, or excited utterance. 89 ALR3d 102.
Validity of statute making sodomy a criminal offense. 20 ALR4th 1009.
What constitutes offense of "sexual battery". 87 ALR3d 1250.

632-A:1 Definitions. In this chapter:

I. "Actor" means a person accused of a crime of sexual assault.

I-a. "Affinity" means a relation which one spouse because of marriage has to blood relatives of the other spouse.

I-b. "Genital openings" means the internal or external genitalia including, but not limited to, the vagina, labia majora, labia minora, vulva, urethra or perineum.

I-c. "Pattern of sexual assault" means committing more than one act under RSA 632-A:2 or RSA 632-A:3, or both, upon the same victim over a period of 2 months or more and within a period of 5 years.

II. "Retaliate" means to undertake action against the interests of the victim, including, but not limited to:

(a) Physical or mental torment or abuse.

(b) Kidnapping, false imprisonment or extortion.

(c) Public humiliation or disgrace.

III. "Serious personal injury" means extensive bodily injury or disfigurement, extreme mental anguish or trauma, disease or loss or impairment of a sexual or reproductive organ.

IV. "Sexual contact" means the intentional touching of the victim's or actor's sexual or intimate parts, including breasts and buttocks, and the intentional touching of the victim's or actor's clothing covering the immediate area of the victim's or actor's sexual or intimate parts. Sexual contact includes only that aforementioned conduct which can be reasonably construed as being for the purpose of sexual arousal or gratification.

V. "Sexual penetration" means:

(a) Sexual intercourse; or

(b) Cunnilingus; or

(c) Fellatio; or

(d) Anal intercourse; or

(e) Any intrusion, however slight, of any part of the actor's body or any object manipulated by the actor into genital or anal openings of the victim's body; or

(f) Any intrusion, however slight, of any part of the victim's body into genital or anal openings of the actor's body;

(g) Any act which forces, coerces or intimidates the victim to perform any sexual penetration as defined in subparagraphs (a)-(f) on the actor, on another person, or on himself.

(h) Emission is not required as an element of any form of sexual penetration.

History

Source. 1975, 302:1. 1979, 127:1. 1981, 553:10. 1986, 132:2. 1992, 254:3-5. 1994, 185:1, eff. Jan. 1, 1995.

Amendments—1994. Paragraph I-c: Added.

—1992. Paragraph I-b: Added.

Paragraph II: Amended generally.

Paragraph V: Added a new subpar. (g) and redesignated former subpar. (g) as subpar. (h).

—1986. Paragraph I-a: Added.

—1981. Paragraph V: Amended generally.

—1979. Paragraph IV: Inserted "or actor's" following "victim's" wherever it appeared.

Annotations

1. Construction

The mental state required for RSA 632-A:3, II must be found in the definition of sexual penetration; unlike the definition of sexual contact, there is no language in the definition of sexual penetration describing a requisite state of mind. State v. Goodwin (1996) 140 NH 672, 671 A2d 554.

Since culpability applies only to material elements of an offense, purposefulness is required with respect to the act of sexual penetration, but is not required of the statutory variants as to how penetration can be committed. State v. Demmons (1993) 137 NH 716, 634 A2d 998.

Where there is an element of an offense that is defined by statutory variants, and the indictment expresses a specific variant, then the State is bound by the allegation made in the indictment; since sexual penetration can be committed in any of five ways, if the indictment charges defendants with committing this act in two specific statutorily defined ways, the State is bound to prove the penetration alleged. State v. Demmons (1993) 137 NH 716, 634 A2d 998.

If the victim is forced to commit fellatio upon the defendant or the defendant performs the act upon the victim, the act falls within the definition of sexual penetration in paragraph V of this section. State v. vonKlock (1981) 121 NH 697, 433 A2d 1299, overruled on other grounds, State v. Smith (1985) 127 NH 433, 503 A2d 774.

Subparagraph V(e) of this section relates to acts not otherwise covered in paragraph IV and does limit sexual penetration to the genital or anal openings of the victim. State v. Scott (1977) 117 NH 996, 380 A2d 1092.

Cited

Cited in State v. Goodwin (1978) 118 NH 862, 395 A2d 1234; State v. St. John (1980) 120 NH 61, 410 A2d 1126; State v. Mitchell (1983) 124 NH 247, 469 A2d 1310; State v. Lovely (1984) 124 NH 690, 480 A2d 847; State v. Smith (1985) 127 NH 433, 503 A2d 774; Lovely v. Cunningham, 796 F.2d 1 (1st Cir. 1986); State v. Smith (1986) 127 NH 836, 508 A2d 1082; Opinion of the Justices (1987) 129 NH 180, 522 A2d 989; State v. Hood (1989) 131 NH 606, 557 A2d 995; State v. Wood (1989) 132 NH 162, 562 A2d 1312; State v. Pond (1989) 132 NH 472, 567 A2d 992; State v. Fennell (1990) 133 NH 402, 578 A2d 329; State v. Letourneau (1990) 133 NH 665, 578 A2d 865; State v. O'Neill (1991) 134 NH 182, 589 A2d 999; State v. Vaillancourt (1992) 136 NH 206, 612 A2d 1329; State v. Arris (1995) 139 NH 469, 656 A2d 828.

632-A:2 Aggravated Felonious Sexual Assault.

I. A person is guilty of the felony of aggravated felonious sexual assault if he engages in sexual penetration with another person under any of the following circumstances:

(a) When the actor overcomes the victim through the actual application of physical force, physical violence or superior physical strength.

(b) When the victim is physically helpless to resist.

(c) When the actor coerces the victim to submit by threatening to use physical violence

or superior physical strength on the victim, and the victim believes that the actor has the present ability to execute these threats.

(d) When the actor coerces the victim to submit by threatening to retaliate against the victim, or any other person, and the victim believes that the actor has the ability to execute these threats in the future.

(e) When the victim submits under circumstances involving false imprisonment, kidnapping or extortion.

(f) When the actor, without the prior knowledge or consent of the victim, administers or has knowledge of another person administering to the victim any intoxicating substance which mentally incapacitates the victim.

(g) When the actor provides therapy, medical treatment or examination of the victim in a manner or for purposes which are not professionally recognized as ethical or acceptable.

(h) When, except as between legally married spouses, the victim is mentally defective and the actor knows or has reason to know that the victim is mentally defective.

(i) When the actor through concealment or by the element of surprise is able to cause sexual penetration with the victim before the victim has an adequate chance to flee or resist.

(j) When, except as between legally married spouses, the victim is 13 years of age or older and under 16 years of age and:

(1) the actor is a member of the same household as the victim; or

(2) the actor is related by blood or affinity to the victim.

(k) When, except as between legally married spouses, the victim is 13 years of age or older and under 18 years of age and the actor is in a position of authority over the victim and uses this authority to coerce the victim to submit.

(*l*) When the victim is less than 13 years of age.

(m) When at the time of the sexual assault, the victim indicates by speech or conduct that there is not freely given consent to performance of the sexual act.

