

Bill as Introduced

HB 1134 - AS INTRODUCED

2010 SESSION

10-2058
04/09

HOUSE BILL **1134**

AN ACT authorizing federal law enforcement officers to use deadly and non-deadly force when assisting state law enforcement officials.

SPONSORS: Rep. Shurtleff, Merr 10

COMMITTEE: Criminal Justice and Public Safety

ANALYSIS

This bill specifies the circumstances under which a federal officer or special agent may use deadly or non-deadly force in assisting a New Hampshire law enforcement officer.

.....

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 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Ten

AN ACT authorizing federal law enforcement officers to use deadly and non-deadly force when assisting state law enforcement officials.

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

1 1 New Paragraph; Physical Force in Law Enforcement. Amend RSA 627:5 by inserting after
2 paragraph VIII the following new paragraph:

3 IX. A federal law enforcement officer or special agent who has been requested or directed by
4 a New Hampshire law enforcement officer to assist in effecting an arrest, or whose assistance is
5 requested under mutual aid, is authorized to take emergency law enforcement action, including
6 making an arrest or preventing an escape from custody and such officer or special agent is justified
7 in using:

8 (a) Non-deadly force when, and to the extent, that he or she reasonably believes it is
9 necessary to carry out the direction of the New Hampshire law enforcement officer, unless the
10 federal officer or special agent believes the arrest is illegal; or

11 (b) Deadly force only when he or she reasonably believes it is necessary to defend
12 himself, herself, or a third person from what he or she reasonably believes to be the imminent use of
13 deadly force, or when the New Hampshire law enforcement officer directs the federal officer or
14 special agent to use deadly force and the federal officer or special agent believes the New Hampshire
15 law enforcement officer is authorized to use deadly force under the circumstances.

16 2 Effective Date. This act shall take effect 60 days after its passage.

HB 1134 - AS AMENDED BY THE HOUSE

03Mar2010... 0687h

2010 SESSION

10-2058
04/09

HOUSE BILL **1134**

AN ACT authorizing federal law enforcement officials to take emergency law enforcement action to temporarily detain persons when assisting local law enforcement officials or upon witnessing a crime.

SPONSORS: Rep. Shurtleff, Merr 10

COMMITTEE: Criminal Justice and Public Safety

AMENDED ANALYSIS

This bill authorizes federal law enforcement officials to take emergency law enforcement action to temporarily detain persons when assisting local law enforcement officials or upon witnessing a crime.

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 1134 – AS AMENDED BY THE HOUSE

03Mar2010... 0687h

10-2058
04/09

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Ten

AN ACT authorizing federal law enforcement officials to take emergency law enforcement action to temporarily detain persons when assisting local law enforcement officials or upon witnessing a crime.

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

- 1 1 New Section; Detention Authority of Federal Officers. Amend RSA 594 by inserting after
2 section 6 the following new section:
3 594:6-a Detention Authority of Federal Officers. A federal law enforcement officer or special
4 agent who has been requested or directed by a New Hampshire law enforcement officer to assist in
5 effecting an arrest, or whose assistance is requested under mutual aid, or who observes a person
6 committing what the officer has reasonable grounds to believe is a felony, a misdemeanor
7 constituting a breach of the peace, or an offense under RSA 265-A, may detain such person provided
8 the detention is accomplished in a reasonable manner. The officer or special agent may use
9 reasonable and necessary force to effect the detention or to defend himself or herself or a third person
10 from what the officer believes to be imminent assault or bodily injury. Any person detained
11 pursuant to this section shall be released as soon as practicable to the custody of a New Hampshire
12 officer with jurisdiction.
13 2 Effective Date. This act shall take effect 60 days after its passage.

Amendments



Sen. Lasky, Dist. 13
 April 8, 2010
 2010-1283s
 04/09

Amendment to HB 1134

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

2

3 AN ACT authorizing federal law enforcement officials to take emergency law enforcement
 4 action to temporarily detain persons when assisting local law enforcement officials
 5 or upon witnessing a crime and relative to legislative security staff.
 6

7 Amend the bill by replacing all after section 1 with the following:

8

9 2 New Subdivision; Legislative Security. Amend RSA 14 by inserting after section 49 the
 10 following new subdivision:

11

Legislative Security

12

14:50 Legislative Security; Authority.

13

14 I. The sworn members of the legislative security staff while on official duty shall have the
 15 authority of an ex officio constable including the power to detain persons who are creating a
 16 disturbance or who they have reasonable grounds to believe have committed any offense under the
 17 laws of the state, for as long as necessary to surrender the person to a state trooper, deputy sheriff,
 18 or local police officer having jurisdiction, provided such detention is accomplished in a reasonable
 19 manner.

