

Bill as Introduced

HB 572-FN - AS INTRODUCED

2011 SESSION

11-0392
04/09

HOUSE BILL **572-FN**

AN ACT relative to official oppression.

SPONSORS: Rep. Itse, Rock 9; Rep. Ingretson, Graf 5; Rep. D. McGuire, Merr 8;
Sen. Barnes, Jr., Dist 17

COMMITTEE: Criminal Justice and Public Safety

ANALYSIS

This bill revises the offense of official oppression by making it either a class B misdemeanor or a violation, depending on whether a public servant acted with a purpose to benefit oneself or another or to harm another.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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

AN ACT relative to official oppression.

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

1 1 Official Oppression. Amend RSA 643:1 to read as follows:

2 643:1 Official Oppression.

3 I. A public servant, as defined in RSA 640:2, II, is guilty of a **class B** misdemeanor if, with a
4 purpose to benefit ~~himself~~ **oneself** or another or to harm another, he **or she** knowingly commits an
5 unauthorized act which purports to be an act of his **or her** office; or knowingly refrains from
6 performing a duty imposed on him **or her** by law or clearly inherent in the nature of his **or her**
7 office.

8 II. *A public servant, as defined in RSA 640:2, II, is guilty of a violation if, without a*
9 *purpose to benefit oneself or another or to harm another, he or she knowingly commits an*
10 *unauthorized act which purports to be an act of his or her office; or knowingly refrains*
11 *from performing a duty imposed upon him or her by law or clearly inherent in the nature*
12 *of his or her office.*

13 2 Effective Date. This act shall take effect January 1, 2012.

LBAO
11-0392
01/04/11

HB 572-FN - FISCAL NOTE

AN ACT relative to official oppression.

FISCAL IMPACT:

The Judicial Branch states this bill may increase state expenditures by an indeterminable amount in FY 2012 and each year thereafter. The New Hampshire Association of Counties states this bill may decrease county expenditures in FY 2012 and each year thereafter. There is no fiscal impact on local expenditures or state, county and local revenue.

METHODOLOGY:

The Judicial Branch states this bill amends RSA 643:1, the offense of official oppression, to change the current offense from an unspecified misdemeanor to a class B misdemeanor. It also adds a new violation level offense for a public servant who knowingly commits an unauthorized act or refrains from performing a duty imposed on him or her, where the action or inaction is without purpose to benefit or harm anyone. The Branch states the change of the offense from an unspecified misdemeanor to a class B misdemeanor will have no fiscal impact on the Branch. The Branch states this bill could result in an increase in costs to the Branch by adding the violation offense. The Branch has no information to estimate how many cases will be brought but a review of FY 2005 through FY 2010 shows only 12 charges of official oppression have been brought to the district courts, therefore the Branch estimates this bill to have little fiscal impact. The Branch states a violation level offense is estimated to cost \$42.27 per case in FY 2012 and \$43.02 per case in FY 2013 and each year thereafter.

The New Hampshire Association of Counties states to the extent less individuals are incarcerated in county facilities; county expenditures may decrease by an indeterminable amount. The average annual cost to incarcerate an individual in a county correctional facility is approximately \$35,000.

The Judicial Council states the class B misdemeanor and the violation carry no right to counsel because there is no potential loss of liberty. As a result there is no fiscal impact on indigent defense expenditures.

Speakers

Hearing Minutes

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

PUBLIC HEARING ON HB 572-FN

BILL TITLE: relative to official oppression.

DATE: February 17, 2011

LOB ROOM: 204 **Time Public Hearing Called to Order:** 1:40 p.m.

Time Adjourned: 2:00 p.m.

(please circle if present)

Committee Members: Reps. Swinford, Gagne, Welch, Fields, Fesh, Charron, Villeneuve, Antosz, Greazzo, Kreis, Parsons, Tasker, Warden, Pantelakos, Berube, Shurtleff and Ginsburg.