II. A person is guilty of aggravated felonious sexual assault without penetration when he intentionally touches the genitalia of a person under the age of 13 under circumstances that can be reasonably construed as being for the purpose of sexual arousal or gratification.

III. A person is guilty of aggravated felonious sexual assault when such person engages in a pattern of sexual assault against another person, not the actor's legal spouse, who is less than 16 years of age. The mental state applicable to the underlying acts of sexual assault need not be shown with respect to the element of engaging in a pattern of sexual assault.

History

Source. 1976, 302:1. 1981, 415:2, 3. 1986, 132:1. 1992, 264:6. 1994, 185:2. 1995, 66:1, *eff.* Jan. 1, 1996.

Amendments—1995. Paragraph I(m): Added.

—1994. Paragraph III: Added.

—1992. Designated the existing introductory paragraph as par. I and substituted "the felony of aggravated felonious sexual assault" for "a class A felony" following "guilty of" in that paragraph, redesignated former pars. I-VI as subpars. (a)-(f), respectively, redesignated former par. VII as subpar. (g) and substituted "provides therapy" for "engages in the" following "actor" and "professionally" for "medically" preceding "recognized" in that subparagraph, and redesignated former pars. VIII-XI as subpars. (h)-(*l*), respectively, and added par. II.

—1986. Paragraph X: Amended generally.

Paragraph X-a: Added.

—1981. Paragraph VIII: Inserted "except as between legally married spouses" following "when".

Paragraph X: Inserted "except as between legally married spouses" following "when" and "when the actor" preceding "is related" and substituted "13" for "thirteen" and "16" for "sixteen".

Cross References

Bail prohibited, see RSA 597:1-a.

Classification of crimes, see RSA 625:9.

Limitations on civil actions brought by defendant against victim, see RSA 632-A:10-c.

Penalties, see RSA 632-A:10-a, :11.

Registration of criminal offenders, see RSA 651-B.

Sentences, see RSA 651.

Victims permitted to speak before sentencing, see RSA 651:4-a.

Annotations

1. Constitutionality

A construction of paragraph IV (now paragraph I(d)) of this section, which includes as one of the prescribed means of coercing sex through threats to retaliate a threat to extort, to embrace the definition of extortion in RSA 637:5, II, which includes threats of economic reprisal, without the objective of acquiring the victim's property, did not constitute an interpretation so novel and unforeseeable as to render retroactive application of the interpretation a violation of the due process clause of the United States Constitution. Lovely v. Cunningham, 796 F.2d 1 (1st Cir. 1986).

In prosecution under paragraph IV (now paragraph I(d)) of this section, predicated on the use or threats of economic reprisal to coerce the victim to engage in sexual acts with the defendant in which the state presented evidence of a plethora of threats by the defendant to cause trouble for the victim with the police and to cause the victim to lose his job unless he continued to provide sexual favors, resulting in apprehension by the victim of being deprived of financial resources, the facts supported the conclusion of the jury that the situation was one involving coercion of the victim by the defendant, rather than a bargain by the victim, in response to pressure by the defendant, to continue sexual favors and, thus, application of the statute to the defendant did not involve an unconstitutional application of the statute to criminalize a lover's quarrel. Lovely v. Cunningham, 796 F.2d 1 (1st Cir. 1986).

Since routine and ordinary penetrations of a child which occur in the course of caring for him or her do not fall within the prohibitions of this section, this section is thus not overbroad because it does not prohibit any protected conduct. State v. Smith (1985) 127 NH 433, 503 A2d 774.

Use of the word "involving" in paragraph V (now paragraph I(e)) of this section does not render that paragraph unconstitutionally vague. State v. Taylor (1981) 121 NH 489, 431 A2d 775.

Paragraph V (now paragraph I(e)) of this section gave fair warning to defendant that the conduct with which he was charged, sexual penetration of a victim whom he had kidnapped or falsely imprisoned, was forbidden. State v. Taylor (1981) 121 NH 489, 431 A2d 775.

Paragraph VII (now paragraph I(h)) of this section is not void for vagueness or overbreadth because of undefined use of the term "mentally defective" since the term is no more vague than many other statutory terms describing criminal offenses, any reasonable person would know that the language was meant to describe people who are of marked subnormal intelligence and the fact that paragraph VII imposes criminal liability only on one who either knows or should have known that the victim was mentally defective bears heavily on the issue of fair warning of the conduct proscribed. State v. Degrenier (1980) 120 NH 919, 424 A2d 412.

2. Construction

Defendant's claim that sexual assault under RSA 632-A:4 requires a showing of sexual penetration is incorrect; if the defendant's view were correct then every sexual assault prosecution would have to prove aggravated felonious sexual assault whenever it sought to make use of circumstance IX (now I(i)) as set forth in RSA 632-A:2, and the crime of sexual assault under circumstance IX (now I(i)) would thus become meaningless; it is not to be presumed that the legislature would pass an act leading to an absurd result and nullifying to an appreciable extent the purpose of the statute. State v. Arris (1995) 139 NH 469, 656 A2d 828.

The term sexual penetration is not a defining element of circumstance IX (now I(i)) of RSA 632-A:2, rather, it simply refers to the conduct proscribed by RSA 632-A:2; a person must commit sexual penetration to be guilty of aggravated felonious sexual assault, but to be guilty of sexual assault, he need only commit sexual contact under circumstances set forth in RSA 632-A:2. State v. Arris (1995) 139 NH 469, 656 A2d 828.

Under this section, although the threat and sexual penetration must be close in time, the threat need not be explicit. State v. Kulikowski (1989) 132 NH 281, 564 A2d 439.

The exact date of the assault is not an element of the aggravated felonious sexual assault crime. State v. Tynan (1989) 132 NH 461, 566 A2d 1142.

Normally, the exact date of the sexual assault is not required for a conviction. State v. LaCasse (1987) 129 NH 651, 531 A2d 327.

This section does not require proof of the exact date of the assault as an element, and therefore a defendant need only be informed that he must meet proof that he committed the assaultive acts at some time during a specified period. State v. Lakin (1986) 128 NH 639, 517 A2d 846.

Sexual contact is not a necessary element of aggravated felonious assault. State v. Smith (1985) 127 NH 433, 503 A2d 774.

This section was not intended to include penetration of a child for benign purposes such as washing, administering an enema, or taking a child's temperature. State v. Smith (1985) 127 NH 433, 503 A2d 774.

This section does not define the offense so as to make proof of exact date essential. State v. Boire (1984) 124 NH 622, 474 A2d 568.

A defendant may be separately indicted for and convicted of proscribed intercourse and fellatio, two separate offenses against the person. State v. Bussiere (1978) 118 NH 659, 392 A2d 151.

A male commits an aggravated felonious sexual assault if he forces a female to commit act of fellatio upon him. State v. Scott (1977) 117 NH 996, 380 A2d 1092.

