

Bill as Introduced

SB 471-FN - AS INTRODUCED

2010 SESSION

10-2838
04/03

SENATE BILL **471-FN**

AN ACT relative to felonious sexual assault and sexual assault.

SPONSORS: Sen. DeVries, Dist 18

COMMITTEE: Judiciary

ANALYSIS

This bill adds a circumstance under which a person may be charged with felonious sexual assault and sexual assault.

This bill was requested by the attorney general.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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 relative to felonious sexual assault and sexual assault.

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

1 1 Felonious Sexual Assault. Amend RSA 632-A:3, IV to read as follows:

2 IV.(a) Engages in sexual contact with the person, ***or causes the person to engage in***
3 ***sexual contact on himself or herself in the presence of the actor***, when the actor is in a position
4 of authority over the person and uses that authority to coerce the victim to submit under any of the
5 following circumstances:

6 [(a)] (1) When the actor has direct supervisory or disciplinary authority over the victim
7 by virtue of the victim being incarcerated in a correctional institution, the secure psychiatric unit, or
8 juvenile detention facility where the actor is employed; or

9 [(b)] (2) When the actor is a probation or parole officer or a juvenile probation and parole
10 officer who has direct supervisory or disciplinary authority over the victim while the victim is on
11 parole or probation or under juvenile probation.

12 (b) Consent of the victim under any of the circumstances set forth in ***this*** paragraph [IV]
13 shall not be considered a defense.

14 (c) ***Notwithstanding RSA 632-A:1, IV, in this paragraph "sexual contact" means***
15 ***the intentional touching of the person's sexual or intimate parts, including genitalia, anus,***
16 ***breasts, and buttocks.***

17 2 Sexual Assault. Amend RSA 632-A:4, III to read as follows: .

18 III.(a) A person is guilty of a misdemeanor if such person engages in sexual contact or
19 sexual penetration with another person, ***or causes the person to engage in sexual contact on***
20 ***himself or herself in the presence of the actor***, when the actor is in a position of authority over
21 the person under any of the following circumstances:

22 [(a)] (1) When the actor has direct supervisory or disciplinary authority over the victim
23 by virtue of the victim being incarcerated in a correctional institution, the secure psychiatric unit, or
24 juvenile detention facility where the actor is employed; or

25 [(b)] (2) When the actor is a probation or parole officer or a juvenile probation and parole
26 officer who has direct supervisory or disciplinary authority over the victim while the victim is on
27 parole or probation or under juvenile probation.

28 (b) Consent of the victim under any of the circumstances set forth in ***this*** paragraph
29 [III] shall not be considered a defense.

1 (c) *Notwithstanding RSA 632-A:1, IV, in this paragraph "sexual contact" means*
2 *the intentional touching of the person's sexual or intimate parts, including genitalia, anus,*
3 *breasts, and buttocks.*

4 3 Effective Date. This act shall take effect January 1, 2011.

LBAO
10-2838
01/04/10

SB 471-FN - FISCAL NOTE

AN ACT relative to felonious sexual assault and sexual assault.

FISCAL IMPACT:

The Judicial Branch, Judicial Council, Department of Corrections and New Hampshire Association of Counties state this bill may increase state and county expenditures by an indeterminable amount in FY 2011 and each year thereafter. There will be no fiscal impact on local expenditures or state, county and local revenue.

METHODOLOGY:

The Judicial Branch states this bill will add to both the felonious sexual assault statute and sexual assault statute, the circumstance of one causing a person to engage in sexual contact on himself or herself in the presence of the actor where the actor is in the position of authority over the person. If felonious sexual assault, this added circumstance is a class B felony and if sexual assault, this added circumstance is an unspecified misdemeanor. Misdemeanor charges can be either a class A or class B with the presumption they will be class B in accordance with RSA 625:9,IV. However, the Branch has no information to estimate how many new misdemeanors or felonies would be brought as a result of this bill nor if the misdemeanors would be class A or class B misdemeanors. The Branch states the cost of a class A misdemeanor case is \$51.14 and the cost of a class B misdemeanor case is \$36.89 in FY 2011 and each year thereafter. The cost of a complex felony offense, which is how a class B felony offense for violation of the felonious sexual assault statute would be classified, is \$661.17 in FY 2011 and each year thereafter. The possibility of appeals increases the likelihood the fiscal impact on the Branch will exceed \$10,000.

The Judicial Council states this bill may result in an indeterminable increase in general fund expenditures. The Council states if the misdemeanor offense results in a right counsel, there will be increased expenditures. The Council states if an individual is found to be indigent, the flat fee of \$275 per misdemeanor or \$2,282.50 for the felony charge of felonious sexual assault is charged by a public defender or contract attorney. If an assigned counsel attorney is used the fee is \$60 per hour with a cap of \$1,400 for a misdemeanor charge and \$4,100 for a felony charge. The Council also states additional costs could be incurred if an appeal is filed. The public defender, contract attorney and assigned counsel rates for Supreme Court appeals is \$2,000 per case, with many assigned counsel attorneys seeking permission to exceed the fee

cap. Requests to exceed the fee cap are seldom granted. Finally, expenditures would increase if services other than counsel are requested and approved by the court during the defense of a case or during an appeal.