Bill Sponsors: Rep. Itse, Rock 9; Rep. Ingbretson, Graf 5; Rep. D. McGuire, Merr 8; Sen. Barnes, Jr., Dist 17

TESTIMONY

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

Rep. Daniel Itse, Sponsor, Rockingham, Dist. 9, Epping, Fremont. Supports. We had this bill last year passed but died in Senate. Cited examples in his district. Many decisions are arbitrary depending on who you are dealing with.

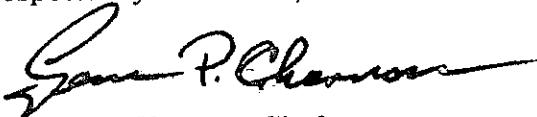
Ann Rice, AG's Office – Opposed. Paragraph I now unclassified but now Class B. It leaves no leeway for the court to decide. Leave unclassified misdemeanor.

Michael Williams, NH Municipal Association – no written testimony.

***Assistant Commissioner Earl Sweeney, Department of Safety** – written testimony provided.

Attorney John Williams, DHHS – agreed with Earl Sweeney.

Respectfully submitted,



Rep. Gene Charron, Clerk

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

PUBLIC HEARING ON HB 572-FN

BILL TITLE: relative to official oppression.

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TESTIMONY

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

2-17-11

HB-572 FN

OFFICIAL OPPRESSION

①

1:40

Rep ITSE: Sponsor RICK-DISI -9 EPPING-FREEDOT.

support

We had this Bill last year passed but died in Senate. Cited examples in his district. Many decisions are arbitrary, depending on who you are dealing with -

②

1:45

Att. General's office ^(Ann Rice) opposed Paragraph I now - unclassified but now Class B it leaves no leeway for the Court. It needs to be unclassified ~~misdeemeanor~~

opposed

③

1:50

MICHAEL WILLIAMS. NH MUNICIPAL ASSN, no written Testimony =

④

1:51

ASSY Comm. Earl Sweeney Dept of Safety. Written Testimony Provided -

5 2:00

Attorney John Williams DHHS. - agreed w/ Earl Sweeney -

Closed - 2:00 P.M.

Testimony

Department of Safety Comments on HB_572-FN ___ SB ___ as Introduced (x) as amended()

[This bill redefines official oppression to make it either a Class B misdemeanor or a Violation depending on whether a public servant acts to benefit him or herself or harm another.]

This bill does two things. First, it reduces the penalty for official oppression from a misdemeanor to a Class B misdemeanor. Second, it creates an additional category of official oppression which it makes a violation. Under present law a public servant commits official oppression with a purpose to benefit him or herself or a third party, he or she knowingly commits an unauthorized act which purports to be an official one, or knowingly refrains from performing a duty imposed on him or her by law or clearly inherent in the nature of the office he or she holds. This bill would create second category that constitutes official oppression even if the public servant had no purpose to benefit him or herself or to harm another.

We can understand the sponsors' desire to find a way to punish improper acts, but we believe this bill will create more problems than it hopes to solve.

Official oppression statutes came about years ago when the Model Penal Code was developed and began to be adopted by various states. The New Hampshire criminal laws were redefined nearly a half century ago and adopted this and many other portions of the Model Penal Code.

The purpose of official oppression statutes is to prevent and punish "**abuse of office**" or **abuse of official capacity**. It deals with **public corruption**. Typically, official oppression is charged when a public official deliberately misuses government property or services, or commits an official act under color of law. Police brutality would be an example, or a police officer pulling over a female driver and asking for sexual favors in return for not issuing a ticket, or engaging in a ticket fixing scandal. Another example would be abusing prisoners in a penal institution. We arrested one of our own officers this year for running a scam where he was issuing motor vehicle salvage inspection stickers for a dealer who was a friend of his without actually looking at the vehicles. A welfare official who conspired to remove an elderly person from their home and place them in a nursing home to benefit someone who stood to inherit the person's property would be another example, or a Liquor Commissioner who denied a license to a restaurant because it was going to go into competition with one of the Commissioner's friends, or a Supervisor of the Checklist who kept a qualified person from voting in a close election because he knew the person favored the other party.