3. Construction with other laws

Defendant could have been convicted for solicitation of aggravated felonious sexual assault based on his asking prosecution witness to sexually penetrate another female under circumstances involving kidnapping and this required state to prove sexual penetration and every element of kidnapping; and, therefore, solicitation of kidnapping, under indictment, was lesser-included offense of solicitation of aggravated felonious sexual assault, and sentences on both convictions violated double jeopardy protections. State v. Lucius (1995) 140 NH 60, 663 A2d 605.

Multiple sentences for convictions of solicitation of aggravated felonious sexual assault, solicitation of kidnapping, and solicitation of violation of the child pornography laws subjected defendant to multiple punishments for same offense, in violation of the guarantees against double jeopardy of both state and federal constitutions. State v. Lucius (1995) 140 NH 60, 663 A2d 605.

Imposing punishment for both criminal solicitation of aggravated felonious sexual assault and criminal solicitation of violation of child pornography laws does not violate state or federal double jeopardy protections because each offense has numerous elements not contained in other; in fact, only element they have in common is actual asking. State v. Lucius (1995) 140 NH 60, 663 A2d 605.

Argument was rejected that indictments alleging aggravated felonious sexual assault were barred by RSA 625:8, the statute of limitations, because the state relied on threats that had occurred more than six years prior to the date of the arrest warrant; defendant was not prosecuted for merely threatening the victim more than six years prior to the date of the warrant, but for committing aggravated felonious sexual assault within the limitations period. State v. Kulikowski (1989) 132 NH 281, 564 A2d 439.

The distinguishing feature between the crimes of sexual assault and aggravated sexual assault is that a person must commit sexual penetration to be guilty of aggravated felonious sexual assault under this section, but to be guilty of sexual assault under RSA 632-A:4, he need only commit sexual contact under circumstances set forth in this section. State v. vonKlock (1981) 121 NH 697, 433 A2d 1299, overruled on other grounds, State v. Smith (1985) 127 NH 433, 503 A2d 774.

4. Burden of proof

Defendant's conviction for sexual penetration of a mentally defective person was reversed where the State failed to sustain its burden of proof that the victim was mentally defective instructed that retardation was not for lay witnesses to diagnose, and the victim's testimony indicated she had the capacity to legally consent to the act. State v. Call (1994) 139 NH 102, 650 A2d 331.

In a prosecution for sexual penetrations of a mentally defective person, the State has the burden of proving beyond a reasonable doubt that the victim was incapable of legally consenting to the act; and a conviction will be reversed only if no rational trier of fact, viewing the evidence most favorably of the State, could have found guilty beyond a reasonable doubt. State v. Call (1994) 139 NH 102, 650 A2d 331.

In a prosecution for aggravated felonious sexual assault, the state must prove beyond a reasonable doubt that the defendant engaged in sexual penetration with another person when the defendant overcame the victim through the application of physical force, physical violence or superior physical strength. State v. Simpson (1990) 133 NH 704, 582 A2d 619.

5. Mens rea

While the underlying act common to each variant of the offense of aggravated sexual assault is sexual penetration, no mens rea is expressed in this section; notwithstanding this omission, one cannot be convicted of this felony without proof that the act was accompanied by a culpable mental state. State v. Ayer (1992) 136 NH 191, 612 A2d 923.

For conviction of crime of aggravated felonious sexual assault, there is no requirement that the defendant actually know that the victim did not consent. State v. Ayer (1992) 136 NH 191, 612 A2d 923.

Indictment for aggravated felonious assault could properly charge defendant for acting "knowingly," rather than "intentionally" or "purposely," since common-law crime of rape was general-intent, rather than a specific intent, crime; holding in State v. Davis, 108 NH 158 (1967), that same intent was required for rape and attempted rape, is overruled insofar as it is inconsistent. State v. Ayer (1992) 136 NH 191, 612 A2d 923.

Aggravated felonious sexual assault indictment alleging that defendant acted "knowingly", rather than "purposely",

was sufficient, since state only needed to prove defendant acted knowingly. State v. Reynolds (1992) 136 NH 325, 615 A2d 637.

Requisite mental state for conviction of aggravated felonious sexual assault is "knowingly", not "purposely". State v. Lemieux (1992) 136 NH 329, 615 A2d 635.

6. Threats of retaliation

Retaliatory threats, within the meaning of paragraph IV of this section, are not required to be express. State v. Johnson (1988) 130 NH 578, 547 A2d 213.

In the case of defendant convicted of aggravated felonious sexual assault where the victim testified that the defendant had threatened him with loss of employment and housing, institution of criminal charges, and proceedings in court to collect money owed the defendant, the threats directed to the victim amounted to threats of retaliation within the meaning of paragraph IV of this section. State v. Lovely (1984) 124 NH 690, 480 A2d 847.

7. Mentally defective victim

Paragraph VIII of this section prohibits intercourse only with those persons whose mental deficiency is such as to make them incapable of legally consenting to the act. State v. Degrenier (1980) 120 NH 919, 424 A2d 412.

Although the degree of mental defectiveness intended to be covered by paragraph VIII (now paragraph I(h)) of this section may not be entirely clear, the term "mentally defective" is sufficient to give defendant fair warning that, by engaging in sexual intercourse with one who he knows or has reason to know is mentally defective in any recognizable and appreciable degree, he is violating paragraph VIII (now paragraph I(h)). State v. Degrenier (1980) 120 NH 919, 424 A2d 412.

8. Coercion

Coercion of a victim as it is contemplated in RSA 632-A:2, X-a (*see now* RSA 632-A:2, I(k)) can include the subtle persuasion arising from the position of authority; that is, undue influence and psychological manipulation. State v. Carter (1995) 140 NH 114, 663 A2d 101.

A person in a position of authority who uses such authority in any way to coerce the child's submission to sexual activity is subject to prosecution under this section, whether the coercion involves undue influence, physical force, threats, or any combination thereof. State v. Collins (1987) 129 NH 488, 529 A2d 945.

9. Lesser included offenses

The term sexual penetration is not a defining element of circumstance IX (now I(i)) of RSA 632-A:2, rather, it simply refers to the conduct proscribed by RSA 632-A:2, a person must commit sexual penetration to be guilty of aggravated felonious sexual assault, but to be guilty of sexual assault, he need only commit sexual contact under circumstances set forth in RSA 632-A:2. State v. Arris (1995) 139 NH 469, 656 A2d 828.

Sexual assault cannot be a lesser-included offense of aggravated felonious assault. State v. Smith (1985) 127 NH 433, 503 A2d 774.

State v. vonKlock, 121 NH 697 (1981), is overruled to the extent it held that sexual assault is a lesser-included offense of aggravated felonious sexual assault. State v. Smith (1985) 127 NH 433, 503 A2d 774.

A person must necessarily commit the crime of sexual assault before he can commit aggravated felonious sexual assault inasmuch as there is no means by which a person could commit sexual penetration without engaging in sexual contact; therefore, sexual assault is a lesser-included offense of aggravated felonious sexual assault. State v. vonKlock (1981) 121 NH 697, 433 A2d 1299, overruled, State v. Smith (1985) 127 NH 433, 503 A2d 774.

