

Committee Report

REGULAR CALENDAR

February 26, 2021

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Majority of the Committee on Criminal Justice and Public Safety to which was referred HB 200-FN,

AN ACT increasing the penalty for certain invasions of privacy. Having considered the same, report the same with the recommendation that the bill OUGHT TO PASS.

Rep. Casey Conley

FOR THE MAJORITY OF THE COMMITTEE

**MAJORITY
COMMITTEE REPORT**

Committee:	Criminal Justice and Public Safety
Bill Number:	HB 200-FN
Title:	increasing the penalty for certain invasions of privacy.
Date:	February 26, 2021
Consent Calendar:	REGULAR
Recommendation:	OUGHT TO PASS

STATEMENT OF INTENT

This bill increases penalties for crimes pertaining to violation of privacy. There are three key provisions. One would make the act of capturing photographs, video or audio recordings of someone in a place they would expect privacy, a felony in second and subsequent offenses. Another provision would make it a felony to disseminate or publish without consent from all parties photographic or video materials showing consensual sexual activity. The third piece makes it a felony to enter one's property to view into a private residence for the purpose of sexual arousal. Raising penalties from misdemeanor to felony is not something the majority takes lightly. But the lasting effects of these crimes on victims, difficulties associated with removing such content from the Internet, and the potential for this type of behavior to escalate into violent crime warrant stiffer penalties.

Vote 15-5.

Rep. Casey Conley
FOR THE MAJORITY

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

Criminal Justice and Public Safety

HB 200-FN, increasing the penalty for certain invasions of privacy. **MAJORITY: OUGHT TO PASS. MINORITY: INEXPEDIENT TO LEGISLATE.**

Rep. Casey Conley for the **Majority** of Criminal Justice and Public Safety. HB 200 increases penalties for crimes pertaining to violation of privacy. There are three key provisions. One would make the act of capturing photographs, video or audio recordings of someone in a place they would expect privacy, a felony in second and subsequent offenses. Another provision would make it a felony to disseminate or publish without consent from all parties photographic or video materials showing consensual sexual activity. The third piece makes it a felony to enter one's property to view into a private residence for the purpose of sexual arousal. Raising penalties from misdemeanor to felony is not something the majority takes lightly. But the lasting effects of these crimes on victims, difficulties associated with removing such content from the Internet, and the potential for this type of behavior to escalate into violent crime warrant stiffer penalties.

Vote 15-5.

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

February 26, 2021

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Minority of the Committee on Criminal Justice and Public Safety to which was referred HB 200-FN,

AN ACT increasing the penalty for certain invasions of privacy. Having considered the same, and being unable to agree with the Majority, report with the following resolution: RESOLVED, that it is INEXPEDIENT TO LEGISLATE.

Rep. Chris True

FOR THE MINORITY OF THE COMMITTEE

**MINORITY
COMMITTEE REPORT**

Committee:	Criminal Justice and Public Safety
Bill Number:	HB 200-FN
Title:	increasing the penalty for certain invasions of privacy.
Date:	February 26, 2021
Consent Calendar:	REGULAR
Recommendation:	INEXPEDIENT TO LEGISLATE

STATEMENT OF INTENT

The minority opposes the changes in this bill that increase the prohibited conduct from a misdemeanor to a felony. The conduct described in RSA 644:9 while disturbing does not include violence or extreme bodily harm to the victim. Some of the conduct described in RSA 644:9 could be described as annoying or juvenile. Current law provides prosecutors and sentencing judges with the ability to sentence offenders to up to a year in jail, large fines, and years of supervision by probation. The minority feels that is more than sufficient where punishment is due.

Rep. Chris True
FOR THE MINORITY

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

Criminal Justice and Public Safety

HB 200-FN, increasing the penalty for certain invasions of privacy. **INEXPEDIENT TO LEGISLATE.**

Rep. Chris True for the **Minority** of Criminal Justice and Public Safety. The minority opposes the changes in this bill that increase the prohibited conduct from a misdemeanor to a felony. The conduct described in RSA 644:9 while disturbing does not include violence or extreme bodily harm to the victim. Some of the conduct described in RSA 644:9 could be described as annoying or juvenile. Current law provides prosecutors and sentencing judges with the ability to sentence offenders to up to a year in jail, large fines, and years of supervision by probation. The minority feels that is more than sufficient where punishment is due.