Currently by making the offense an unclassified misdemeanor, the prosecutor has the option whether to charge the official with a Class A misdemeanor, which calls for a jail sentence of up to a year, or a Class B misdemeanor. HB 572-FN removes that discretion from the prosecutor and makes it strictly a Class B misdemeanor, for which no jail sentence is possible. It would be better to leave this discretion in the hands of the prosecutor because there are some cases of official oppression that are so egregious that the Judge should be able to impose a jail sentence.

The second part of the bill is more troubling. It removes the requirement that the official has to have an intention to benefit himself or harm someone else in order to be charged with official oppression and

makes a new violation-level offense for knowingly committing an unauthorized act or refraining from performing a duty of the office. Because people can sign violation level criminal complaints against other people, we believe this could lead to anyone who is unhappy with any discretionary act by a public servant, charging that public servant with official oppression and in today's litigious society we can see hundreds of frivolous court actions coming about just because someone is unhappy with a decision or action of a public official. Even if the complaint is a frivolous one, the courts will be tied up with hearing these cases and the public officials will have to appear in criminal court to defend themselves. Because the implications are so serious if they should be found guilty – it might destroy their careers and reputations – most will feel they have to hire an attorney to represent them. In some cases the cost of the attorney will come out of the official's pocket but in other cases the government agency that employs them will bear the cost, either out of taxpayer funds or through their liability insurance policies. In either case there will be a cost – to the State, which is self-insured, if it is a state official who is being charged, or to the town, city or county if it is a local official. The end result will be to make these liability insurance policies more costly and hard to obtain, thereby passing an unfunded mandate along to the local communities. The fiscal note to this bill should have an "L" on it to take into account that there will be a cost to the cities and towns, but this was apparently overlooked.

Because it will be so easy for people who are dissatisfied with any action of an official to bring these charges, many public officials will be hesitant to do their duty for fear of having frivolous criminal charges brought against them. If this bill passes, little old Sadie the Town Clerk can be charged if she rushes out of the office to attend her granddaughter's school play and knows she was supposed to post the Town Warrant on the bulletin board outside the Town Hall before she leaves but decides to wait until tomorrow. The police officer who tries to mediate a dispute between two neighbors and decides not to arrest to make an arrest even though he knows he could, and decides to try and settle the situation informally, could be charged by the one of the parties, even though his decision was not to improperly benefit himself of anyone else.

At the very least if this bill was to pass, we would suggest amending the *mens rea* or required criminal intent to the highest intent under the criminal code, "purposely" instead of merely "knowingly." However, we believe the bill will cause far more mischief than it will solve problems.

Voting Sheets

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

EXECUTIVE SESSION on HB 572-FN

BILL TITLE: relative to official oppression.

DATE: February 22, 2011

LOB ROOM: 204

Amendments:

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

Motions: OTP OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. Mark Warden

Seconded by Rep. Kyle J. Tasker

Vote: 9-5 (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote: (Please attach record of roll call vote.)

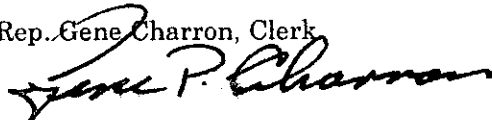
CONSENT CALENDAR VOTE: NO

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Gene Charron, Clerk



HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

EXECUTIVE SESSION on HB 572-FN

BILL TITLE: relative to official oppression.

DATE: 2-22-11

LOB ROOM: 204

Amendments:

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. *Ward*

Seconded by Rep. *Taska*

Vote: (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote: (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE:

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Gene Charron, Clerk

Gene P. Charron

*Regular
Calendar.*

CRIMINAL JUSTICE AND PUBLIC SAFETY

Bill #: HB572-FN Title: Relative to official oppression.

PH Date: 02/17/11

Exec Session Date: 2/22/2011

Motion: OTP.