In prosecution for aggravated felonious sexual assault, where there was no physical evidence of rape, the prosecutrix stated that she was raped and the defendant claimed that he hit or pushed the prosecutrix in an attempt to secure the return of his property, but did not rape her, there was sufficient evidence to permit a jury rationally to convict the defendant of the lesser offense of simple assault and acquit him of the greater offense of aggravated felonious sexual assault, and the failure of the trial court to give a requested instruction on the lesser included offense seriously undermined the integrity of the fact finding process and denied the defendant of due process of law. Dukette v. Perrin, 564 F. Supp. 1530 (D.N.H. 1983).

10. Indictment

Three indictments for aggravated felonious sexual assault properly alleged the element of coercion by threatening, where they clearly alleged present coercion occasioned by repeated prior threats. State v. Kulikowski (1989) 132 NH 281, 564 A2d 439.

The omission from the indictment of the name of an under-thirteen victim of an aggravated felonious sexual assault did not, per se, render the indictment constitutionally insufficient, where the omission did not hobble the defendant's preparation of his defense. State v. Day (1987) 129 NH 378, 529 A2d 887.

Although indictment charging defendant with violating paragraph III (now I(c)) of this section did not allege that the victim believed that the actor had the present ability to execute his threats, since it informed defendant of the factual basis of the charge by stating that he forced the prosecutrix to submit to sexual penetration by threatening her with a knife, and she would not have been forced to submit if she had not believed that the defendant had the present ability to carry out his threat, the indictment was constitutionally sufficient. State v. Shute (1982) 122 NH 498, 446 A2d 1162.

11. Defenses

In prosecution for aggravated felonious sexual assault, even court's review of the sterile pages of the transcript, supported the jury's decision to reject defendant's alibi defense. State v. Giles (1996) 140 NH 714, 672 A2d 1128.

When State alleges that sexual assault occurred sometime within a given time frame, State has obligation to prove the offense occurred within that time frame when defendant asserts a defense based on lack of opportunity within that time frame. State v. Williams (1993) 137 NH 343, 629 A2d 83.

Where State's indictment alleged that sexual assault occurred sometime within two-year time frame and defendant relied on substantial time-based defense of lack of opportunity, trial court abused its discretion in refusing to instruct jury that State must prove offense occurred within the two-year time frame, and reversal was therefore required. State v. Williams (1993) 137 NH 343, 629 A2d 83.

This section implicitly creates a defense in any prosecution, for penetration necessary for the health, hygiene, or safety of a child. State v. Smith (1985) 127 NH 433, 503 A2d 774.

Penetration for a legitimate purpose is a defense to aggravated felonious sexual assault. State v. Smith (1985) 127 NH 433, 503 A2d 774.

12. Elements

Sexual penetration is a material element of any aggravated felonious sexual assault offense under RSA 632-A:2. State v. Melcher (1996) 140 NH 823, 678 A2d 146.

Time is not an element of aggravated felonious sexual assault; however, if the State alleges a particular time frame, it has the obligation to prove that the offense occurred within that time frame when the defendant asserts a defense based on lack of opportunity within that time frame. State v. Carter (1995) 140 NH 114, 663 A2d 101.

Where defendant charged with three counts of aggravated felonious sexual assault did not assert a defense based on lack of opportunity within the time frame specified by the State, the State was not required to prove the time of the assaults. State v. Carter (1995) 140 NH 114, 663 A2d 101.

Social worker's opinion of sexual assault victim's credibility was inadmissible as either expert or lay opinion; as expert testimony it carried prejudicial risks likely to outweigh any probative value, and common sense evaluation of credibility of witnesses was province and obligation of jury. State v. Huard (1994) 138 NH 256, 638 A2d 787.

Time is not an element of aggravated felonious sexual assault. State v. Williams (1993) 137 NH 343, 629 A2d 83.

Sexual penetration is a material element of any aggravated felonious sexual assault offense. State v. Chamberlain (1993) 137 NH 414, 628 A2d 704.

13. Evidence

There was ample evidence to support a jury finding that the defendant assaulted the victim between February 1 and April 20, 1991 where the victim testified that during February, March, and April of 1991, she spent most Friday nights and Saturdays at her grandmother's house, defendant, her grandmother's brother, lived in the house at the time, one Saturday during this period, her grandmother unexpectedly had to work a shift at the shoe factory where she was employed and left the victim home with defendant, and defendant assaulted the victim on that occasion. State v. Giles (1996) 140 NH 714, 672 A2d 1128.

Where indictments alleged three discrete acts, yet the trial court allowed the State to introduce testimony by the victim about hundreds of prior sexual assaults perpetrated by defendant, many of which were identical to crime charged, evidence was precisely of the sort that could create an undue tendency to induce a decision against defendant on some improper basis. State v. Murti (1996) 140 NH 692, 672 A2d 709.

Where, among other things, evidence showed that defendant, who was at one time victim's teacher and hall and lunch monitor, started developing an intimate relationship with victim in junior high school and maintained contact with victim after the school year ended, a rational jury could have concluded that defendant used his position of authority to coerce the victim through undue psychological influence into submitting to the sexual acts. State v. Carter (1995) 140 NH 114, 663 A2d 101.

From defendant's statement to police in which he characterized the victim as a "very introverted" girl who could be "moody [and] emotional at times," and in which he stated that victim would come in after school, spend a lot of time hanging around and talking, victim didn't have a father and defendant always got the feeling that she was looking for some male figure to talk to, and that victim's relationship with her mother was very volatile, a jury could infer that defendant knew of the victim's vulnerability and the potentially great influence over her his position as a teacher afforded him. State v. Carter (1995) 140 NH 114, 663 A2d 101.

Where victim was almost eighteen years of age, and testified that intercourse occurred after foreplay, answered several questions about birth control precautions, and further testified about vaginal bleeding after sexual intercourse, there was sufficient evidence from which a reasonable jury could have found that penetration occurred for purposes of sexual assault statute. State v. Paglierani (1994) 139 NH 37, 648 A2d 209.

Victim's statements concerning her fears that she was going to die and that defendant was going to kill her were not inadmissible at trial for sexual assault and kidnapping, since statements were relevant and consistent with proof of crimes charged, and therefore failure of defendant's attorney to specifically object to statements did not constitute deficient representation. State v. Wisowaty (1993) 137 NH 298, 627 A2d 572.

At trial for kidnapping and aggravated felonious sexual assault, probative value of victim's testimony that she thought her life was in jeopardy substantially outweighed its possible prejudice; bodily injury sufficient to elevate kidnapping to class A felony could include psychological injuries and mental anguish, and elements of aggravated felonious sexual assault could include use of physical force or threats of physical violence, and thus testimony was both relevant and central to proof of crimes charged. State v. Wisowaty (1993) 137 NH 298, 627 A2d 572.

Since no reasonable jury could have found defendant guilty beyond a reasonable doubt, defendant's conviction on charge alleging digital penetration was reversed; child victim not only failed to testify that defendant penetrated her, but explicitly stated that penetration had not taken place. State v. Chamberlain (1993) 137 NH 414, 628 A2d 704.

