

LEGISLATIVE COMMITTEE MINUTES

HB1218

Bill as Introduced

HB 1218 - AS INTRODUCED

2014 SESSION

14-2172

04/05

HOUSE BILL ***1218***

AN ACT relative to the crime of adultery.

SPONSORS: Rep. O'Flaherty, Hills 12

COMMITTEE: Children and Family Law

ANALYSIS

This bill redefines the acts which constitute the crime of adultery.

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 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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

AN ACT relative to the crime of adultery.

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

- 1 1 Adultery; Acts Prohibited. Amend RSA 645:3 to read as follows:
- 2 645:3 Adultery. A person is guilty of a class B misdemeanor if, being a married person, he *or*
- 3 *she* engages in sexual intercourse with another not his *or her* spouse or, being unmarried, engages
- 4 in sexual intercourse with another known by him *or her* to be married. *In this section, "sexual*
- 5 *intercourse" shall include anal penetration.*
- 6 2 Effective Date. This act shall take effect 60 days after its passage.

Amendments



Amendment to HB 1218

NOT ADOPTED

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

AN ACT relative to adultery as a cause for divorce.

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

1 Absolute Divorce; Adultery. Amend RSA 458:7, II to read as follows:

II. Adultery of either party. *In this paragraph, "adultery" shall mean sexual penetration between a married person in a heterosexual or homosexual marriage, and another not his or her spouse. For the purpose of this paragraph, "sexual penetration" shall mean sexual intercourse, anal intercourse, or any intrusion, however slight, of any part of the body or any object manipulated by a person into the genital or anal openings of the body of another person. Sexual penetration shall include only that aforementioned conduct which can be reasonably construed as being for the purpose of sexual arousal or gratification.*

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



2014-0479h

AMENDED ANALYSIS

This bill requires that adultery may be a cause for divorce in a homosexual marriage and inserts a definition of adultery as a cause for divorce.

Speakers

Hearing Minutes

HOUSE COMMITTEE ON CHILDREN AND FAMILY LAW

PUBLIC HEARING ON HB 1218

BILL TITLE: relative to the crime of adultery.

DATE: January 28, 2014

LOB ROOM: 206 **Time Public Hearing Called to Order:** 1:30 pm

Time Adjourned: 1:50 pm

(please circle if present)

Committee Members: Reps. Walz, Long, Rollo, Flockhart, Friedrich, Chase, M. MacKay, Alicea, Frambach, Gulick, Stevens, Gargas, DeSimone, Hoell, Itse, Kelleigh Murphy, Nigrello, Oigny, Tremblay and Dumaine.

Bill Sponsors: Rep. O'Flaherty, Hills 12

TESTIMONY

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

***Rep O'Flaherty, prime sponsor**

Introduced the bill to the committee. He spoke about this issue coming to light about a concerned citizen when same sex marriage began in New Hampshire He submitted written testimony. This should be sexual penetration needing an amendment, which he will submit to the committee.

Rep Walz: Q. Why he would sponsor both bills? **Rep. O'Flaherty: A.** It was at the request of a constituent.

Rep Gulick: Q. What was the argument that resulted in narrowing to anal penetration? **Rep O'Flaherty: A.** Difficulty defining to all references wrong messages were sent.

Attorney Anna Goulet Zimmerman, representing self - oppose

She supports HB 1125 and agrees that the law should address all types of marriage. Does not know how broad implications would be.

Rep Gargas: Q. In addition to adultery there are several other causes in divorces? **Ms. Goulet Zimmerman: A.** Yes, none of the others are crimes.

Rep Walz found that in 2005 another bill that speaks to this subject was voted Inexpedient to Legislate.

Rep Flockhart: Q. If we repeal, should we keep the text in the law? **Ms. Goulet Zimmerman: A.** Yes but how and the exact language remain to be seen.

Records show that the last time a bill was introduced on this subject was in 2010; it passed in the House and was killed in the Senate.

Respectfully submitted,



Rep. Debra L. DeSimone, Clerk

HOUSE COMMITTEE ON CHILDREN AND FAMILY LAW

PUBLIC HEARING ON HB 1218

BILL TITLE: relative to the crime of adultery.