The Department of Corrections states this bill may increase expenditures by an indeterminable amount, but is unable to predict the number of individuals that might be impacted. The Department states the average annual cost of incarcerating an individual in the general prison population for the fiscal year ending June 30, 2009 was \$33,110. The cost to supervise an individual by the Department's division of field services for the fiscal year ending June 30, 2009 was \$744.

The New Hampshire Association of Counties states to the extent this bill results in an increase in the number of individuals prosecuted, convicted, and sentenced to incarceration, the counties may have increased expenditures. The Association is unable to determine the number of individuals who might be detained, prosecuted or incarcerated as a result of this bill. The average cost to incarcerate an individual in a county facility is \$35,342 a year.

The Department of Justice states an individual charged with this offense would typically be a public official and the Department's public integrity unit would handle the prosecution. The Department estimates this bill would result in less than three prosecutions a year and any fiscal impact could be absorbed by the Department.

SB 471-FN - AS AMENDED BY THE SENATE

03/03/10 0790s

2010 SESSION

10-2838
04/03

SENATE BILL **471-FN**

AN ACT relative to felonious sexual assault and sexual assault.

SPONSORS: Sen. DeVries, Dist 18

COMMITTEE: Judiciary

ANALYSIS

This bill adds a circumstance under which a person may be charged with felonious sexual assault and sexual assault.

This bill was requested by the attorney general.

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.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Ten

AN ACT relative to felonious sexual assault and sexual assault.

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

1 Felonious Sexual Assault. Amend RSA 632-A:3, IV to read as follows:

2 IV.(a) Engages in sexual contact with the person, ***or causes the person to engage in***
3 ***sexual contact on himself or herself in the presence of the actor***, when the actor is in a position
4 of authority over the person and uses that authority to coerce the victim to submit under any of the
5 following circumstances:

6 [(a)] (1) When the actor has direct supervisory or disciplinary authority over the victim
7 by virtue of the victim being incarcerated in a correctional institution, the secure psychiatric unit, or
8 juvenile detention facility where the actor is employed; or

9 [(b)] (2) When the actor is a probation or parole officer or a juvenile probation and parole
10 officer who has direct supervisory or disciplinary authority over the victim while the victim is on
11 parole or probation or under juvenile probation.

12 (b) Consent of the victim under any of the circumstances set forth in *this* paragraph [IV]
13 shall not be considered a defense.

14 (c) *For the purpose of this paragraph, "sexual contact" means the intentional*
15 ***touching of the person's sexual or intimate parts, including genitalia, anus, breasts, and***
16 ***buttocks, where such contact, or the causing of such contact, can reasonably be construed***
17 ***as being for the purpose of sexual arousal or gratification of the person in the position of***
18 ***authority, or the humiliation of the person being touched.***

19 2 Sexual Assault. Amend RSA 632-A:4, III to read as follows:

20 III.(a) A person is guilty of a misdemeanor if such person engages in sexual contact or
21 sexual penetration with another person, ***or causes the person to engage in sexual contact on***
22 ***himself or herself in the presence of the actor***, when the actor is in a position of authority over
23 the person under any of the following circumstances:

24 [(a)] (1) When the actor has direct supervisory or disciplinary authority over the victim
25 by virtue of the victim being incarcerated in a correctional institution, the secure psychiatric unit, or
26 juvenile detention facility where the actor is employed; or

27 [(b)] (2) When the actor is a probation or parole officer or a juvenile probation and parole
28 officer who has direct supervisory or disciplinary authority over the victim while the victim is on
29 parole or probation or under juvenile probation.

30 (b) Consent of the victim under any of the circumstances set forth in *this* paragraph

1 [H] shall not be considered a defense.

2 (c) *For the purpose of this paragraph, "sexual contact" means the intentional*
3 *touching of the person's sexual or intimate parts, including genitalia, anus, breasts, and*
4 *buttocks, where such contact, or the causing of such contact, can reasonably be construed*
5 *as being for the purpose of sexual arousal or gratification of the person in the position of*
6 *authority, or the humiliation of the person being touched.*

7 3 Effective Date. This act shall take effect January 1, 2011.

LBAO
10-2838
01/04/10

SB 471-FN - FISCAL NOTE

AN ACT relative to felonious sexual assault and sexual assault.

FISCAL IMPACT:

The Judicial Branch, Judicial Council, Department of Corrections and New Hampshire Association of Counties state this bill may increase state and county expenditures by an indeterminable amount in FY 2011 and each year thereafter. There will be no fiscal impact on local expenditures or state, county and local revenue.