Court error at aggravated felonious sexual assault trial, allowing witness to testify indirectly that she believed the victim had been sexually assaulted by the defendant, was harmless, where opinion was not directed to specific inconsistency in victim's testimony, was cumulative, and was inconsequential compared to victim's damaging, vivid description of acts defendant forced her to perform. State v. Lemieux (1992) 136 NH 329, 615 A2d 635.

The inconsistent and uncorroborated testimony of a victim is not insufficient, as a matter of law, to support a conviction for aggravated felonious assault. State v. Simpson (1990) 133 NH 704, 582 A2d 619.

Argument was rejected that court at trial for aggravated felonious sexual assault abused its discretion by admitting evidence of "prior bad acts" committed by defendant; evidence at issue constituted very threat which coerced the victim during the assaults in question. State v. Kulikowski (1989) 132 NH 281, 564 A2d 439.

A defendant charged with violating paragraph XI (now paragraph I(l)) of this section must be afforded the opportunity to show, by specific incidents of sexual conduct, that the victim had the experience and ability to contrive a statutory rape charge. State v. Howard (1981) 121 NH 53, 426 A2d 457.

14. Expert testimony

Admission of social worker's opinion of sexual assault victim's credibility was not harmless error, where jury's decision as to defendants' guilt or innocence depended upon victim's credibility, and despite defense counsel's cross-examination, social worker's opinion of victim's credibility was imbued with authenticity because of his expert status. State v. Huard (1994) 138 NH 256, 638 A2d 787.

Testimony of State's expert psychologist at child sexual abuse trial was not sufficiently reliable, and admission of testimony constituted error, where expert's reliance on children's accounts of alleged abuse was substantial, evaluations of children dealt almost exclusively in vague psychological profiles and symptoms and unquantifiable results, and unreliable elements or assumptions in testimony could not be exposed by thorough cross-examination. State v. Cressey (1993) 137 NH 402, 628 A2d 696.

Expert testimony in child sexual abuse case was improper and constituted error requiring reversal of defendant's conviction; testimony went beyond explaining child sexual abuse accommodation syndrome and offering explanation for inconsistent statements and other behaviors of child commonly exhibited by sexually abused children, and was an attempt to prove that the child had been sexually abused. State v. Chamberlain (1993) 137 NH 414, 628 A2d 704.

15. Instructions

The trial court abused its discretion by mixing an element of the charged crime, the victim's physical ability to resist, with an element of the defendant's defense of consent. State v. Jackson (1996) 141 NH —, — A2d —.

If it followed the instructions as given, the jury could have found the absence of ability to exercise reasonable judgment based solely on a finding that the victim was physically helpless to resist but the legislature did not include the physical ability of the victim to resist in its list of conditions that might prevent exercise of the reasonable judgment necessary to consent under RSA 626:6, III, and the instructions as a whole, therefore, did not fairly cover the issues of law in the case. State v. Jackson (1996) 141 NH —, — A2d —.

At trial for aggravated felonious sexual assault, court did not err in refusing to give an instruction on contributing to the delinquency of a minor as a lesser-included offense, since contributing to the delinquency of a minor does not contain the elements of and need not be committed in the process of committing aggravated felonious sexual assault. State v. LaCourse (1986) 127 NH 737, 506 A2d 339.

If the evidence supports it, a defendant charged with aggravated felonious sexual assault is entitled to an instruction that if the jury should find the alleged penetration was necessary for the health, hygiene, or safety of the child, it must find the defendant not guilty. State v. Smith (1985) 127 NH 433, 503 A2d 774.

At trial for aggravated felonious sexual assault, no prejudice resulted from the lack of a jury instruction that penetration necessary for health, hygiene or safety reasons was a valid defense to the charge, since the defense in the case was that the penetration was accidental and the actual jury charge emphasized the requirement that the penetration was purposeful. State v. Smith (1985) 127 NH 433, 503 A2d 774.

Trial court's erroneous jury instruction that sexual assault was a lesser-included offense of aggravated felonious sexual assault did not require reversal of conviction, since trial court correctly defined the elements of the two offenses, and since the jury did not consider the lesser offense, because the defendant was convicted of the greater offense. State v. Smith (1985) 127 NH 433, 503 A2d 774.

Where indictment for aggravated felonious sexual assault charged defendant as both a resident of the victim's household and a blood relative and the trial court instructed the jury that proof of only one of the elements was necessary for a conviction, the instruction, phrased in the disjunctive, was in accord with paragraph X (now paragraph I(k)) of this section, and there was no prejudice occasioned by the discrepancy

between the wording of the indictment and the instruction to the jury. State v. Langdon (1981) 121 NH 1065, 438 A2d 299.

16. Objections

Where defendant failed to make specific objection to legal definition of "member of the same household" in application of sexual assault statute prohibiting sexual penetration of person between ages of thirteen and sixteen who is member of the same household, general objection did not preserve issue for appeal. State v. Paglierani (1994) 139 NH 37, 648 A2d 209.

17. Jury

Where victim lived in defendant's home at time of illicit sexual intercourse, and while there, was subject to parental-like control, a reasonable jury could properly have found that the victim and defendant were members of the same household for purposes of sexual assault statute prohibiting sexual penetration of person between ages of thirteen and sixteen who is member of the same household. State v. Paglierani (1994) 139 NH 37, 648 A2d 209.

18. Proof of authority

The power to grade is not the only weapon in a teacher's arsenal, nor the only proof of authority within the meaning of RSA 632-A:2. State v. Carter (1995) 140 NH 114, 663 A2d 101.

Viewed in the light most favorable to the State, the evidence supported a finding that junior high school teacher's authority over former student continued even after the student's departure from the junior high school where the proximity of the high school and the involvement of its students in activities at the junior high school supported the inference that a junior high school teacher had the right to expect obedience from a high school student; teacher was, therefore, in a position of authority over the victim at the time the sexual acts occurred. State v. Carter (1995) 140 NH 114, 663 A2d 101.

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ANNOTATIONS DECIDED UNDER PRIOR LAW

1. Consent

Lack of consent, a necessary element to make a prima facie case of rape, may be proved in a variety of ways, including but not limited to an attempt to escape, outcry or offer of resistance, except where the complaining witness is restrained by fear of violence. State v. Lemire (1975) 115 NH 526, 345 A2d 906.

Since a necessary element to make a prima facie case of rape was lack of consent, a showing of consent would constitute a complete defense to the crime. State v. Lemire (1975) 115 NH 526, 345 A2d 906.

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New Hampshire Practice

1 N.H.P. Criminal Practice & Procedure § 370.

New Hampshire Bar Journal

For article, "Understanding and Representing Adult Clients Who Are Victims of Domestic Abuse," see 35 N.H.B.J. 8 (1994).

New Hampshire Criminal Jury Instructions

New Hampshire Criminal Jury Instructions, Instruction ## 1.20, 2.08.

ALR

Admissibility, in rape case, of evidence that accused raped or attempted to rape person other than prosecutrix. 2 ALR4th 330.

