

LEGISLATIVE COMMITTEE MINUTES

HB568

Bill as Introduced

HB 568-FN - AS INTRODUCED

2015 SESSION

15-0027
09/04

HOUSE BILL **568-FN**

AN ACT requiring a supervisory law enforcement officer to arrest a law enforcement officer when the supervisor knows that the law enforcement officer has committed a criminal offense.

SPONSORS: Rep. Tasker, Rock 2; Rep. Schleien, Hills 37; Rep. H. French, Merr 2; Rep. Spillane, Rock 2; Rep. Hansen, Hills 22; Rep. Edwards, Hills 11

COMMITTEE: Criminal Justice and Public Safety

ANALYSIS

This bill requires a supervisory law enforcement officer to arrest a law enforcement officer under his or her supervision when the supervisor knows that the law enforcement officer has committed a criminal offense.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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

AN ACT requiring a supervisory law enforcement officer to arrest a law enforcement officer when the supervisor knows that the law enforcement officer has committed a criminal offense.

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

- 1 1 New Section; Failure to Arrest Law Enforcement Officer. Amend RSA 642 by inserting after
- 2 section 10 the following new section:
- 3 642:11 Failure to Arrest Law Enforcement Officer. A supervisory law enforcement officer shall
- 4 be guilty of a misdemeanor for failure to arrest a law enforcement officer under his or her
- 5 supervision when the supervisor knows that the law enforcement officer has committed a criminal
- 6 offense.
- 7 2 Effective Date. This act shall take effect January 1, 2016.

HB 568-FN - FISCAL NOTE

AN ACT requiring a supervisory law enforcement officer to arrest a law enforcement officer when the supervisor knows that the law enforcement officer has committed a criminal offense.

FISCAL IMPACT:

The Judicial Branch, Department of Justice, and New Hampshire Association of Counties state this bill, **as introduced**, may increase state and county expenditures by an indeterminable amount in FY 2016 and each year thereafter. There will be no fiscal impact on local expenditures, or state, county, and local revenue.

METHODOLOGY:

The Judicial Branch, Department of Justice, and New Hampshire Association of Counties state this bill creates a misdemeanor offense if a supervisory law enforcement officer fails to arrest a law enforcement officer under his or her supervision who has committed a crime. The bill contains an unspecified misdemeanor which can be either class A or class B, with the presumption being a class B misdemeanor. There is no method to determine how many charges would be brought as a result of the changes contained in this bill to determine the fiscal impact on expenditures. However, the Judicial Branch, Department of Justice, and New Hampshire Association of Counties have provided the potential costs associated with the penalties contained in this bill, where they can be determined. See table below for average cost information:

	FY 2016	FY 2017
<u>Judicial Branch*</u>		
Class B Misdemeanor	\$48	\$51
Class A Misdemeanor	\$69	\$71
Appeals	Varies	Varies
*It should be noted average case cost estimates for FY 2016 and FY 2017 are based on data that is more than nine years old and does not reflect changes to the courts over that same period of time or the impact these changes may have on processing the various case types.		
<u>NH Association of Counties</u>		
County Prosecution Costs	Indeterminable	Indeterminable
Estimated Average Cost of Incarcerating an Individual	\$35,000	\$35,000

The Department of Justice states it investigates and prosecutes some public officials for criminal conduct committed in their official capacity. Therefore, the Department assumes under this bill it may receive additional referrals of possible violations to investigate and prosecute, which may increase its expenditures. The Department states the extent of the potential fiscal impact is not known as it would depend on quantity and complexity of possible violations to which it is referred.

Speakers

Hearing Minutes

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

PUBLIC HEARING ON HB 568-FN

BILL TITLE: requiring a supervisory law enforcement officer to arrest a law enforcement officer when the supervisor knows that the law enforcement officer has committed a criminal offense.

DATE: February 17, 2015

LOB ROOM: 204

Time Public Hearing Called to Order:

10:50

Time Adjourned:

11:20

(please circle if present)

Committee Members: :Reps. Tholl, Welch, Fields, Fesh, Marston, Burt, S. Sweeney, Barnes, Comeau, Fisher, Martin, Pantelakos, Berube, Robertson, Cushing, Hirsch, O'Hearne, Mangipudi and DiSesa.