METHODOLOGY:

The Judicial Branch states this bill will add to both the felonious sexual assault statute and sexual assault statute, the circumstance of one causing a person to engage in sexual contact on himself or herself in the presence of the actor where the actor is in the position of authority over the person. If felonious sexual assault, this added circumstance is a class B felony and if sexual assault, this added circumstance is an unspecified misdemeanor. Misdemeanor charges can be either a class A or class B with the presumption they will be class B in accordance with RSA 625:9,IV. However, the Branch has no information to estimate how many new misdemeanors or felonies would be brought as a result of this bill nor if the misdemeanors would be class A or class B misdemeanors. The Branch states the cost of a class A misdemeanor case is \$51.14 and the cost of a class B misdemeanor case is \$36.89 in FY 2011 and each year thereafter. The cost of a complex felony offense, which is how a class B felony offense for violation of the felonious sexual assault statute would be classified, is \$661.17 in FY 2011 and each year thereafter. The possibility of appeals increases the likelihood the fiscal impact on the Branch will exceed \$10,000.

The Judicial Council states this bill may result in an indeterminable increase in general fund expenditures. The Council states if the misdemeanor offense results in a right counsel, there will be increased expenditures. The Council states if an individual is found to be indigent, the flat fee of \$275 per misdemeanor or \$2,282.50 for the felony charge of felonious sexual assault is charged by a public defender or contract attorney. If an assigned counsel attorney is used the fee is \$60 per hour with a cap of \$1,400 for a misdemeanor charge and \$4,100 for a felony charge. The Council also states additional costs could be incurred if an appeal is filed. The public defender, contract attorney and assigned counsel rates for Supreme Court appeals is \$2,000 per case, with many assigned counsel attorneys seeking permission to exceed the fee

cap. Requests to exceed the fee cap are seldom granted. Finally, expenditures would increase if services other than counsel are requested and approved by the court during the defense of a case or during an appeal.

The Department of Corrections states this bill may increase expenditures by an indeterminable amount, but is unable to predict the number of individuals that might be impacted. The Department states the average annual cost of incarcerating an individual in the general prison population for the fiscal year ending June 30, 2009 was \$33,110. The cost to supervise an individual by the Department's division of field services for the fiscal year ending June 30, 2009 was \$744.

The New Hampshire Association of Counties states to the extent this bill results in an increase in the number of individuals prosecuted, convicted, and sentenced to incarceration, the counties may have increased expenditures. The Association is unable to determine the number of individuals who might be detained, prosecuted or incarcerated as a result of this bill. The average cost to incarcerate an individual in a county facility is \$35,342 a year.

The Department of Justice states an individual charged with this offense would typically be a public official and the Department's public integrity unit would handle the prosecution. The Department estimates this bill would result in less than three prosecutions a year and any fiscal impact could be absorbed by the Department.

CHAPTER 223
SB 471-FN - FINAL VERSION

03/03/10 0790s

2010 SESSION

10-2838
04/03

SENATE BILL ***471-FN***

AN ACT relative to felonious sexual assault and sexual assault.

SPONSORS: Sen. DeVries, Dist 18

COMMITTEE: Judiciary

ANALYSIS

This bill adds a circumstance under which a person may be charged with felonious sexual assault and sexual assault.

This bill was requested by the attorney general.

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.

CHAPTER 223
SB 471-FN - FINAL VERSION

03/03/10 0790s

10-2838
04/03

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Ten

AN ACT relative to felonious sexual assault and sexual assault.

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

1 223:1 Felonious Sexual Assault. Amend RSA 632-A:3, IV to read as follows:

2 IV.(a) Engages in sexual contact with the person, ***or causes the person to engage in***
3 ***sexual contact on himself or herself in the presence of the actor***, when the actor is in a position
4 of authority over the person and uses that authority to coerce the victim to submit under any of the
5 following circumstances:

6 [(a)] (1) When the actor has direct supervisory or disciplinary authority over the victim
7 by virtue of the victim being incarcerated in a correctional institution, the secure psychiatric unit, or
8 juvenile detention facility where the actor is employed; or

9 [(b)] (2) When the actor is a probation or parole officer or a juvenile probation and parole
10 officer who has direct supervisory or disciplinary authority over the victim while the victim is on
11 parole or probation or under juvenile probation.

12 (b) Consent of the victim under any of the circumstances set forth in ***this*** paragraph [IV]
13 shall not be considered a defense.

14 (c) ***For the purpose of this paragraph, "sexual contact" means the intentional***
15 ***touching of the person's sexual or intimate parts, including genitalia, anus, breasts, and***
16 ***buttocks, where such contact, or the causing of such contact, can reasonably be construed***
17 ***as being for the purpose of sexual arousal or gratification of the person in the position of***
18 ***authority, or the humiliation of the person being touched.***

19 223:2 Sexual Assault. Amend RSA 632-A:4, III to read as follows:

20 III.(a) A person is guilty of a misdemeanor if such person engages in sexual contact or
21 sexual penetration with another person, ***or causes the person to engage in sexual contact on***
22 ***himself or herself in the presence of the actor***, when the actor is in a position of authority over
23 the person under any of the following circumstances:

24 [(a)] (1) When the actor has direct supervisory or disciplinary authority over the victim
25 by virtue of the victim being incarcerated in a correctional institution, the secure psychiatric unit, or
26 juvenile detention facility where the actor is employed; or

27 [(b)] (2) When the actor is a probation or parole officer or a juvenile probation and parole
28 officer who has direct supervisory or disciplinary authority over the victim while the victim is on
29 parole or probation or under juvenile probation.