Applicability of rape statute covering children of a specified age, with respect to a child who has passed the anniversary date of such age. 73 ALR2d 874.

Conviction of rape or related sexual offenses on basis of intercourse accomplished under the pretext of, or in the course of, medical treatment. 65 ALR4th 1064.

Multiple instances of forcible intercourse involving same defendant and same victim as constituting multiple crimes of rape. 81 ALR3d 1228.

Rape by fraud or impersonation. 91 ALR2d 591.

Rape or similar offense based on intercourse with woman who is allegedly mentally deficient. 31 ALR3d 1227.

What constitutes penetration in prosecution for rape or statutory rape. 76 ALR3d 163.

632-A:3 Felonious Sexual Assault. A person is guilty of a class B felony if he:

I. Subjects a person to sexual contact and causes serious personal injury to the victim under any of the circumstances named in RSA 632-A:2; or

II. Engages in sexual penetration with a person other than his legal spouse who is 13 years of age or older and under 16 years of age; or

III. Engages in sexual contact with a person other than his legal spouse who is under 13 years of age.

HISTORY

Source. 1975, 302:1. 1981, 415:4. 1985, 228:4, eff. Jan. 1, 1986.

Amendments—1985. Amended section generally.

—1981. Inserted "other than his legal spouse" following "person".

CROSS REFERENCES

Bail prohibited, see RSA 597:1-a.
Classification of crimes, see RSA 625:9
Extended term of imprisonment, see RSA 651:6.
Limitations on civil actions brought by defendant against victim, see RSA 632-A:10-c.
Registration of criminal offenders, see RSA 651-B.
Sentences, see RSA 651.

ANNOTATIONS

1. Privacy rights

Although this section lacked requirement of scienter it did not infringe on party's assumed federally protected privacy right to engage in consensual heterosexual intercourse with adults. Goodrow v. Perrin (1979) 119 NH 483, 403 A2d 864.

There is no privacy right to engage in sexual intercourse with a person the legislature has determined is unable to give consent, even if there is a protected privacy right to engage in heterosexual intercourse with other adults. Goodrow v. Perrin (1979) 119 NH 483, 403 A2d 864.

2. Application

Statutory rape applies to those under the age of sixteen years regardless of their emotional and sexual maturity. State v. Berry (1977) 117 NH 352, 373 A2d 355.

3. Mens rea

The mental state required for RSA 632-A:3, II must be found in the definition of sexual penetration; unlike the definition of sexual contact, there is no language in the definition of sexual penetration describing a requisite state of mind. State v. Goodwin (1996) 140 NH 672, 671 A2d 554.

Whereas specific intent commonly refers to a special mental element above and beyond that required with respect to the criminal act itself, the general intent requirement for rape means that no intent is requisite other than that evidenced by the doing of the acts constituting the offense. State v. Goodwin (1996) 140 NH 672, 671 A2d 554.

Engaging in sexual penetration in any of the statutorily prohibited circumstances is criminal when the actor acts knowingly. State v. Goodwin (1996) 140 NH 672, 671 A2d 554.

It would be illogical if the mens rea for felonious sexual assault involving penetration and aggravated felonious sexual assault involving penetration were different; assuming arguendo that the mental state required for felonious sexual assault was "purposely," it would be more difficult to prove than aggravated felonious sexual assault, even though it carries a lesser penalty. State v. Goodwin (1996) 140 NH 672, 671 A2d 554.

"Knowingly" is the appropriate mens rea for felonious sexual assault involving sexual penetration. State v. Goodwin (1996) 140 NH 672, 671 A2d 554.

On appeal from conviction on two counts of felonious sexual assault for sexual penetration in the form of anal and sexual intercourse, defendant's argument that the jury instruction on transferred intent improperly permitted the jury to convict him on both counts even if he intended to engage only in vaginal intercourse was rejected, since the judge's instruction explicitly stated that the State had "the burden of proof of purposeful penetration of the vagina and purposeful penetration of the anus," and the State was only required to prove that defendant had the culpable mental state to engage in sexual penetration, and that the two acts stated in the indictments had occurred. State v. Demmons (1993) 137 NH 716, 634 A2d 998.

On appeal from conviction on two counts of felonious sexual assault for sexual penetration in the form of anal and sexual intercourse, defendant's arguments that the jury instruction on transferred intent improperly amended the indictment, and that the jury instruction surprised him, prejudicing his defense and violating his constitutional right to a fair trial, were rejected as unfounded because there was no constructive amendment of the indictments since purposefulness is required with respect to the act of sexual penetration alone, and is not carried over to the separate variants. State v. Demmons (1993) 137 NH 716, 634 A2d 998.

The mens rea required for felonious sexual assault is "purposely." State v. Pond (1989) 132 NH 472, 567 A2d 992.

At trial for felonious sexual assault, court properly made no reference to the term "knowingly," which was mere surplusage in the indictments, and appropriately instructed the jury that they must find the defendant acted purposely to find him guilty. State v. Pond (1989) 132 NH 472, 567 A2d 992.

4. Separate acts

Each act of sexual contact under this section constitutes a separate offense of felonious sexual assault when such contact is with a person less than thirteen years of age. State v. Patch (1991) 135 NH 127, 599 A2d 1243.

5. Consent

Delay in making a complaint in a forceable rape case may be considered on question of credibility of complaining witness and of her state of mind regarding consent, but in case of alleged rape of child under age of sixteen, consent is not material; whatever relevance delay may have with respect to credibility was purely question of fact under circumstances of particular case. State v. Berry (1977) 117 NH 352, 373 A2d 355.

6. Defenses

Reasonable and honest belief that person is over age of

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HB #1324

The last comprehensive survey compiling reasons why women have abortions was in 1987 by the pro-abortion Alan Guttmacher Institute. Birth control for convenience accounted for 80% of all abortions. One percent cited rape or incest[1]. Kate Michaelman head of the National Abortion Rights Action League admits to 1.5 million abortions a year. Thus we can conclude that since the 1987 Guttmacher study 15 million babies have come to a most untimely and yes, painful end to their innocent lives.

The abortion industry does its work in secret. Since the Doe vs. Bolton decision of 1973 defined health as "encompassing all factors -- physical, emotional, psychological, familial and the woman's age -- relevant to the well-being of the patient," it has been open season on the pre-born with no system of tracking the types of procedures, subsequent problems, the number of repeat patients, etc. These questions are particularly relevant as minors need no parental or legal guardians' consent. Don't taxpaying citizens have a right to know the numbers of pelvic inflammatory disease, hemorrhages, cervical lacerations, uterine perforation, inflammation of the reproductive organs and menstrual disturbances? There have been babies that survive the abortion -- what has been their fate? The experience of the abortionist and the abortion method used come into play. Retention of fetal and placental tissue may bring on serious physical problems, especially if the patient doesn't return for post-abortion check-ups. Other complications can occur later and be more long-term in nature. Twenty to 30% of all suction and D&C abortions performed in hospitals will result in long-term negative side effects relating to fertility and reproduction2. Damage done to the fallopian tubes, the uterine wall and the cervix, produce such problems as sterility (the chances of which multiply with successive abortions), increased risk of ectopic pregnancy, inability to carry to full term and difficulties in future labor and delivery. Death of the mother from abortion is greater as the pregnancy increases and the complexity of the procedure expands[3].