Bill Sponsors: Rep. Tasker, Rock 2; Rep. Schleien, Hills 37; Rep. H. French, Merr 2; Rep. Spillane, Rock 2; Rep. Hansen, Hills 22; Rep. Edwards, Hills 11

TESTIMONY

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

Rep. Tasker – Sponsor – officer moonlighting, this is a misdemeanor. Officer know if officer doing wrong why this is not a misdemeanor.

Rep. Comeau – if I as a private or officer, are there any rules to bring charges.

Rep. Tasker – no action taken

Rep. Hirsch – how do you know if person heard or do you have facts.

Rep. Tasker – no charges filed women moon lighting, police get special treatment.

Rep. Mangipudi – are we giving police special treatment?

Rep. Tasker – the police need to be charged.

Rep. DiSesa – I am an officer if I hear just he may have committed a crime.

Rep. Tasker – officer would be charged

Rep. DiSesa – as an officer I know about what I would be charged if turned over.

Rep. Tasker – very little leeway.

Rep. Tholl – If I know an arrested person but prosecutor didn't process would I be charged with crime.

Rep. Tasker – this is why we need this bill so officers are treated like everyone else. Do police get special treatment.

Rep. Pantelakos – I am hard pressed thinking do you think the penalty is enough.

Rep. Tasker – person resigns but not charged. Why have law if we don't prosecute.

Rep. Pantelakos – where did you get the poll?

Rep. Tasker – Union Leader, do police get special treatment.

Rep. Marston – if this bill enacted, how do we enforce this

Rep. Tasker – this can't undermine system

Rep. Mangipudi – Are we making law for 1 person

Rep. Tasker – misdemeanor = if criminal offense.

Rep. Robertson – if law is broken it should be reported.

Rep. Tasker – ok

Rep. Berube – just poll for Manchester, no one said it was a problem. Are you saying that on every bill, rep. Tasker.

***Elizabeth Woodcock – NH DOJ OPG** “for info” Dept. of Justice office of attorney general need probable cause, what is knowledge you need to file to Grand Jury as for indictment. Maybe not found evidence enough to indict. You may feel or think person is guilty for crime. Knowing or having evidence is two different avenues.

Rep. Barnes – do you know if we have oversight with police dept.

Woodcock – yes – Attorney General =if someone doesn't have help, may need other help.

Rep. Robertson – what would court do to person for moonlighting.

Woodcock – court would probably ask them to resign.

Rep. Tholl – if as officer would I didn't follow up would this help.

Woodcock – knowing = assuming

***Chris Casco**

Respectfully submitted,

Rep. Dennis Fields, Clerk

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

PUBLIC HEARING ON HB 568-FN

BILL TITLE: requiring a supervisory law enforcement officer to arrest a law enforcement officer when the supervisor knows that the law enforcement officer has committed a criminal offense.

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Time Adjourned: 11:20 AM

(please circle if present)

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TESTIMONY

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

Anne!

Carol

SPONSOR REP TASKER = OFFICER MOUNLIGHTING, THIS IS A MISDEMEANOR
OFFICER KNOW IF OFFICER DUMB WROTE WHY THIS IS NOT A MISDEMEANOR.

Q = REP COMEAU = IF I ASK PRIVATE OR OFFICER ARE THEIR ANY RULES TO
BRING CHARGES.

REP TASKER = NO ACTION TAKEN.

Q = REP HIRSH = HOW DO YOU KNOW IF PERSON HEARD OR DO YOU HAVE FACTS?

A = REP TASKER = NO CHARGES FILED woman mounlighting, police get
SPECIAL SPECIAL TREATMENT.

Q = REP MOUNLIGHT = ARE WE GIVING POLICE SPECIAL TREATMENT?

A = REP TASKER = THE POLICE NEED TO BE CHARGED.

Q REP DISESA = I AM AN OFFICER IF I HEAR JUST REMAY HAVE COMMITTED CRIME.

A = REP TASKER = OFFICER WOULD BE CHARGED.

Q REP DISESA = AS AN OFFICER I KNOW ABOUT WOULD I BE CHARGED IF I AM
OVER.

A REP TASKER = VERY LITTLE LEeway.

OVER ->

Page 2

Q. Mr. TASHKOR = IF I KNOW AN ARRESTED PERSON BUT PROSECUTOR MIGHT PROCESS WOULD I BE CHARGED WITH CRIME

A. Mr. TASHKOR = THIS IS WHY WE NEED THIS BILL SO OFFICERS ARE TREATED LIKE EVERYONE ELSE
NO POLICE GET SPECIAL TREATMENT.