CHAPTER 223
SB 471-FN- FINAL VERSION

- Page 2 -

1 (b) Consent of the victim under any of the circumstances set forth in *this* paragraph
2 [H] shall not be considered a defense.

3 (c) *For the purpose of this paragraph, "sexual contact" means the intentional*
4 *touching of the person's sexual or intimate parts, including genitalia, anus, breasts, and*
5 *buttocks, where such contact, or the causing of such contact, can reasonably be construed*
6 *as being for the purpose of sexual arousal or gratification of the person in the position of*
7 *authority, or the humiliation of the person being touched.*

8 223:3 Effective Date. This act shall take effect January 1, 2011.

9

10 Approved: June 28, 2010

11 Effective Date: January 1, 2011

Amendments



Senate Judiciary
February 17, 2010
2010-0790s
04/05

Amendment to SB 471-FN

1 Amend RSA 632-A:3, IV(c) as inserted by section 1 of the bill by replacing it with the following:

2

3 *(c) For the purpose of this paragraph, "sexual contact" means the intentional*
4 *touching of the person's sexual or intimate parts, including genitalia, anus, breasts, and*
5 *buttocks, where such contact, or the causing of such contact, can reasonably be construed*
6 *as being for the purpose of sexual arousal or gratification of the person in the position of*
7 *authority, or the humiliation of the person being touched.*

8

9 Amend RSA 632-A:4, III(c) as inserted by section 2 of the bill by replacing it with the following:

10

11 *(c) For the purpose of this paragraph, "sexual contact" means the intentional*
12 *touching of the person's sexual or intimate parts, including genitalia, anus, breasts, and*
13 *buttocks, where such contact, or the causing of such contact, can reasonably be construed*
14 *as being for the purpose of sexual arousal or gratification of the person in the position of*
15 *authority, or the humiliation of the person being touched.*

Committee Minutes

AMENDED
SENATE CALENDAR NOTICE
JUDICIARY

Printed: 02/03/2010 at 8:49 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: February 3, 2010

HEARINGS

Tuesday

2/9/2010

JUDICIARY

SH 103

2:00 PM

(Name of Committee)

(Place)

(Time)

EXECUTIVE SESSION MAY FOLLOW

Comments: THE PURPOSE OF THIS AMENDED NOTICE IS TO RECONVENE THE HEARING ON
CACR 32 WHICH WAS RECESSED ON 2/2/10

- | | | |
|---------|----------|---|
| 2:00 PM | SB353-FN | relative to the procedure for administration of insolvent estates. |
| 2:15 PM | SB471-FN | relative to felonious sexual assault and sexual assault. |
| 2:30 PM | CACR33 | relating to the governor's power to reduce appropriations. Providing that the governor shall have line item reduction power of items in any bill making appropriations of money. |
| 3:00 PM | CACR34 | relating to funding of public education. Providing that the general court shall define an adequate education and distribute state funds for public education in a manner that alleviates local disparities. |
| 3:15 PM | CACR32 | relating to clarification of certain language. Providing that all references to people in the constitution shall refer to both male and female. |

Sponsors:

SB353-FN

Sen. Deborah Reynolds

SB471-FN

Sen. Betsi DeVries

CACR33

Sen. Peter Bragdon

CACR34

Sen. Peter Bragdon

Sen. John Gallus

CACR32

Sen. Kathleen Sgambati

Sen. John Gallus

Sen. Harold Janeway

Sen. Amanda Merrill

Rep. Candace Bouchard

Sen. John Barnes, Jr.

Sen. Robert Letourneau

Sen. Lou D'Allesandro

Sen. Peggy Gilmour

Sen. Molly Kelly

Sen. Deborah Reynolds

Rep. Michael Rollo

Sen. Jeb Bradley

Sen. Bob Odell

Sen. Betsi DeVries

Sen. Margaret Hassan

Sen. Sylvia Larsen

Rep. Edward Butler

Rep. Andrew White

Sen. Michael Downing

Sen. Sheila Roberge

Sen. Martha Fuller Clark

Sen. Matthew Houde

Sen. Bette Lasky

Rep. Beth Arsenaault

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 **SB 471-FN – AN ACT relative to felonious sexual assault and sexual assault.**

HEARING DATE: February 9, 2010

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

MEMBERS OF THE COMMITTEE ABSENT: No one

Sponsor(s): Senator DeVries

What the bill does: This bill adds a circumstance under which a person may be charged with felonious sexual assault and sexual assault and was requested by the Attorney General.