19

20 II. When in the performance of their duties legislative security staff members shall be
 21 entitled to the same indemnification of state officers and officials as provided in RSA 99-D:2.

21

22 III. The legislative security staff shall be considered a law enforcement agency for purposes
 23 of receiving and exchanging criminal justice information and motor vehicle registration information
 24 with the department of safety and other law enforcement agencies.

24

25 IV. Legislative security staff members shall not be required to meet the training and
 26 certification requirements of RSA 188-F:27 but may attend and participate in training programs at
 27 the police standards and training council and upon successfully completing such programs shall
 28 receive the same academic credits or certifications as other peace officers attending such programs.

28

29 V. Legislative security staff members who were certified police officers prior to appointment
 30 to the legislative security staff may retain or regain their police certification while serving as sworn
 31 members of the legislative security staff upon completing such continuing education requirements as
 32 the police standards and training council may require.

32

3 Effective Date.

33

I. Section 1 of this act shall take effect 60 days after its passage.

34

II. The remainder of this act shall take effect upon its passage.



2010-1283s

AMENDED ANALYSIS

This bill authorizes federal law enforcement officials to take emergency law enforcement action to temporarily detain persons when assisting local law enforcement officials or upon witnessing a crime. This bill also provides that sworn members of the legislative security staff shall have limited law enforcement powers including the power to detain persons while in the performance of their official duties.

Committee Minutes

AMENDED
SENATE CALENDAR NOTICE
JUDICIARY

Printed: 04/28/2010 at 8:28 am

- ✓ Senator Deborah Reynolds Chairman
- ✓ Senator Bette Lasky V Chairman
- ✓ Senator Matthew Houde
- ✓ Senator Sheila Roberge
- ✓ Senator Robert Letourneau

For Use by Senate Clerk's Office ONLY		
<input type="checkbox"/>	Bill Status	
<input type="checkbox"/>	Docket	
<input type="checkbox"/>	Calendar	
Proof: <input type="checkbox"/>	Calendar <input type="checkbox"/>	Bill Status

Date: April 28, 2010

HEARINGS

Tuesday

5/4/2010

JUDICIARY

SH 103

2:00 PM

(Name of Committee)

(Place)

(Time)

EXECUTIVE SESSION MAY FOLLOW

Comments: THE PURPOSE OF THIS AMENDED NOTICE IS TO REMOVE HB 1306 AND RESCHEDULE IT TO 5/5/10 AT 2:00 P.M.

- | | | |
|---------|--------|---|
| 2:00 PM | HB1133 | relative to the duration of involuntary emergency admissions. |
| 2:15 PM | HB1134 | (New Title) authorizing federal law enforcement officials to take emergency law enforcement action to temporarily detain persons when assisting local law enforcement officials or upon witnessing a crime. |
| 2:30 PM | HB1185 | relative to retired judges over 70 years of age. |
| 2:45 PM | HB1215 | relative to gender neutral references in certain public assistance statutes. |
| 3:00 PM | HB1223 | relative to notice in class action cases under the consumer protection act. |
| 3:15 PM | HB1259 | relative to subrogation claims and liens in civil actions. |

Sponsors:

HB1133

Rep. Stephen Shurtleff

HB1134

✓ Rep. Stephen Shurtleff

HB1185

Rep. Robert Rowe

Rep. Frank Emiro

Rep. Mary Gorman

Sen. Peter Bragdon

Rep. William O'Brien

Sen. Robert Letourneau

Rep. David Nixon

HB1215

Rep. David Bickford

HB1223

Rep. Gary Richardson

Rep. Janet Wall

Rep. David Nixon

Rep. Robert Rowe

Rep. William O'Brien

HB1259

Rep. David Nixon

Rep. Robert Rowe

Rep. James Craig

Rep. Paul McEachern

Gail Brown 271-3076

Sen. Deborah Reynolds

Chairman

Judiciary Committee

Hearing Report

TO: Members of the Senate

FROM: Susan Duncan, *Senior Legislative Aide*

RE: Hearing report on **HB 1134 – AN ACT (New Title) authorizing federal law enforcement officials to take emergency law enforcement action to temporarily detain persons when assisting local law enforcement officials or upon witnessing a crime.**

HEARING DATE: May 4, 2010

MEMBERS OF THE COMMITTEE PRESENT: Senators Reynolds, Lasky, Roberge, Letourneau and Houde

MEMBERS OF THE COMMITTEE ABSENT: No one

Sponsor(s): Representative Shurtleff

What the bill does: This bill authorizes federal law enforcement officials to take emergency law enforcement action to temporarily detain persons when assisting local law enforcement officials or upon witnessing a crime.