Q. Mr. PANTOLAKOS = I AM HARD PRESSED THINKING DO YOU THINK THE PENALTY ENOUGH

A. Mr. TASHKOR = PERSON RESIGNS BUT NOT CHARGED
WHY HAVE LAW IF WE DON'T PROSECUTE

Q. Mr. PANTOLAKOS = NONE DID YOU GET THE
A. Mr. TASHKOR = UNION LEADER, NO POLICE GET SPECIAL TREATMENT.

Q. Mr. MARSTON = IF THIS BILL ENACTED, HOW DO WE ENFORCE THIS.

A. Mr. TASHKOR = THIS CAN'T UNDERMINE SYSTEM

Q. Mr. MANGIAPAZ = ARE WE MAKING LAW FOR 1 PERSON

A. Mr. TASHKOR = MY DECISION = IF CRIMINAL OFFENSE

Q. Mr. ROBERTSON = IF LAW IS BROKEN IT SHOULD BE REPORTED

A. Mr. TASHKOR = OK

Q. Mr. BERNABE = JUST POLL FOR MANCHESTER, NO ONE SAID A PROBLEM.

A. YOU SAY THAT OF EVERY BILL, MR. TASHKOR

CRAP 2

ELIZABETH WOODCOCK = M.N. DOJ ORG WRITTEN TESTIMONY.

U FOR INFO

DEPT OF JUSTICE OFFICER ATTORNEY GENERAL
WANT PROBABLE CAUSE, WHAT IS KNOWLEDGE YOU NEED TO FILE
TO GRAB JURY ASK FOR INDICTMENT MAYBE NOT FOUND EVIDENCE
ENOUGH TO INDICT YOU MAY FEEL OR THINK PERSON IS GUILTY
FOR CRIME. KNOWING BY HAVING EVIDENCE IS TWO DIFFERENT THINGS.

Q. Mr. BARNES = DO YOU KNOW IF WE HAVE OVERSIGHT WITH POLICE DEPT.

A. WOODCOCK = YES ATTORNEY GENERAL =
IF SOMEONE DOESN'T HAVE HELP, MAY NEED OTHER HELPS

Q. Mr. ROBERTSON = WHAT WOULD COURT DO TO PERSON FOR MISCALCULATION

A. WOODCOCK = COURT WOULD PROBABLY ASK HER TO RESIGN

Q. Mr. THOLL = IF AS OFFICER WOULD I DIDN'T FOLLOW UP WOULD THIS HELP

A. WOODCOCK = KNOWING = ASSUMING

CRAP 3

CHRIS CASHO = WRITTEN TESTIMONY

Testimony

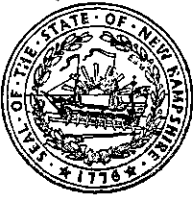
HB 568
Testimony of
Elizabeth C. Woodcock, Assistant Attorney General
February 17, 2015
For Information

This bill would require a supervising law enforcement officer to arrest a law enforcement officer when the supervisor “knows” that the law enforcement officer has committed a criminal offense.

The bill has several problems. The first is that, as a matter of state and federal constitutional law, a person cannot be arrested absent probable cause to believe he or she has committed a crime. The idea that a police officer could be arrested because a supervisor “knows” he or she has committed a crime conflicts with this standard. There is no definition of “know” in the statute and, as a result, the arrest might take place on something that a court would conclude was less than probable cause. If a supervisor could arrest on less than probable cause, then the bill would open the way for supervisors to take action against an unpopular officer or an officer who has questioned the wisdom of a supervisor’s decision without having to measure up to the traditional standard of proof.

The bill does not explain what happens after the arrest made on the supervisor’s “knowledge.” Is the officer placed on administrative leave or is he or she suspended without pay? If it is the latter, and a court or grand jury finds that there was no probable cause for the arrest, the arrested officer would be entitled to reinstatement with back pay. In either case, the officer might be entitled to sue the supervisor or the police department for damage to his or her reputation – despite the fact that the bill does not allow for any discretion on the part of the supervisor (see line 3 – stating that a supervisor “shall” be guilty of a misdemeanor for failure to arrest).

Finally, the bill removes discretion from what is ordinarily a discretionary decision on the part of law enforcement to arrest and prosecute a case. The bill does not even draw distinctions between misdemeanors and felonies. If the supervisor were investigating more serious criminal conduct on the part of an officer, the supervisor would still be required to arrest the officer, despite the fact that it could compromise the investigation. Once placed under arrest, the constitutional protections under *Miranda v. Arizona* apply. The officer would have the right to remain silent and the right to an attorney.