Who supports the bill: Senator DeVries; Dr. Robert McLeod; Attorney Ann Rice of the Department of Justice

Who opposes the bill: Attorney Catherine Cooper representing the NH Association of Defense Lawyers

Summary of testimony received:

- Senator Houde introduced the legislation on behalf of Senator DeVries who was tied up in another committee hearing and unable to be present.
- Attorney Rice testified in support and explained that there have been a couple of situations that occurred and for which the legislation was brought forward.
- She said that female inmates have been coerced into engaging in sexual acts in the presence of corrections officers. Unfortunately they were not able to prosecute – thus this legislation.
- She explained that a corrections officer is a person who is in a position of authority over an inmate and that they should not be able to use their position in such a manner.
- She explained that under the proposed legislation, it would be a misdemeanor offense if the person were not coerced and a Class B felony if the individual were coerced.

- She said that they realized that they left out language explaining that the purpose of the sexual act is for gratification or arousal. She said that this is important and needs to be added.
- She will get exact language for consideration to the Committee members.
- She said that this has been an experience in both county and state correctional facilities. While they do not expect to see many cases brought forward, having the language on the books does serve as a deterrent.
- Senator Houde asked if the standard here would make it harder to prove. Attorney Rice agreed that she was concerned that there would be objections if that component were not included. He followed up by asking if the act were for purposes of degrading the individual, or would that be too limiting. Attorney Rice responded by saying that it is hard to imagine that someone would defend for that purpose.
- Attorney Catherine Cooper appeared in opposition and said that they have problems with the new language. She noted on lines 12 and 19, the word "causes" and asked if a threat or a course of action and felt that this is extremely vague. She said that criminal statutes do need to have specific language.
- She also noted that putting this into the assault statute is troubling. She said that the conduct here is not about touching, but acting on one's self.
- The other issue she was concerned about was the lack of mental state (sexual arousal or gratification) and agreed that it is a necessary part.
- On line 14, starting with "notwithstanding . . ." she said that this is very confusing. She felt that there needs to be some explanation or further definition to state how the language is incorporated to the facts of a specific case.
- Senator Lasky, following up on the assault placement, asked if a person is in a position of authority, and causes them to engage in this conduct. Attorney Cooper explained that we're talking about how an assault is defined – and that perhaps a different placement in statute would make more sense.
- Senator Reynolds commented on the actor being a person and the unprivileged touching of someone else and how this would or would not play in.

Fiscal Impact: See Fiscal Note

Future Action: The Committee took the bill under advisement. When having a general discussion in executive session, they wondered whether placement in another section would make more sense.

sfd

[file: SB 471-FN]

Date: February 10, 2010

JHB

Date: February 9, 2010
Time: 2:45 p.m.
Room: State House Room 103

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

SB 471-FN relative to felonious sexual assault and sexual assault.

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

The Chair, Senator Deborah R. Reynolds, opened the hearing on SB 471-FN and invited Senator Houde to introduce the legislation.

Senator Matthew Houde, D. 5: Thank you very much, Madam Chair, members of the Committee. For the record, Matthew Houde, Senate District 5. As the Chair indicated, the prime sponsor is not available and asked me to introduce the bill, which I am here to do.

So, SB 471, an act relative to felonious sexual assault and sexual assault. I understand that this bill came in at the request of the Attorney General's Office, so I assume that someone from that Department is here and will speak to the bill.

Senator Deborah R. Reynolds, D. 2: Thank you very much. Any questions of Senator Houde? Seeing none, thank you for introducing the bill.

Senator Matthew Houde, D. 5: You're welcome.

Senator Deborah R. Reynolds, D. 2: I want to note that Dr. Robert MacLeod, who is one of my constituents, welcome, is signed in in favor of the bill, does not wish to speak. I would like to call Ann Rice from the Attorney General's Office.

Assistant Attorney General Ann Rice: Thank you very much. Good afternoon, Madam Chair and members of the Committee. My name is Ann

FHB

Rice; I appear on behalf of the Attorney General in support of this bill. Thank you, Senator Houde for introducing the bill. I did approach Senator DeVries and asked her to sponsor this bill for us.

We have been apprised of a couple of situations – one in a county facility and several in the secure psychiatric unit of the prison. We have had reports of female inmates who have been coerced into engaging in masturbation in the presence of a correctional officer and this has happened on a number of occasions. On each occasion, we have investigated and the reports appear to be credible, but under our current law, there is no way to charge that as a criminal offense. So, what we are proposing to do is to amend our felonious sexual assault and sexual assault statutes to include this kind of a circumstance. I will walk you through what we have here.

Under current law, it is a Class B felony, felonious sexual assault, for a person in a position of authority, someone who is a correctional officer, probation parole officer, someone who has that kind of authority over someone, to use his or her authority to coerce an inmate, a probationer or a parolee to engage in sexual contact. It is also under current law a misdemeanor for a person in that kind of a position of authority to engage in either sexual contact or penetration, regardless of whether the victim is coerced or not. The misdemeanor offense says simply the fact that you are in this position of authority and we hold you to a high standard of conduct in this. If you engage in sexual relations with someone under your supervision, that is an offense.