Who supports the bill: Representative Shurtleff; Frank DePippo representing federal law enforcement officers;

Who opposes the bill: Representative Villeneuve; Representative L. Christiansen; Attorney Penny Dean representing Gun Owners of NH;

Others testifying: Senator Lasky (offering an amendment)

Summary of testimony received:

- Representative Shurtleff introduced the legislation and explained that he filed it on behalf of the federal law enforcement association in order to give them authority to detain folks in N. H.
- He explained that more and more state and federal task forces are operating in N. H.
- He noted that he does support the amendment that Senator Lasky will be presenting giving State House security officers the ability to detain. He said that an usher in a movie theater has more authority than our State House officers. He said that the amendment does not give them power to arrest, but would have the ability to detain someone until law enforcement officers arrive.

- Representative Christiansen testified in opposition and said that he would like to follow the Constitution. He said that the federal constitution limits the authority of the federal government – and that we do not need to give our sovereignty to them.
- Attorney Dean appeared in opposition and said that the bill should be killed. She said that this would provide a great expansion of power to federal law enforcement and would allow them to stop N. H. citizens – would enable them to be detained with “reasonable and necessary force” and “released as soon as practicable” – which is not a defined term here.
- She said that other state statutes already provide authority and cited RSA 594:6, 106-D: 3, 106-C, 106-C: 10 and 106-I: 1 – with just a cursory review of statutes.
- She explained that New Hampshire is the second safest state in the nation and that we do not need federal officers. She said under this legislation, they could even enforce traffic regulations if they so chose.
- She asked Committee members to please look at how this would impact our citizens.
- Frank DePippo testified in support as a U. S. Government special agent – he would not identify what agency he’s associated with and explained that this is not allowed.
- He said that any citizen could request their assistance – and that his supervisor is going to come back and ask him “under what authority were you operating?”.
- He said that this legislation is endorsed by N. H. Chiefs of Police as well as the N. H. Troopers Association.
- He used as an example when agents were deployed to Louisiana following Katrina – and each had to be sworn in.
- He explained that this legislation would enable action in a mutual aid situation so that the federal officer could act, and then call the state or local office.
- Senator Reynolds, in referring to Attorney Dean’s reference to 594:1 stated that this already defines an officer and explained that later in the statute it goes on to say that every law enforcement officer may request any person She asked if we need this. Mr. DePippo responded that Maine and Rhode Island recognize this and that they feel that including the language would allow that appropriate action could be taken. He clarified that no federal officer or agency would open a state case – this is only emergency authorization. He said that if she is concerned about the breadth of the statute, it could be amended to clarify that it is action allowed within the guidelines established by the Attorney General or Department of Safety. Senator Reynolds acknowledged his suggestions but pointed out that we are at the last day of hearings before these bills must be out.
- Senator Letourneau asked under what circumstances would this be needed and whether something in particular had brought it

forward. Mr. DePippo responded that in an instance where a federal officer stops to assist someone in trouble, their supervisor is going to ask "under what authority were they acting." The supervisor may say that they did not have state authority to act. He said that in other states, offices can walk into a store where a robbery is taking place, then if they respond, they are merely acting as a private citizen. This way they could assist and take action.

- Senator Houde, in referring to the first scenario, if the federal officer were required to hold someone, that authority would be in the statute. Mr. DePippo responded "yes," as a private citizen. He explained that the federal Department of Justice says that it's a liability issue and that they were just acting as private citizens. He clarified that they are not riding around looking for these situations.
- Senator Reynolds noted that this sounds more like something that Congress could decide.
- Senator Lasky presented amendment #1283s, the amendment referenced earlier by Representative Shurtleff.

Fiscal Impact: Not applicable.

Action: The Committee took the bill under advisement.

sfd
[file: HB 1134]
Date: May 7, 2010

CHAPTER 594 ARRESTS IN CRIMINAL CASES

Arrest

Section 594:6

594:6 Aid to Officers. – Every law enforcement officer who encounters a need for assistance in the execution of his office in a criminal case or emergency situation may require any person to render suitable aid. Any person who, when so required, neglects or refuses to give such aid shall be guilty of a violation.

Source. RS 178:12. CS 189:12. GS 236:2. GL 254:2. PS 250:2. PL 364:2. RL 423:2. RSA 594:6. 1994, 286:1, eff. Jan. 1, 1995.

Date: May 4, 2010
Time: 2:25 p.m.
Room: State House Room 103

2413

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

HB 1134 (New Title) authorizing federal law enforcement officials to take emergency law enforcement action to temporarily detain persons when assisting local law enforcement officials or upon witnessing a crime.

Members of Committee present: Senator Reynolds
Senator Lasky
Senator Houde
Senator Roberge
Senator Letourneau

The Chair, Senator Deborah R. Reynolds, opened the hearing on HB 1134 and invited the prime sponsor, Representative Stephen Shurtleff, to introduce the legislation.