Researchers have identified a pattern of psychological problems known as Post Abortion Syndrome (P.A.S.). Women suffering from P.A.S. may experience attempted suicide, drug and alcohol abuse, personal relationship disorders, sexual dysfunction, repeated abortions endangering their reproductive health, communication difficulty, and damaged self-esteem. It is characterized by a pattern of denial which may last for 5 to 10 years before emotional difficulties surface.[4]

Now that an identifiable pattern has been established, we need to know how widespread it is. We can't help these women who are the survivors of these heinous procedures if we don't gather statistics and information. I can't help but wonder about the lack of passion on the part of the so-called women's rights advocates. It seems they are only concerned that women get abortions. You never hear any concern this second victim of abortion. But at least this victim survived and can have a chance at life.

By now I'm sure everyone has heard the testimony of Dr. Fitzsimmons, Executive Director of the National Coalition of Abortion Providers. He is the man who admitted lying through his teeth about the number and circumstances of partial birth abortion. He now admits that it is between three and five thousand, not 450. He also now admits they are done on healthy women and pre-borns regularly. Nita Lowey, Democratic Congresswoman from New York and prominent pro-abortion advocate, said on Nightline on 2/26/97, "There is a lot of misinformation around. Statistics are unreliable and that is the problem. There are no accurate statistics." Doesn't anyone care about the second victim of these tragic procedures? We collect statistics and information on AIDS, cancer of all types, heart disease, etc., but this hush-hush industry, which affects at best estimate 1.5 million women a year is untouchable. What a national shame. In New Hampshire, we can do something to change that. Please support this bill.

References

1) Torres, Aida and Dorroch, Jacqueline Forrest, "Why Do Women Have Abortions?" Family Planning Perspectives, July/August 1988, pp. 169-70.

2) Hilgers, Thomas W., M.D., The Hatch Hearings, Vol. 1, P. 19

3) Pritchard, Jack A., M.D., et. al., Williams Obstetrics, 17th edition, Norwalk, CT: Appleton-Century-Crofts, 1986. p. 483.

4) Wanda Franz, Ph.D., testimony before U.S. Congress; House, Human Resources & Intergovernmental Relations Subcommittee of the Committee on Government Operations; Hearing on Medical & Psychological Impact of Abortion, 101st Congress, 1st Session, 3/16/89.

Vincent M. Rue, Ph.D.; Anne Speckhard, Ph.D., James Rogers, Ph.D., and Wanda Franz, Ph.D.; "The Psychological Aftermath of Abortion: A White Paper" presented to C. Everett Koop, M.D., Surgeon General of the U.S., 9/15/87.

168 North Amherst Road
Bedford, New Hampshire 03110
January 13, 1998

Senator Eleanor Podles, Chairperson
Judiciary Committee
State House Room 302
107 North Main Street
Concord, New Hampshire 03301-4951

Dear Senator Podles:

I am writing this to show my support for HB 1324, Parental Notification Bill. I urge you and the Judiciary Committee to support passage of this bill.

There are legal and moral responsibilities parents have to their underage children. Abortion is a monumental decision that has ramifications of a physical, mental, emotional and spiritual nature. As parents we have a legal as well as a moral duty to guide and direct and to protect our children until they reach the legal age of adulthood. It is morally wrong and I believe legally wrong to take these duties and rights away from parents in the area of medical decisions. Abortion is a medical procedure; it is every bit as serious as any operation which requires the signature of the parent or guardian of an underage child. I urge your support of HB 1324 Parental Notification Bill as the legal right of a parent involving medical treatment of a minor.

Thank you.

Martha R. Andreo

martha R. Andreo

FILE COPY

400 Greeley Street
Manchester, NH 03102-2310
January 10,1998

Dear Judiciary Committee:

I am writing to express my support for the PARENTAL NOTIFICATION BILL (HB 1324).

It is absurd of the NH Legislature to tell parents that they do not have the right to have access to the information concerning their child's health and medical condition.

I request the NH Legislature to recognize the right of parents to have the full knowledge of their minor child's medical health.

As a mother do not denied me access to my child's medical condition or health.

Sincerely,

(me.) Julia Michaud

Julia Michaud

·Promoting Reproductive Choices **NARAL**

New Hampshire

To: House Judiciary Committee
From: Jennifer Bills, NARAL-NH
Re: HB 1324
Date: January 14, 1998

Good morning Chairman McCarthy and members of the Judiciary Committee. My name is Jennifer Bills, Field Organizer for NARAL-NH, the National Abortion and Reproductive Rights Action League of New Hampshire, and I am here to oppose HB 1324, a bill that would require parental notification before a minor may obtain an abortion. While parental involvement may sound sensible, denying teenagers confidential access to abortion is dangerous - forcing young women who don't want to involve their parents to seek illegal or self-induced abortion. It also results in delaying the procedure, and later abortions pose far greater health risks.

The American Medical Association has found that parental consent and notice laws "appear to increase the health risks to the adolescent by delaying medical treatment or forcing the adolescent into an unwanted childbirth." The AMA believes that although physicians should encourage minors to discuss their pregnancy with their parents, they should not be forced to require minors to do so:

> The patient – even an adolescent – generally must decide wether, on balance, parental involvement is advisable. Accordingly, minors should ultimately be allowed to decide whether parental involvement is appropriate." (AMA, Council on Ethical and Judicial Affairs, "Mandatory Parental Consent to Abortion," (1992), 7.)

According to the AMA, parental involvement laws such as HB 1324 also "increase the gestational age at which the induced pregnancy termination occurs, thereby also increasing the risk associated with the procedure." And teenage childbearing is not something we want to encourage -- teenage girls are 24 times more likely to die from childbirth than from first trimester legal abortions.

The government cannot mandate healthy family communication where it does not already exist. Responsible parents should be involved when their young daughters

face crisis pregnancies, and in fact, 75% of teens already consult their parents when faced with a crisis pregnancy. Unfortunately, some women cannot turn to their parents because they come from homes where physical violence or emotional abuse are prevalent or because their pregnancy is the result of incest. Among minors who did not tell a parent of their abortion, 30% had experienced violence in their family or feared violence or being forced to leave home. Young women considering abortion are particularly vulnerable to child abuse because family violence is often at its worst during a family member's pregnancy. In Idaho, a 13-year-old sixth grade student named Spring Adams was shot to death by her father after he learned she was to terminate a pregnancy caused by his acts of incest.

This bill does not even contain a judicial bypass, which renders it unconstitutional. However, the judicial bypass process is not an acceptable alternative. It is expensive to the state and terrifying to the young woman -- and virtually 100% of these appeals are approved.