What SB 471 would do is to expand those offenses to include circumstances where the person in the position of authority caused the inmate or supervisee to engage in sexual contact with him or herself in the person's presence. So, it would be an inmate engaging in sexual contact on his or herself while in the presence of someone in the position of authority. It would be a misdemeanor if there was no evidence of coercion; if there was evidence of coercion, it would be a Class B felony. So, this is just fitting one more circumstance into current law.

We have also, for purposes of this bill, proposed to narrow the definition of sexual contact somewhat. Under the current law, sexual contact includes both direct skin to skin touching and touching outside the clothes or with objects. So, what we would propose here is to remove the provision that talks about not...to take out the phrase that says through the clothes. So, this would mean actual contact with someone, actual contact with someone's own sexual parts.

JLB

In looking at this bill, I realize that we left out one part of the sexual contact definition that I think is important. Under the current definition of sexual contact, it requires that there be a purpose for sexual gratification or arousal and I think that that still needs to be in the sexual contact definition. So, what I would propose is to say that the conduct is done for the purpose of sexual gratification or sexual arousal on the part of the person in authority, in the position of authority. So, if an inmate is forced to engage in sexual contact on him or herself, it doesn't mean that we have to show that they are doing it for sexual arousal, but it would be for the person who is in the position of authority and it would be sexual arousal for that. I'm happy to provide Susan with the language to put that in there.

So, that's the bill. Very basic. It just expands the circumstances a little bit to include these situations that we have become aware that are happening in both the county and state corrections facilities. I don't expect that we will see many prosecutions as a result of this legislation, and when we do, I've got to tell you, these cases are extremely difficult to prove. But, I think that these kinds of pieces of legislation stand as very strong deterrence for this kind of conduct which is absolutely unacceptable in a place like the Department of Corrections or the county corrections facilities.

I'm happy to take any questions.

Senator Bette R. Lasky, D. 13: Thank you. Senator Houde?

Senator Matthew Houde, D. 5: Thank you, Madam Chair. Thank you, Attorney Rice, for taking my question. The additional language that you are suggesting adding making it for purposes of...

Attorney Rice: Sexual arousal.

Senator Matthew Houde, D. 5: Does that not make it even harder to prove?

Attorney Rice: Well, it does make it harder to prove, but I also don't want to get into a situation where somehow an inmate is engaging in touching his or herself and someone says that they were being told to do that for medical reasons or something. It seems rather obvious that it would be for sexual arousal, but I was concerned that there may be objection to this because we didn't have that sexual arousal component there.

Senator Matthew Houde, D. 5: Follow up? I guess my concern, would you believe, has to do with the fact that we have heard degradation purposes, reasons why someone presumably would be doing this for other than sexual gratification? So, it is limiting.

Attorney Rice: I agree. I understand that. Actually, we talked about that exact circumstance and we could include that in there. We find it hard to imagine that someone would say, yes, I did this, but I did it to degrade the inmate, and not to do it for my own sexual gratification. So, just thinking, as a prosecutor, it is very hard to imagine that someone would actually defend on that purpose. But, I agree with you. I think that it may be for degradation as well and we could include that in some way. I would have to think about the language for that. But, I appreciate the thinking about that. Thank you.

Senator Bette R. Lasky, D. 13: Any other questions? Thank you.

Attorney Rice: Thank you.

Senator Deborah R. Reynolds, D. 2: And, the last person we have signed in to speak relative to the bill is Attorney Katherine Cooper from the New Hampshire Association of Defense Lawyers. Welcome, Attorney Cooper.

Attorney Katherine Cooper: Good afternoon. Thank you, Senator Reynolds. Good afternoon, members of the Committee.

This is an interesting bill to be taking a position on, partly because the overall reason for it is clearly protection of the people who generally are our clients. However, when accusations like this are made, you end up on the opposite side and that is defending the people who are accused of this conduct. There are several problems with the way this new language is structured, which makes it extremely difficult to try and make out a defense.

To begin with, using the word "causes", which appears in line 2 and line 19 as the defining terminology for what creates the sort of act. Any time you have a crime, you need an act and an intent. And, causes seems to be what is defining the act here for purposes of making this a crime. What is causes? That could certainly be a threat or coercive action; however, it is used in both the misdemeanor and the felony portions of the statute. If it is a threat, you could certainly charge under the criminal threatening statute. If it is other types of conduct, this is extremely vague and criminal statutes do need to have a certain level of specificity to them to provide notice to people of what they can and cannot do and also to provide the ability for a person to defend him or herself.

In addition, putting this in an assault statute is troubling because assault, as its basic common law definition implies, a forceful or touching that is not wanted by the recipient. This is not talking about any kind of an assault by

JLB

another person. It is touching of one's own self. So, that is troubling from just a basic common law definition of assault standpoint and it also is troubling in terms of the fact that crimes need to differentiate between different types of conduct and different types of harm. It certainly is more invasive and more hurtful for another person to assault you or touch you or harm you than to do that to yourself. But, this statute essentially lumps that all in together in creating felony and misdemeanor conduct on the same level.