Representative Shurtleff: Thank you, Madam Chair, members of the Committee. For the record, I'm still Steve Shurtleff and still represent Merrimack District 10, Concord's wards 1, 2 and 3, and I'm here this afternoon, Madam Chair, to introduce to this Committee HB 1134.

Madam Chair, I filed this bill on behalf of the Federal Law Enforcement Officers Association. What this bill does is give them the authority to detain individuals if they have reasonable grounds to believe they have committed a felony or a misdemeanor. The reason I was asked to file this legislation, as you probably know, Madam Chair, there are more and more state and federal task forces operating in New Hampshire and this would give authority to federal law enforcement officers to be able to come to the assistance of a state officer without having to face any recriminations from their departments in Washington for acting, to enforce a New Hampshire law. That was the primary reason this bill was filed.

JHB

I understand that Senator Lasky may be introducing an amendment to this bill. Maybe I misunderstood, but I just wanted to go on the record that I support that amendment.

Senator Deborah R. Reynolds, D. 2: Thank you, Representative. Do you want to speak to the amendment at this point?

Representative Shurtleff: I would be glad to.

Senator Deborah R. Reynolds, D. 2: Alright. Why don't you go ahead?

Representative Shurtleff: Thank you. I appreciate it. This is a bill that we wished to bring forward in the House Criminal Justice Committee to give the security officers in the state house complex the authority to detain. As you may or may not know, under current law, they have not authority to detain anybody for anything. Actually, an usher in a movie theater has more authority to detain somebody for photographing a movie. Our security staff have no authority whatsoever.

This bill was drafted with Assistant Commissioner Earl Sweeney, who was extremely helpful in providing just the right language. They would not have the power to arrest, but they would be able to hold anybody that they observed committing a criminal act. They would turn them over immediately to state law enforcement officials.

Senator Deborah R. Reynolds, D. 2: Any questions of Representative Shurtleff? Seeing none, thank you very much, Representative Shurtleff.

Representative Shurtleff: Thank you, Madam Chair.

Senator Deborah R. Reynolds, D. 2: Representative Moe Villeneuve has signed in in opposition. Representative, are you here? Did you want to testify, sir?

Representative Villeneuve: No.

Senator Deborah R. Reynolds, D. 2: I just want to note your opposition. We do have a couple of people who have signed in regarding the bill, so I am going to let them testify and then we are going to hear from Senator Lasky on the amendment. Representative Lars Christiansen has signed in in opposition. Representative, do you wish to speak? You didn't sign in either way. Do you want to speak? You're welcome to. Come forward, sir. Welcome.

JRB

Representative Christiansen: Representative Christiansen. Good afternoon, honorable Senators. I have a problem with...

Senator Deborah R. Reynolds, D. 2: Representative, before you start, would you just state your full name and who you represent?

Representative Christiansen: Hillsborough District 27, Hudson, Litchfield and Pelham.

Senator Deborah R. Reynolds, D. 2: And, what's your full name?

Representative Christiansen: Lars Christiansen.

Senator Deborah R. Reynolds, D. 2: Thank you. Go right ahead.

Representative Christiansen: Okay. I have a problem and I like to follow the Constitution to which we all subscribe to. The federal Constitution limits the authority of the federal government. We don't need federal jurisdiction and give our sovereignty to the federal government. That's what we would be doing. Now, if it is not necessary. If the federal authority only has certain things that they have jurisdiction. I am going to pick on marijuana. They are officially, in the news media, backing down on enforcing the marijuana laws in states where they have passed this. Okay? Because it is not in their jurisdiction. There are interstate drugs, sure, they will be involved there. So, you can get federal help without diminishing our citizen sovereignty. Sovereignty follows the people. Okay? We should not pass laws that are going to take this away from the people. Okay? You have, in cases of interstate commerce, that puts certain issues in the federal jurisdiction.

But, the business within the boundaries of the state should be, like I say, the state officials and of course if a federal official happens to be there, he can be invited in just like any citizen can. I can remember myself holding a burglar at bay, okay, while I had the police on the phone. Sounded like gravel. Took them ten or fifteen minutes to get there and all I had to do was hold that 657 aimed steady at him and keep the public who was coming in to look out of the way and it seemed like forever. The citizen can also, and so can the feds. We don't need this legislation to diminish our citizens' sovereignty.

Senator Deborah R. Reynolds, D. 2: Okay. Thank you very much, Representative. Any questions? Thank you very much, sir. I want to note that Penny Dean, Attorney, has signed in in opposition to the bill, does not wish to speak. Do you wish to speak?