Amendment #: _____

MEMBER	YEAS	NAYS
Swinford, Elaine B, Chairman		✓
Gagne, Larry G, V Chairman	✓	
Welch, David A	✓	
Fields, Dennis H	✓	
Fesh, Robert M	—	
Charron, Gene P	✓	
Villeneuve, Moe	✓	
Antosz, Jason P	✓	
Greazzo, Phil J	✓	
Kreis, Kenneth	✓	
Parsons, Robbie L	✓	✓
Tasker, Kyle J	—	—
Warden, Mark	✓	
Pantelakos, Laura C		✓
Berube, Roger R	—	—
Shurtleff, Stephen J		✓
Ginsburg, Philip E		✓
	9	5
TOTAL VOTE:		

Committee Report

REGULAR CALENDAR

March 2, 2011

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Committee on CRIMINAL JUSTICE AND PUBLIC SAFETY to which was referred HB572-FN,

AN ACT relative to official oppression. Having considered the same, report the same with the recommendation that the bill OUGHT TO PASS.

Rep. Mark Warden

FOR THE COMMITTEE

COMMITTEE REPORT

Committee:	CRIMINAL JUSTICE AND PUBLIC SAFETY
Bill Number:	HB572-FN
Title:	relative to official oppression.
Date:	February 22, 2011
Consent Calendar:	NO
Recommendation:	OUGHT TO PASS

STATEMENT OF INTENT

This bill revises the offense of official oppression by making it either a class B misdemeanor or a violation, depending on whether a public servant acted with a purpose to benefit oneself or another or to harm another. The committee felt that the intention of this bill --to increase accountability of public servants-- is a positive step towards better government.

Vote 9-5.

Rep. Mark Warden
FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

CRIMINAL JUSTICE AND PUBLIC SAFETY

HB572-FN, relative to official oppression. **OUGHT TO PASS.**

Rep. Mark Warden for **CRIMINAL JUSTICE AND PUBLIC SAFETY**. This bill revises the offense of official oppression by making it either a class B misdemeanor or a violation, depending on whether a public servant acted with a purpose to benefit oneself or another or to harm another. The committee felt that the intention of this bill --to increase accountability of public servants-- is a positive step towards better government. **Vote 9-5.**

Original: House Clerk
Cc: Committee Bill File

Johnston, Judith

From: Warden, Mark
Sent: Wednesday, February 23, 2011 2:52 PM
To: Johnston, Judith
Subject: Fw: Blurb on HB 572

Sent via DROID on Verizon Wireless

-----Original message-----

From: "Warden, Mark" <Mark.Warden@leg.state.nh.us>
To: "Swinford, Elaine" <Elaine.Swinford@leg.state.nh.us>
Cc: "Charron, Gene" <Gene.Charron@leg.state.nh.us>
Sent: Wed, Feb 23, 2011 00:31:32 GMT+00:00
Subject: Blurb on HB 572

Below is the other blurb I was supposed to write, if I recall correctly. Again, Gene should let me know if he wants me to go to the office and fill out the form, and Elaine will review the blurb to see if it's appropriate.

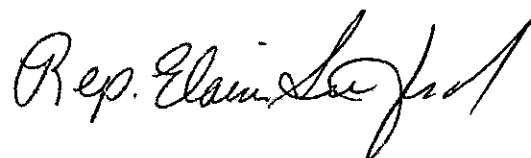
Thanks
Mark

HB 572 relative to official oppression....

Committee Report: Ought to Pass

Majority Report: This bill revises the offense of official oppression by making it either a class B misdemeanor or a violation, depending on whether a public servant acted with a purpose to benefit oneself or another or to harm another. The committee felt that the intention of this bill --to increase accountability of public servants-- is a positive step towards better government.

Mark Warden



COMMITTEE REPORT

COMMITTEE: Criminal Justice and Public Safety

BILL NUMBER: HD 572-FN

TITLE: Relative to official oppression

DATE: February 22, 2011 CONSENT CALENDAR: YES NO

- OUGHT TO PASS
- OUGHT TO PASS W/ AMENDMENT
- INEXPEDIENT TO LEGISLATE
- INTERIM STUDY (Available only 2nd year of biennium)

Amendment No. _____

STATEMENT OF INTENT:

See Attached

COMMITTEE VOTE: 9.5

RESPECTFULLY SUBMITTED,

- Copy to Committee Bill File
- Use Another Report for Minority Report

Rep. Mark Warden (Signature)
For the Committee