DATE: 1-28-14

LOB ROOM: 206

Time Public Hearing Called to Order: 1:30

Time Adjourned: 1:50

(please circle if present)

Committee Members: Reps. Walz, Long, Rollo, Flockhart, Friedrich, Chase, M. MacKay, Alicea, Frambach, Gulick, Stevens, Gargas, DeSimone, Hoell, Itse, Kelleigh Murphy, Nigrello, Oligny, Tremblay and Dumaine.

Bill Sponsors: Rep. O'Flaherty, Hills 12

TESTIMONY

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

Rep Walz introduced **Rep O'Flaherty** for HB 1218 He spoke about this issue coming to light about a concerned citizen. When same sex marriage began in NH. He submitted written testimony. This should be sexual penetration needing an amendment, which he will submit to the committee.

Rep Walz asked why he would sponsor both bills he said it was at the request of a constituent.

Rep Gulick What was the argument that resulted in narrowing to anal penetration. **Rep O'Flaherty** answered difficulty defining to all references wrong messages were sent.

Rep Walz introduced **Attorney Anna Goulet Zimmerman**. Supports HB 1125. Agrees that the law should address all types of marriage. Does not know how broad implications would be.

Rep Gargaz in addition to adultery there are several other causes in divorces. **Ms. Goulet Zimmerman** answered yes none of the others are crimes.

Rep Walz found that in 2005 another Bill that speaks to this subject was voted ITL.

Rep Flockhart asked if we repeal should we keep the text in the law. **Ms. Goulet Zimmerman** answered yes but how and the exact language remains to be seen.

Records show that the last time a bill was introduced on this subject was in 2010, it passed in the House and was killed in the Senate.

Testimony

Madam Chairperson, members of the Children and Family Law committee,

I'm introducing this bill at the request of a former state representative and concerned citizen.

HB 1218 adds to New Hampshire's adultery statute RSA 645:3 that for the purposes of the section sexual intercourse shall include anal penetration.

When homosexual marriage became legal in New Hampshire what would constitute adulterous homosexual behavior was not contemplated. The matter had been the subject of a court decision however.

In *Blachflower v. Blanchflower* (15 N.H. 226) the New Hampshire Supreme Court ruled that sexual relation between homosexual partners was not sexual intercourse.

In the 3-2 ruling the court used Webster's Third New International Dictionary which defines sexual intercourse as coitus such as is only possible with heterosexual sex.

In both the majority opinion and the dissent the justices stressed that this case was not about the status of same-sex relationships in society and the opinions were both, on the whole, respectful of homosexual intimacy.

However the double standard created by defining adultery as only possible between heterosexual couples does delegate homosexual marriage to second class status in my opinion.

This bill attempts to address this iniquity, however there is a problem. The language in this bill inadvertently only applies to male couples by specifying anal penetration instead of sexual penetration which is defined in RSA 632-A:1

If this would be corrected in an amendment I believe the legislature could provide guidance to the courts that homosexual marriage is not only legal in New Hampshire but equal with heterosexual marriages.

Respectfully,

Representative Tim O'Flaherty
Manchester, Hills. 12

P.S. - since giving this introduction to the bill I've requested amendment 0399h which would clarify what constitutes adultery in the case of homosexual couples. Contrary to the original bill and my above testimony this amendment addresses RSA 458:7 the divorce statute. This is the more appropriate place in the law to focus this effort and if the committee decides to pursue repeal of the crime of adultery in another bill, this bill would still be able address the inequality in the treatment of same sex marriages.

Voting Sheets

HOUSE COMMITTEE ON CHILDREN AND FAMILY LAW

EXECUTIVE SESSION on HB 1218

BILL TITLE: relative to the crime of adultery.

DATE: February 11, 2014

LOB ROOM: 206

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. Murphy

Seconded by Rep. Hoell

Vote: 15-0 (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: YES NO

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

Statement of Intent: Refer to Committee Report

Respectfully submitted,


Rep. Debra L. DeSimone, Clerk

HOUSE COMMITTEE ON CHILDREN AND FAMILY LAW

EXECUTIVE SESSION on HB 1218

BILL TITLE: relative to the crime of adultery.