The other issue here is one that Attorney Rice already brought up, which is the lack of the mental state for purposes of sexual arousal or gratification, which appears in the current definition of sexual contact. We would agree that that is a necessary part to distinguish this kind of contact from other contact that could be innocent and should not be criminalized in any way. And, the way that this is set out stating it, notwithstanding RSA 632-A:1, IV is frankly confusing because the language is very similar, but not quite the same and just reading it, it is difficult to say exactly why or how the two definitions are different. So, there should be some explanation or some further crafting of that language to make it possible to understand as a defendant, or even as a prosecutor or a police officer when making a charging decision how that language is supposed to be incorporated to the facts of a specific case.

I don't think I have anything further unless there's any questions.

Senator Deborah R. Reynolds, D. 2: Thank you very much. Senator Lasky?

Senator Bette R. Lasky, D. 13: Thank you, Madam Chair. Good afternoon. You were talking about whether this was a form of assault and you thought not. In my mind, if a person is in a position of authority and causes someone else to engage in this causes (which may not be the right word) to engage in this conduct, isn't that a form of assault? In my mind, I see it as a form of assault.

Attorney Cooper: Well, what I'm talking about is differentiating between assault and other forms of criminal conduct. I'm certainly not saying that this is okay type of conduct.

Senator Bette R. Lasky, D. 13: I was not implying that.

Attorney Cooper: Okay. But, I think that there are potential problems because of the way assault is defined throughout the centuries as an unconsented to touching by another. So, it may be that this type of conduct could be restricted, but more appropriately in another area of the statute. Harassment or threatening or another place that is not specifically an

assault. What we're talking about here is actually the absence of physical contact.

Senator Deborah R. Reynolds, D. 2: I think what you're really saying, though, is that the actor who is committing the unprivileged conduct contacted the person himself. Right?

Attorney Cooper: Right.

Senator Deborah R. Reynolds, D. 2: So, in statutory definitions, assault is the nonprivileged touching of someone else.

Attorney Cooper: Right.

Senator Deborah R. Reynolds, D. 2: Any further questions? Thank you very much.

Attorney Cooper: Thank you.

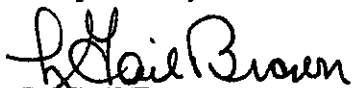
Senator Deborah R. Reynolds, D. 2: Thank you for your testimony. Is there anyone else here?

Senator Robert J. Letourneau, D. 19: Madam Chairman, I just was over at ED&A. Senator DeVries said that, if you have any concerns with this bill, she would be glad to work it out.

Senator Deborah R. Reynolds, D. 2: Thank you very much for noting that for the record. Is there anyone else to testify relative to SB 471? Seeing none, I am going to close the hearing on SB 471.

Hearing concluded at 2:45 p.m.

Respectfully submitted,



L. Gail Brown
Senate Secretarial Supervisor
5/11/10

Speakers

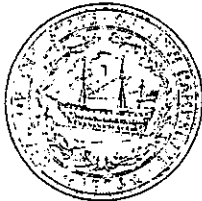
Testimony

ATTORNEY GENERAL
DEPARTMENT OF JUSTICE

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

THAEL A. DELANEY

ATTORNEY GENERAL



ORVILLE B. "BUD" FITCH II
DEPUTY ATTORNEY GENERAL

Submission A

February 10, 2010

Senator Deborah Reynolds, Chair
Senate Judiciary Committee
State House Room 302
Concord, NH 03301

RE: Senate Bill 471; An Act Relative to Felonious Sexual Assault and Sexual Assault

Dear Senator Reynolds:

During my testimony at the hearing on Senate Bill 471, I offered to provide a suggested revision to the definition of sexual contact set forth in that bill. My proposal is as follows: Replace the language in lines 14 through 16 on page one and lines 1 -3 on page 2 with the following language: "(c) For purposes of this paragraph "sexual contact" means the intentional touching of the person's sexual or intimate parts, including genitalia, anus, breasts, and buttocks, where such contact, or the causing of such contact, can reasonably be construed as being for the purpose of sexual arousal or gratification of the person in the position of authority, or the humiliation of the person being touched."

I would also like to respond to some concerns raised during the public hearing by Attorney Catherine Cooper. As you may recall, SB 471 deals with sexual assaults committed by individuals in positions of authority, such as correctional officers, probation or parole officers, and juvenile probation officers. It would make it a crime for anyone in such a position to use that position to coerce or cause another person under his or her authority to touch him/herself in a sexual manner.