JHB

Attorney Penny Dean: I do.

Senator Deborah R. Reynolds, D. 2: Okay. Come forward, Attorney Dean. You're in opposition to the bill.

Attorney Dean: Thank you, Madam Chair. I am general counsel for Gun Owners of New Hampshire and I'm also a private attorney, licensed in Maine, New Hampshire, Massachusetts and all federal courts. I will respectfully say this bill should be ITL'd.

To say that it is a great expansion of federal authority would be an understatement. It is not the overstated additional authority that federal officers will have if this passes. Currently, RSA 594:6 already allows local law enforcement to ask the feds or any person, to require any person or assistance. What this would allow with federal law enforcement officers who are regularly transferred between other districts to come into New Hampshire to staff New Hampshire citizens with less constitutional protections that New Hampshire citizens currently enjoy from local law enforcement.

To say that they are going to be turned over immediately to local law enforcement is not what this statute says, what this bill says rather. It says may detain such person provided the detention is accomplished in a reasonable manner. And, they continue to say may use reasonable and necessary force. Any person detained pursuant to this section shall be released as soon as practicable. That is not a defined term here. The question is, how long are they going to keep them. If they believe there is some sort of federal law enforcement investigation going on, how long are they going to detain and question them? I don't know. But, I think, if you look at other applicable statutes, RSA 106:3-D, III; 106-C; 106-C, X; 106-I, I, all provide for adequate law enforcement authority to ask for assistance.

Senator Deborah R. Reynolds, D. 2: Attorney Dean, you are so knowledgeable in this area, but if you could just slow down and let's go through the citations. I've got 594:6 and what else?

Attorney Dean: 594:6, yes. I apologize.

Senator Deborah R. Reynolds, D. 2: That's okay.

Attorney Dean: 106-D:3, as in dog; 106-C, as in cat; 106-C:10, as in cat; 106-I as in ice cream, I. That is not a comprehensive review, but a cursory review of the current statutory protections in place.

JRB

I think the huge difference is, right now, local authorities control local areas, which is the way it should be. The sheriff controls the county; the cities and towns are controlled primarily by the chiefs of police in those areas. What this bill would do if it becomes law it will allow any law enforcement officer, and I'm talking a part-time officer, a one hour a week officer, to invite the feds into that area. What you're going to get is they are not required to get permission of the city or the sheriff. They are going to essentially do an end run around their boss and the boss is going to be left cleaning up the mess.

As we all know, the lowest level officer might not know all of the intelligence that the chief knows. They may very well cause problems; there may be other issues. But, the largest issue is New Hampshire is the second safest state in the nation. We don't need additional law enforcement officers here. If we do, the sheriff or the chief can ask law enforcement in. You don't need federal officers.

Do you realize that, according to this law, this bill rather, they will be doing traffic enforcement if they so choose? This specifically says, or an offense under RSA 265-A may detain such person provided the detention is accomplished in a reasonable manner. You're going to have federal law enforcement officers, if they so choose, enforcing traffic regulations on our highways. I have a problem with that.

The other larger issue I have is from the safety perspective. We had, in the Rochester area, at least two cases of women being assaulted. They were pulled over by people that they thought were law enforcement and asked to step out of their car. People not willing to challenge the police or get in trouble with the police have done so. I, for one, don't know that I could recognize a lot of federal officers' cars. So, if I get pulled over by them, what risk am I at? I know I am more assertive than most. I am going to hope my cell phone works in that area, call 9-1-1 and ask for a second officer to make sure that this person really is law enforcement. But, how many people are willing to do that?

I think the issue, bottom line is here, that we don't need a statute to allow any officer, any officer to invite the feds in without the approval of the chief or the sheriff in this particular area. I respectfully would ask you to go through this line by line and think about how it would impact New Hampshire citizens.

Senator Deborah R. Reynolds, D. 2: Thank you very much, Attorney Dean. Any questions? Seeing none, thank you very much for your testimony. The last person I have signed in in opposition is Frank DePippo. Did you intend to testify, sir?

AMB

Frank DePippo: Yes, for.

Senator Deborah R. Reynolds, D. 2: Oh, you're in support? You had indicated in opposition. So, feel free to come forward. No problem. Welcome. If you could just state your full name for the record.

Mr. DePippo: Frank DePippo and I am a special agent in the U.S. government, and I'm the New Hampshire President of the Federal Law Enforcement Officers Association. Thank you for...

Senator Deborah R. Reynolds, D. 2: Just so it is clear for the record, are you with a particular, are you ATF?

Mr. DePippo: I'm with one of the government agencies, but we're not allowed to put forth the agency policy here.

Susan Duncan: They would have to kill you.