State of New Hampshire

DEPARTMENT OF SAFETY
OFFICE OF THE COMMISSIONER
33 HAZEN DR. CONCORD, NH 03305
603/271-2791

JOHN J. BARTHELMES
COMMISSIONER

LEGISLATIVE POSITION NH DEPARTMENT OF SAFETY

HB 568: Requiring supervisory officers to arrest police officers who have committed crimes

Position: Opposed because flawed as written

Dear Honorable Members of the Committee:

This bill requires a supervisory law enforcement officer to arrest a law enforcement officer under his or her supervision when the supervisor knows that the officer has committed a criminal offense.

The bill makes the supervisor guilty of a jailable crime – a misdemeanor – if he or she fails to make the arrest.

This is a fairly simple bill and is obviously intended to insure that police officers who commit crimes are not given a “pass” or special treatment because of some misplaced sense of “brotherhood.”

The problem with the bill is that the criminal justice system is not as simple as that. It can be complex at times. It is easy to envision a number of situations that the wording of this bill does not take into consideration.

For example, the law requires the arrest if the supervisor “knows” the officer committed the offense. This is much better than the original proposal, which was that the arrest be made if the officer “had committed” the offense. Obviously if the supervisor was not aware of the offense he or she could not be expected to make an arrest. However, there are often instances when a law enforcement officer “knows” who has committed a particular offense – even situations where “everyone in town” knows who did it – but the admissible evidence or proof is not there. Police officers cannot, with few exceptions, make an arrest without a warrant unless they observe the offense committed in their presence, and they cannot obtain an arrest warrant for an offense not committed in their presence unless they have enough facts and circumstances to constitute probable cause for the Judge to issue the warrant.

Another instance where an immediate arrest might not be the best thing is where an officer is suspected of a more serious crime that is the subject of an undercover internal affairs investigation or is part of a wider conspiracy or plot that involves additional officers or even

officers from other agencies, and an immediate arrest for the lesser crime might prevent clearing more serious crimes.

The concept of the bill is understandable but it may not be ready for prime time. It would be useful to know if other states have similar statutes and how they are worded, before settling on final language for this concept.

Voting Sheets

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

EXECUTIVE SESSION on HB 568-FN

BILL TITLE: requiring a supervisory law enforcement officer to arrest a law enforcement officer when the supervisor knows that the law enforcement officer has committed a criminal offense.

DATE: 3/2/15

LOB ROOM: 204

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

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

Moved by Rep. Panterakos

Seconded by Rep. DiSesa

Vote: 16-0 (Please attach record of roll call vote.)

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

Moved by Rep.

Seconded by Rep.

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

CONSENT CALENDAR VOTE: YES

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

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Dennis Fields, Clerk

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

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Motions: OTP, OTP/A, ITD, Retained (Please circle one.)

Moved by Rep. *PANTCHAKOS*

Seconded by Rep. *DISER*

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

96 Y005 1045 0

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

Moved by Rep.

Seconded by Rep.

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

YES CONSENT CALENDAR VOTE:

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

Statement of Intent: Refer to Committee Report

Respectfully submitted,
Dennis H. Fields
Rep. Dennis Fields, Clerk



STATE OF NEW HAMPSHIRE
OFFICE OF THE HOUSE CLERK

1/8/2015 1:43:23 PM
Roll Call Committee Registers
Report

2015 SESSION

CRIMINAL JUSTICE AND PUBLIC SAFETY

Bill #: 569 FM. Title: _____

PH Date: 2 1 17 15 Exec Session Date: 3 1 2 1 15

Motion: ITL Amendment #: _____

<u>MEMBER</u>	<u>YEAS</u>	<u>NAYS</u>
Tholl, John E., Chairman	1	
Welch, David A., V Chairman	1	
Fields, Dennis H., Clerk	1	
Fesh, Robert M.	1	
Marston, Dick	1	
Burt, John A.	1	
Sweeney, Shawn P.	ABSENT	
Barnes, Arthur E.	1	
Comeau, Ed	1	
Fisher, Robert Z.	1	
Martin, John F.	1	
Pantelakos, Laura C.	1	
Berube, Roger R.	ABSENT	
Robertson, Timothy N.	1	
Cushing, Robert R.	1	
Hirsch, Geoffrey D.	ABSENT	
O'Hearne, Andrew S.	1	
Mangipudi, Latha D.	1	
DiSesa, Len	1	
TOTAL VOTE:	<u>YEAS 16</u>	<u>NAYS 0</u>

Committee Report

CONSENT CALENDAR

March 5, 2015

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Committee on CRIMINAL JUSTICE AND PUBLIC SAFETY to which was referred HB568-FN,

AN ACT requiring a supervisory law enforcement officer to arrest a law enforcement officer when the supervisor knows that the law enforcement officer has committed a criminal offense. Having considered the same, report the same with the following Resolution:
RESOLVED, That it is INEXPEDIENT TO LEGISLATE.