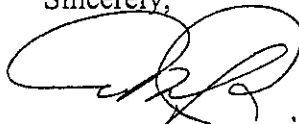
Attorney Cooper voiced two concerns about the bill. First, she testified that the word "causes" in the phrase "causes the person to engage in sexual assault on himself or herself" is too vague because it does not define the specific conduct in which the actor has to engage. The word "cause" is used in a variety of criminal statutes where the purpose of the statute is to prevent someone from engaging in conduct that would lead to a particular result. For example, RSA 631:1-a, makes it an offense to "purposely cause[] the death of another"; RSA 631:1-b makes it an offense to "knowingly cause the death of another"; RSA 631:1 makes it an offense to "purposely cause[] serious bodily injury to another"; RSA 631:8 makes it an offense to

"knowingly or recklessly cause[] serious bodily injury to an elderly, disabled, or impaired adult by neglect"; RSA 634:1 makes it an offense to "cause[] an explosion which unlawfully damages the property of another"; 641:5 makes it an offense to "cause a person to testify or inform falsely"; and RSA 644:8, III-a makes it an offense to "cause any animal to be beaten, cruelly whipped, tortured, or mutilated." Like the proposed language of SB 471, none of these statutes describes the specific conduct that a person has to refrain from. Instead, they criminalize *any* conduct that leads to the prohibited result.

Attorney Cooper also testified that the offenses described in SB 471 are not assaults as that term is commonly understood, because there is no improper physical contact between two people. She suggested that they be incorporated in the criminal threatening statute. While I agree that some understand the word "assault" to connote physical contact of some form, it is the legislature that defines criminal offenses. In fact, the legislature has already defined sexual penetration to include "any act which forces, coerces, or intimidates the victim to perform any sexual penetration . . . on himself." See RSA 632-A:1, V(a)(7). Thus, the sexual assault statutes already criminalize conduct that does not necessarily involve physical contact. SB 471 criminalizes acts that are different only by a matter of degrees. It is a logical extension of the current sexual assault statutes, which address situations of improper sexual conduct involving two individuals.

Thank you for your consideration of SB 471. I hope you and your fellow committee members will vote to pass this piece of legislation and add another layer of protection against sexual abuse in our correctional facilities. If you or other members of your committee have questions or concerns, I would be glad to meet with you.

Sincerely,



Ann M. Rice
Associate Attorney General
Criminal Justice Bureau
(603) 271-3671

cc: Senator Lasky
Senator Letourneau
Senator Roberge
Senator Houde
Senator DeVries ✓
Attorney Catherine Cooper

Voting Sheets

Senate Judiciary Committee

EXECUTIVE SESSION

Bill # SB 471-FN

Hearing date: 2/9/10

Executive session date: 2/16/10

Motion of: amendment

VOTE: 5-0

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: OTPA

VOTE: 5-0

Made by Reynolds
Senator: Lasky
 Houde
 Letourneau
 Roberge

Seconded Reynolds
by Senator: Lasky
 Houde
 Letourneau
 Roberge

Reported Reynolds
by Senator: Lasky
 Houde
 Letourneau
 Roberge

<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 checked="" 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: February 17, 2010

THE COMMITTEE ON Judiciary
to which was referred Senate Bill 471-FN

AN ACT relative to felonious sexual assault and sexual assault.

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

OUGHT TO PASS WITH AMENDMENT

BY A VOTE OF: 5-0

AMENDMENT # 0790s

Senator Bette R. Lasky
For the Committee

L. Gail Brown 271-3076

New Hampshire General Court - Bill Status System

Docket of SB471

Docket Abbreviations

Bill Title: relative to felonious sexual assault and sexual assault.*Official Docket of SB471:*

Date	Body	Description
01/14/2010	S	Introduced and Referred to Judiciary; SJ 2 , Pg.30
01/28/2010	S	Hearing: February 9, 2010, Room 103, State House, 2:15 p.m.; SC5
02/17/2010	S	Committee Report: Ought to Pass with Amendment 0790s, 3/3/10; SC913 , Pg.12
03/03/2010	S	Committee Amendment 0790s, AA, VV; SJ 8 , Pg.111
03/03/2010	S	Ought to Pass with Amendment 0790s, MA, VV; OT3rdg; SJ 8 , Pg.111
03/03/2010	S	Passed by Third Reading Resolution; SJ 8 , Pg. 117
03/11/2010	H	Introduced and Referred to Judiciary; HJ 25 , PG.1297
03/17/2010	H	Vacated from Judiciary and Referred to Criminal Justice and Public Safety; HJ 26 , PG.1366
03/23/2010	H	Public Hearing: 3/30/2010 11:00 AM LOB 204
03/31/2010	H	Executive Session: 4/8/2010 10:00 AM LOB 204
04/08/2010	H	Committee Report: Ought to Pass for April 21 (Vote 18-0; CC); HC 31 , PG.1525
04/21/2010	H	Ought to Pass: MA VV; HJ 35 , PG.1656
05/05/2010	H	Enrolled; HJ 38 , PG.1914
05/05/2010	S	Enrolled
06/28/2010	S	Signed by the Governor on 06/28/2010; Effective 01/01/2010; Chapter 0223

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

SB 471 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 # 0290 _____ - 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: A

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

7/12/10

J. Hail Brown
COMMITTEE SECRETARY