Mr. DePippo: The agencies say, before you end up, I'm here as a person with the law enforcement officers, but I am a federal agent who has been through the academy and I work in the state, but they don't want us putting forth saying, for example, I'm with the Department of Justice, I'm with Homeland Security. I'm here in my role as the President of the New Hampshire Federal Law Enforcement Officers Association only.

Senator Deborah R. Reynolds, D. 2: Could I ask you one question? Are you a resident of the State of New Hampshire?

Mr. DePippo: Yes.

Senator Deborah R. Reynolds, D. 2: Okay. Thank you.

Mr. DePippo: And, thank you for hearing me. If I could explain or clarify a few points.

In New Hampshire, as someone had mentioned, any private citizen can help any law enforcement officer upon their request. However, if we're traveling in the state and something were to occur and a trooper or local law enforcement were to ask for assistance, our supervisors say, "What law enforcement authority did you have to intervene? Whose authority are you?" Say the trooper ended up injured or something, we're talking about emergency action. They say, "Whose authority are you operating under? You're not operating under federal authority."

RB

So, there we are in a vehicle with law enforcement equipment and lights. In some instances, even though we will stop anyway to help, we're acting as a private citizen. So, the purpose of this is to take action, as it explains, in serious offenses to assist a state or local law enforcement officer.

In the House, this was endorsed by the New Hampshire Chiefs and it was supported by the New Hampshire Troopers Association. So, we're not, if there was some confusion, we're not imposing on anyone's authority, nor are we trying to take action. As an example, when agents were deployed to, say the state of, say police officers, deployed to Louisiana during Katrina. Everyone had to be sworn in because the agents and officers had no authority there. So, they have to be sworn in as police officers to take state and local action.

What this would do is you could take action under a request for mutual aid in an emergency or when a serious, as it says, a felony or a breach of the peace has occurred. So, you take action and then call the state or local officers, preferably call the state or local officers first if you can, but sometimes you can't do that. So, it is not at all interfering with the state or local authorities.

Senator Deborah R. Reynolds, D. 2: Are you done with your testimony?

Mr. DePippo: I am.

Senator Deborah R. Reynolds, D. 2: Okay. First of all, I know Senator Letourneau has a question, but Attorney Dean has pointed out that we have a statute, RSA 594:1, which defines an officer as a sheriff, deputy sheriff, mayor, city marshal, constable, police officer or other person authorized to make arrests in a criminal case. Then it goes on to say, in 594:6 every law enforcement officer who encounters a need for assistance in a criminal case or emergency situation may require any person to render suitable aid.

So, I guess the question is, why do we need this? I guess that's the question. I haven't researched this, except I don't have a lot of background in federal and state interplay here, but I think one of the issues for us in New Hampshire is we don't need this law to this point. I'm wondering if you could speak to that.

Mr. DePippo: Well, for example, Maine has a similar statute; Rhode Island makes any federal officers operating in the state who need to take action in effect a peace officer. So, some states do not have it. We feel, and the State agrees with us, including the Department of Public Safety, who redrafted the bill, that it is appropriate so that emergency action can be taken. And then,

as it says, any person detained pursuant to this section shall be released as soon as practicable to the custody of a New Hampshire officer with jurisdiction. So, it is not operating independently.

And, of course, no federal officer or agent would open a state case, as someone had mentioned, in any manner without notifying the state or local officer or take any type of action without notifying the state or local officer. This is emergency authority. If someone is concerned about the breadth of it or the necessity for it, it could be, and I'm not suggesting an amendment, but some laws will say consistent with guidelines from the Attorney General's Office or Police Standards and Training if that is needed.

But, the intent is to assist a state or local officer other than as a private citizen because really a federal law enforcement officer or agent is not acting as a private citizen. They are still law enforcement officers, but they don't have the authority.

Senator Deborah R. Reynolds, D. 2: I appreciate your testimony and I know other Committee members have questions. But, we are the next day before we have to conclude all of our business. We in the Senate just don't have the luxury of spending a lot of time in redrafting things. So, having said that, I think Senator Letourneau had his hand up first.

Senator Robert J. Letourneau, D. 19: I did. Thank you. My question runs along the same lines as yours. The question is, when do you think this is needed and why do we need it? The original question would be, how often do you think it would be needed? What has brought this along? Why is it before us? Usually when a bill comes before us, there is a purpose for it or something occurred that we found an error in law.

Mr. DePippo: Right. There are instances that have occurred where officers have stopped to help a state or local officer. In instances where they may not have been on a task force.