Rep. Laura C. Pantelakos

FOR THE COMMITTEE

COMMITTEE REPORT

Committee:	CRIMINAL JUSTICE AND PUBLIC SAFETY
Bill Number:	HB568-FN
Title:	requiring a supervisory law enforcement officer to arrest a law enforcement officer when the supervisor knows that the law enforcement officer has committed a criminal offense.
Date:	March 5, 2015
Consent Calendar:	YES
Recommendation:	INEXPEDIENT TO LEGISLATE

STATEMENT OF INTENT

The bill as written would have required a Law Enforcement supervisor to arrest an officer when he KNOWS that the officer has committed a crime. This would make the supervisor guilty of a misdemeanor if he /she fails to make the arrest. Knowing that someone had committed a crime is vastly different in having probable cause to make an arrest. The bill removes desecration from the supervisor and should there be an ongoing investigation on the felony level making an arrest for a minor offense could detrimentally effect the more serious investigation, as Miranda rights and right to an attorney attach upon the arrest.

Vote 16-0.

Rep. Laura C. Pantelakos
FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

CONSENT CALENDAR

CRIMINAL JUSTICE AND PUBLIC SAFETY

HB568-FN, requiring a supervisory law enforcement officer to arrest a law enforcement officer when the supervisor knows that the law enforcement officer has committed a criminal offense.

INEXPEDIENT TO LEGISLATE.

Rep. Laura C. Pantelakos for CRIMINAL JUSTICE AND PUBLIC SAFETY. The bill as written would have required a Law Enforcement supervisor to arrest an officer when he KNOWS that the officer has committed a crime. This would make the supervisor guilty of a misdemeanor if he /she fails to make the arrest. Knowing that someone had committed a crime is vastly different in having probable cause to make an arrest. The bill removes desecration from the supervisor and should there be an ongoing investigation on the felony level making an arrest for a minor offense could detrimentally effect the more serious investigation, as Miranda rights and right to an attorney attach upon the arrest. **Vote 16-0.**

HB568

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COMMITTEE REPORT

COMMITTEE:

Criminal Justice and Public Safety

BILL NUMBER:

HB. 568

TITLE:

DATE:

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:

COMMITTEE VOTE:

16-0

RESPECTFULLY SUBMITTED,

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

Rep. *Laura Cantelakos*
For the Committee

Karwocki, Karen

From: Larivee, Kathy
Sent: Monday, March 16, 2015 4:01 PM
To: Karwocki, Karen
Subject: HB568-FN-Majority.doc

~~edited report~~

CONSENT CALENDAR

March 5, 2015

<p>HOUSE OF REPRESENTATIVES REPORT OF COMMITTEE</p>

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<p>Rep. Laura C. Pantelakos FOR THE COMMITTEE</p>

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Recommendation:	INEXPEDIENT TO LEGISLATE

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Vote 16-0.

Rep. Laura C. Pantelakos
FOR THE COMMITTEE

CONSENT CALENDAR

CRIMINAL JUSTICE AND PUBLIC SAFETY

HB 568-FN, requiring a supervisory law enforcement officer to arrest a law enforcement officer when the supervisor knows that the law enforcement officer has committed a criminal offense. **INEXPEDIENT TO LEGISLATE.**

Rep. Laura C. Pantelakos for Criminal Justice and Public Safety. The bill as written would have required a law enforcement supervisor to arrest an officer when he knows that the officer has committed a crime. This would make the supervisor guilty of a misdemeanor if he/she fails to make the arrest. Knowing that someone had committed a crime is vastly different in having probable cause to make an arrest. The bill removes desecration from the supervisor and should there be an ongoing investigation on the felony level making an arrest for a minor offense could detrimentally effect the more serious investigation, as Miranda rights and right to an attorney attach upon the arrest.. **Vote 16-0.**