The goal should be making abortion less necessary for teens by reducing teen pregnancy, not by making abortion more difficult and dangerous. Making abortion less necessary among teenagers requires a comprehensive effort to reduce teen pregnancy, that must include: age-appropriate health and sexuality education; access to confidential health services, including family planning and abortion; life options programs that offer teens practical life skills and the motivation to delay sexual activity; and programs for pregnant and parenting teens that teach parenting skills and ensure that teens finish school. Although radical right forces vehemently claim that comprehensive programs to combat teen pregnancy are ineffective, the fact is that such an approach has never been implemented on a significant scale in the United States.

Instead of reducing teen pregnancy and abortion, this bill would actually harm the young women it purports to help. Mandatory parental involvement laws endanger the lives and health of young women who, if they do not wish to involve their parents, will go to any lengths, including illegal or self-induced abortions, to avoid it. These laws also increase family violence, suicide, later abortions, and unwanted childbirth. Parental involvement laws are not really about family communications or providing support for young women at a difficult time. They are aimed at eliminating a young woman's right to choose abortion.

Voting Sheets

HOUSE COMMITTEE ON JUDICIARY AND FAMILY LAW

EXECUTIVE SESSION on HB 1324

BILL TITLE: requiring parental notification before abortions may be performed on certain minors.

DATE: 1/22/98

LOB ROOM: 208

Amendments:

Sponsor: Rep. _____ OLS Document #: _____ Adopted/Failed

Sponsor: Rep. _____ OLS Document #: _____ Adopted/Failed

Sponsor: Rep. _____ OLS Document #: _____ Adopted/Failed

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

Moved by Rep. M. Smith

Seconded by Rep. Coy

Vote: 12-4 (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. Sandra B. Keans, Clerk

JUDICIARY AND FAMILY LAW 1998 SESSION

Senate Bill # [redacted] 1324

Public Hearings _____ Executive Session 1/22/98

COMMITTEE REPORT: ITL

	YEAS	NAYS
McCarthy, John J., Jr., Chairman		
Woods, Deborah L., V Chairman		
Bickford, David A.		
Brown, Julie M.	✓	
Clay, Susan J.	✓	
Colburn, Thomas M.		✓
Jacobson, Alf E.	✓	
Keans, Sandra B., Clerk	✓	
Letendre, Evelyn S.		✓
Mirski, Paul M.		✓
Smith, Kevin H.		
Pfaff, Terence R.		✓
Peterson, Andrew R.	✓	
Bergin, Peter F.	✓	
Wall, Janet G.	✓	
DePecol, Benjamin J.	✓	
Allison, David C.	✓	
Johnson, Lionel W.		
Moynihan, Wayne T.		
Pratt, Irene A.	✓	
Richardson, Barbara Hull	✓	
Smith, Marjorie K.	✓	
TOTAL VOTE	124	

Appeared in Favor

Appeared in Opposition

Committee Report

MAJORITY
COMMITTEE REPORT

FILE COPY

COMMITTEE: **Judiciary and Family Law**

BILL NUMBER: **HB 1324**

TITLE: requiring parental notification before abortions may be performed on certain minors.

DATE: Jan. 22, 1998 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)

This bill would not result in improving communication within families. More than 70% of minors do inform their parents. Those who do not, often have sound reasons. Finally the bill does not protect the constitutional right of a minor to have an abortion without the notice of both parents if she is mature enough to make her own decision or an abortion is in her best interests.

Vote 12-4.

Rep. Marjorie K. Smith
FOR THE COMMITTEE

Original: House Clerk
cc: Committee Bill file

USE ANOTHER REPORT FOR MINORITY REPORT

Judiciary and Family Law

HB 1324, requiring parental notification before abortions may be performed on certain minors.
INEXPEDIENT TO LEGISLATE

Rep. Marjorie K. Smith for the majority of **Judiciary and Family Law:** This bill would not result in improving communication within families. More than 70% of minors do inform their parents. Those who do not, often have sound reasons. Finally the bill does not protect the constitutional right of a minor to have an abortion without the notice of both parents if she is mature enough to make her own decision or an abortion is in her best interests. Vote 12-4.

MINORITY
COMMITTEE REPORT

COMMITTEE: **Judiciary and Family Law**

BILL NUMBER: **HB 1324**

TITLE: requiring parental notification before abortions may be performed on certain minors.

DATE: Jan. 22, 1998 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 minority of the committee believes that at the most critical time in a woman's life she should have the support and guidance of a family member. In addition, since there are numerous things that a minor cannot do or have done to her without parental permission, it seems absurd to us that a minor can have an abortion without even so much as notification. This bill provides for parental notification not permission. In the event that the minor is a victim of sexual abuse, physical abuse, or neglect, notification can be made to a sibling over the age of 21, a stepparent or grandparent.

Vote

Rep. Evelyn S. Letendre
FOR THE COMMITTEE

Original: House Clerk
cc: Committee Bill file

USE ANOTHER REPORT FOR MINORITY REPORT

Judiciary and Family Law
HB 1324, requiring parental notification before abortions may be performed on certain minors.

Rep. Evelyn S. Letendre for the Minority of **Judiciary and Family Law:** The minority of the committee believes that at the most critical time in a woman's life she should have the support and guidance of a family member. In addition, since there are numerous things that a minor cannot do or have done to her without parental permission, it seems absurd to us that a minor can have an abortion without even so much as notification. This bill provides for parental notification not permission. In the event that the minor is a victim of sexual abuse, physical abuse, or neglect, notification can be made to a sibling over the age of 21, a stepparent or grandparent. Vote OUGHT TO PASS.

HB 1324 requiring parental notification before abortions may be performed on certain minors.

Inexpedient to Legislate 12-4

~~In addition~~ the majority of the Committee ~~concluded~~ concluded that ~~(this bill would)~~ result this bill would not ~~decrease~~ In ~~the desired goal of~~ improving communication within families. ~~and could result in~~ More than 70% of minors do inform their parents. ~~This~~ ~~Passage of this bill could result~~ those who do not, often have sound reasons.

Finally The bill ~~did~~ does not ~~meet the constitutional test~~ protect the constitutional right of a minor to have an abortion without the notice of both parents if she is mature enough to make her own decision or an abortion is in her best interests.

Margaret Smith

COMMITTEE REPORT

COMMITTEE: **JUDICIARY AND FAMILY LAW**

BILL NUMBER: **HB 1324**

TITLE: requiring parental notification before abortions may be performed on certain minors.

DATE: 1/22/98 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)

Vote 12-4.

Rep._____
FOR THE COMMITTEE

Original: House Clerk
cc: Committee Bill file

USE ANOTHER REPORT FOR MINORITY REPORT

Minority Report
HB1324 - Parental notification

The minority of the committee believes that at this most critical time in a minor's life she should have the support & guidance of a family member. In addition, since there are numerous things that a minor cannot do or have done to her without parental permission, it seems absurd to us that a minor can have an abortion without even so much as notification. This bill provides for parental notification not permission. In the event that the minor is a victim of sexual abuse, physical abuse or neglect notification can be made to a sibling over the age of 21, a stepparent or grandparent.

Respectfully submitted

Evelyn S Letendre

OK /