Someone is at the side of the road, you stop. You say, do you need assistance? Hold these people with me until I get back-up. Then the supervisors are saying at the federal side, "What authority did you have, even though it is a good thing to do, what authority? You do not have state authority at all." If something had happened and the officer had been injured or there had been an emergency, you did not have state authority to act. So, that's one example. Other examples that have occurred in other states – officers have walked into a store, off-duty, getting a sandwich, getting a coffee and someone is taking a criminal action, robbing the store. If they take action, they are acting as a private citizen because they do not have federal authority

under those circumstances. We don't have federal authority everywhere. That would be another example.

Or during, as it says, during a time of mutual aid or major emergency, the state could then say any federal officers coming into the state have authority to assist our officers and take state action. So, you are riding with a state officer and it is an emergency, as it was in Katrina where people were burglarizing houses or taking other hostile actions or shooting at the state and local officers, you could then assist them and would have authority to take action and use force until the state officers were able to get back-up.

Senator Robert J. Letourneau, D. 19: Thank you.

Senator Deborah R. Reynolds, D. 2: Senator Houde?

Senator Matthew Houde, D. 5: Thank you, Madam Chair. Just going over the first scenario that you gave us. You were requested to hold someone on the side of the road. Wouldn't the authority be essentially what the Chair referenced, which is that you have authority if you are asked by a local officer?

Mr. DePippo: Right. As a private citizen. The argument we're getting from the Department of Justice who represents us if there is a tort claim, is the liability issue. What authority did you have? Well, we had authority because we were asked by the state, but they come back and say, you're still acting as a private citizen. So, it is emergency authority to act.

There is a liability issue. We still stop and we still help, but if something were to happen, you're not then acting under, for example, a statute or in that statute it doesn't say, or any federal officer. That's how we had originally had drafted it, to put it into that statute, or any federal officer. They felt that this narrowed it and made it clear that you're doing traffic stops. It says emergency authority to act, 1) at the request of a state or local officer or 2) in a mutual aid situation, or 3) during a breach of the peace or a violent felony.

So, the language as put forth and redrafted by the Department of Safety I feel is adequate. I just suggested that if you felt you had the time and you wanted to add something to it, but the Attorney General's Office could still issue a standard order on use of its authority once the bill comes out if someone has that concern. But, I think we're not actually driving around looking for instances where there is a violation of state law.

Senator Deborah R. Reynolds, D. 2: Yes. We understand that, but I think the concern that we're hearing on this side of the table is that there is the thing that Congress could do to give you some indemnification from liability, which covers us and asking us to do something that we do not feel that we need to do. So, we do appreciate your testimony. Thank you for coming. I'm going to ask Senator Lasky at this point offer the amendment. We do have some other hearings, but I thank you, sir, for coming today.

Mr. DePippo: Thank you.

Senator Deborah R. Reynolds, D. 2: Welcome, Senator Lasky.

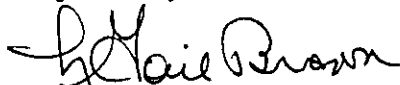
Senator Bette R. Lasky, D. 13: Thank you, Madam Chair, members of the Judiciary Committee. At the request of Representative Shurtleff, who is here, by the way, I am offering this amendment which he spoke to earlier and certainly, if you have any questions, you had one opportunity to ask him and we can bring him back for more. Thank you.

Senator Deborah R. Reynolds, D. 2: Thank you very much, Senator Lasky. Do any members, either of you have any questions about the amendment? We do have Representative Shurtleff here. He has spoken to it. I'm not necessarily going to be execing on the bill today, so we will have a little bit of time to review it.

But, is there anyone else here who wanted to testify relative to HB 1134? If not, I am going to close the hearing. Thank you for coming.

Hearing concluded at 2:45 p.m.

Respectfully submitted,



L. Gail Brown
Senate Secretarial Supervisor
9/17/10

Speakers

Voting Sheets

Senate Judiciary Committee

EXECUTIVE SESSION

Bill # HB 1134

Hearing date: 6/4/10

Executive session date: 5/4/10

Motion of: ITL

VOTE: 4-0

Made by Reynolds
Senator: Lasky
 Houde
 Letourneau
 Roberge

Seconded Reynolds
by Senator: Lasky
 Houde
 Letourneau
 Roberge

Reported Reynolds
by Senator: Lasky
 Houde
 Letourneau
 Roberge

Motion of: _____

VOTE: _____

Made by Reynolds
Senator: Lasky
 Houde
 Letourneau
 Roberge

Seconded Reynolds
by Senator: Lasky
 Houde
 Letourneau
 Roberge

Reported Reynolds
by Senator: Lasky
 Houde
 Letourneau
 Roberge

<u>Committee Member</u>	<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Reported out by</u>
Senator Reynolds, Chairman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Lasky, Vice-Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Houde	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Letourneau	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Roberge	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

*Amendments: _____

Notes: _____

Committee Report

STATE OF NEW HAMPSHIRE
SENATE
REPORT OF THE COMMITTEE

Date: May 5, 2010

THE COMMITTEE ON Judiciary

to which was referred House Bill 1134

AN ACT (New Title) authorizing federal law enforcement officials to take emergency law enforcement action to temporarily detain persons when assisting local law enforcement officials or upon witnessing a crime.