DATE: 2-11-14

LOB ROOM: 206

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. MURPHY

Seconded by Rep. HOELL

Vote: 15 (Please attach record of roll call vote.)
0

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: {Type VOTE} YES

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

Statement of Intent: Refer to Committee Report

Respectfully submitted,


Rep. Debra L. DeSimone, Clerk



2014 SESSION

CHILDREN AND FAMILY LAW

Bill #: 1218 Title: Relative to the Crime of Attiling

PH Date: 1 1 28 14 Exec Session Date: 2 11 14

Motion: ITL Amendment #: _____

MEMBER	YEAS	NAYS
Walz, Mary Beth E, Chairman	✓	
Long, Patrick T, V Chairman	✓	
Rollo, Deanna S	✓	
Flockhart, Eileen C	✓	
Friedrich, Carol H	✓	
Chase, Cynthia L	✓	
Alicea, Caroletta C	✓	
Brown, Pamela T	✓	
Frambach, Mary E	✓	
Gulick, Ruth P	✓	
Stevens, Audrey M	✓	
Gargasz, Carolyn M	✓	
Itse, Daniel C	A	
DeSimone, Debra L, Clerk	✓	
Oigny, Jeffrey D	A	
Dumaine, Dudley D	A	
Hoell, J.R.	✓	
Murphy, Kelleigh D	✓	
Nigrello, Robert L	A	
TOTAL VOTE:	15	0

Committee Report

CONSENT CALENDAR

February 13, 2014

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

**The Committee on CHILDREN AND FAMILY LAW to
which was referred HB1218,**

**AN ACT relative to the crime of adultery. Having
considered the same, report the same with the following**

**Resolution: RESOLVED, That it is INEXPEDIENT TO
LEGISLATE.**

Rep. Kelleigh D Murphy

FOR THE COMMITTEE

COMMITTEE REPORT

Committee:	CHILDREN AND FAMILY LAW
Bill Number:	HB1218
Title:	relative to the crime of adultery.
Date:	February 13, 2014
Consent Calendar:	YES
Recommendation:	INEXPEDIENT TO LEGISLATE

STATEMENT OF INTENT

This bill was designed to address adultery in same-sex relationships. It would redefine the crime of adultery to include "anal penetration" under the definition of sexual intercourse. The committee felt that this language was too narrow to serve the bill's intended purpose. Furthermore, the committee did not see the need to expand the crime of adultery.

Vote 15-0.

Rep. Kelleigh D Murphy
FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

CONSENT CALENDAR

CHILDREN AND FAMILY LAW

HB1218, relative to the crime of adultery. **INEXPEDIENT TO LEGISLATE**

Rep. Kelleigh D Murphy for CHILDREN AND FAMILY LAW. This bill was designed to address adultery in same-sex relationships. It would redefine the crime of adultery to include "anal penetration" under the definition of sexual intercourse. The committee felt that this language was too narrow to serve the bill's intended purpose. Furthermore, the committee did not see the need to expand the crime of adultery. **Vote 15-0.**

CHILDREN AND FAMILY LAW

CONSENT CALENDAR

HB 1218, relative to the crime of adultery.

INEXPEDIENT TO LEGISLATE

VOTE: 15-0

REP. KELLEIGH DOMAINGUE MURPHY

This bill was designed to address adultery in same-sex relationships. It would redefine the crime of adultery to include "anal penetration" under the definition of sexual intercourse. The committee felt that this language was too narrow to serve the bill's intended purpose. Furthermore, the committee did not see the need to expand the crime of adultery.

COMMITTEE REPORT

COMMITTEE: Children and Family Law

BILL NUMBER: 1218

TITLE: An Act Relative to the Crime of Adultery

DATE: 2/11/14 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: This bill was designed to address adultery in same-sex relationships. ~~This bill~~ ^H would redefine the crime of adultery to include "anal penetration" under the definition of sexual intercourse. The committee felt that this language was too narrow ^{to allow} to serve the bill's intended purpose. Furthermore, the committee did not see the need to expand the crime of adultery.

Maryanne White

COMMITTEE VOTE: 15-0

RESPECTFULLY SUBMITTED,

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

Rep. Kelley Ann Donohue Murphy
For the Committee

[Signature]