Having considered the same, the committee recommends that the Bill:

IS INEXPEDIENT TO LEGISLATE

BY A VOTE OF: 4-0

AMENDMENT # s

Senator Sheila Roberge
For the Committee

L. Gail Brown 271-3076

New Hampshire General Court - Bill Status System

Docket of HB1134

Docket Abbreviations

Bill Title: (New Title) authorizing federal law enforcement officials to take emergency law enforcement action to temporarily detain persons when assisting local law enforcement officials or upon witnessing a crime.

Official Docket of HB1134:

Date	Body	Description
01/06/2010	H	Introduced and Referred to Criminal Justice and Public Safety; HJ 6 , PG.230
01/06/2010	H	Public Hearing: 1/14/2010 2:00 PM LOB 204
02/03/2010	H	Subcommittee Work Session: 2/11/2010 9:00 AM LOB 204
02/03/2010	H	Subcommittee Members: Reps Pantelakos(Ch), Stevens & Movsesian
02/03/2010	H	=Cancelled= Executive Session: 2/11/2010 10:00 AM LOB 204
02/10/2010	H	Executive Session: 2/16/2010 10:00 AM LOB 204
02/16/2010	H	Committee Report: Ought to Pass with AM #0687h (NT) for Mar 3 CC (Vote 14-1); HC 17 , PG.797
02/16/2010	H	Proposed Committee Amendment #0687h (New Title); HC 17 , PG.834-835
03/03/2010	H	Amendment #0687h (New Title) Adopted, VV; HJ 20 , PG.1129
03/03/2010	H	Ought to Pass with Amendment #0687h (New Title): MA VV; HJ 20 , PG.1129
03/24/2010	S	Introduced and Referred to Judiciary; SJ 11 , Pg.260
04/19/2010	S	Hearing: May 4, 2010, Room 103, State House, 2:15 p.m.; SC17
05/05/2010	S	Committee Report: Inexpedient to Legislate, 5/12/10; SC19
05/12/2010	S	Inexpedient to Legislate, MA, VV === BILL KILLED === SJ 18 , Pg.467

NH House

NH Senate

Contact Us

New Hampshire General Court Information Systems
 107 North Main Street - State House Room 31, Concord NH 03301

Other Referrals

COMMITTEE REPORT FILE INVENTORY

HB1134 ORIGINAL REFERRAL

_____ RE-REFERRAL

1. THIS INVENTORY IS TO BE SIGNED AND DATED BY THE COMMITTEE SECRETARY AND PLACED INSIDE THE FOLDER AS THE FIRST ITEM IN THE COMMITTEE FILE.
2. PLACE ALL DOCUMENTS IN THE FOLDER FOLLOWING THE INVENTORY IN THE ORDER LISTED.
3. THE DOCUMENTS WHICH HAVE AN "X" BESIDE THEM ARE CONFIRMED AS BEING IN THE FOLDER.
4. THE COMPLETED FILE IS THEN DELIVERED TO THE CALENDAR CLERK.

DOCKET (Submit only the latest docket found in Bill Status)

COMMITTEE REPORT

CALENDAR NOTICE on which you have taken attendance

HEARING REPORT (written summary of hearing testimony)

HEARING TRANSCRIPT (verbatim transcript of hearing)

List attachments (testimony and submissions which are part of the transcript) by number [1 thru 4 or 1, 2, 3, 4] here: _____

SIGN-UP SHEET

ALL AMENDMENTS (passed or not) CONSIDERED BY COMMITTEE:

- AMENDMENT # 1223 _____ - AMENDMENT # _____
_____ - AMENDMENT # _____ _____ - AMENDMENT # _____

ALL AVAILABLE VERSIONS OF THE BILL:

AS INTRODUCED AS AMENDED BY THE HOUSE
_____ FINAL VERSION _____ AS AMENDED BY THE SENATE

PREPARED TESTIMONY AND OTHER SUBMISSIONS (Which are not part of the transcript)

List by letter [a thru g or a, b, c, d] here: _____

EXECUTIVE SESSION REPORT

OTHER (Anything else deemed important but not listed above, such as amended fiscal notes):

IF YOU HAVE A RE-REFERRED BILL, YOU ARE GOING TO MAKE UP A DUPLICATE FILE FOLDER

DATE DELIVERED TO SENATE CLERK

9/23/10

[Signature]

COMMITTEE SECRETARY