Original: House Clerk

Cc: Committee Bill File

Voting Sheets

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

EXECUTIVE SESSION on HB 200-FN

BILL TITLE: increasing the penalty for certain invasions of privacy.

DATE: February 26, 2021

LOB ROOM: 204

MOTIONS: OUGHT TO PASS

Moved by Rep. Conley

Seconded by Rep. Rhodes

Vote: 15-5

CONSENT CALENDAR: NO

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep Jennifer Rhodes, Clerk



2021 SESSION

Criminal Justice and Public Safety

Bill #: 200 Motion: OTP AM #: _____ Exec Session Date: 2/24/21
 15/5

<u>Members</u>	<u>YEAS</u>	<u>Nays</u>	<u>NV</u>
Abbas, Daryl A. Chairman	15		
Welch, David A. Vice Chairman		1	
Burt, John A.		2	
Hopper, Gary S.	1		
Green, Dennis E.		3	
Wallace, Scott	2		
Testerman, Dave	3		
True, Chris		4	
Pratt, Kevin M.	4		
Marston, Dick		5	
Rhodes, Jennifer M. Clerk	5		
Harriott-Gathright, Linda C.	6		
Pantelakos, Laura C.	7		
O'Hearne, Andrew S.			
Bordenet, John	8		
Meuse, David	9		
Newman, Ray E.	10		
Bouldin, Amanda C.	11		
Conley, Casey M.	12		
Klein-Knight, Nicole	13		
Bradley, Amy	14		



2021 SESSION

Criminal Justice and Public Safety

Bill #: _____ Motion: _____ AM #: _____ Exec Session Date: _____

TOTAL VOTE:

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2021 SESSION

Criminal Justice and Public Safety

Bill #: 200 Motion: OTP AM #: _____ Exec Session Date: 2/24/21
 15/5

<u>Members</u>	<u>YEAS</u>	<u>Nays</u>	<u>NV</u>
Abbas, Daryl A. Chairman	15		
Welch, David A. Vice Chairman		1	
Burt, John A.		2	
Hopper, Gary S.	1		
Green, Dennis E.		3	
Wallace, Scott	2		
Testerman, Dave	3		
True, Chris		4	
Pratt, Kevin M.	4		
Marston, Dick		5	
Rhodes, Jennifer M. Clerk	5		
Harriott-Gathright, Linda C.	6		
Pantelakos, Laura C.	7		
O'Hearne, Andrew S.			
Bordenet, John	8		
Meuse, David	9		
Newman, Ray E.	10		
Bouldin, Amanda C.	11		
Conley, Casey M.	12		
Klein-Knight, Nicole	13		
Bradley, Amy	14		

Public Hearing

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

PUBLIC HEARING ON HB 200-FN

BILL TITLE: increasing the penalty for certain invasions of privacy.

DATE: February 26, 2021

LOB ROOM: 306 **Time Public Hearing Called to Order:** 2:40 PM

Time Adjourned: 3:00 PM

Committee Members: Reps. Abbas, Welch, Rhodes, Burt, Hopper, Green, Wallace, Testerman, True, Pratt, Marston, Harriott-Gathright, Pantelakos, O'Hearne, Bordenet, Meuse, R. Newman, Amanda Bouldin, Conley, Klein-Knight and Bradley

Bill Sponsors:
Rep. Vincent

TESTIMONY

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

Rep. Allison Nutting-Wong

- Introduced bill
- Graphics photos are more than intimate texts

Q: Rep. Bordenet – Would sending out “a group text” – would that be considered one or multiple offenses?

A: One conviction is on offense – not how many times it is done

Q: Rep. Maston – Would this be something that they could take the computer?

A: I don't know

Q: Rep. Burt – How would you prevent “?” style images – i.e. friend request etc.

A: Simply don't know

Q: Rep. Klein-Knight- Will there be a database to keep track of data if this becomes law?

A: Not sure, that is not something she is responsible for with the bill

Rep. Harriot-Gathright – HB 200

- Introduced bill from another Rep
- Bill is to increase penalty for certain invasions of privacy

Aubrey Fredman – Oppose – 296

- This is not necessary – waste of time

Q: Rep. Klein-Knight – You testified that sexual harassment is not “a problem”?

A: I said it's tacky

Respectfully submitted,

Rep. Jennifer Rhodes

House Remote Testify

Criminal Justice and Public Safety Committee Testify List for Bill HB200 on 2021-02-26


Support: 20 Oppose: 1 Neutral: 0 Total to Testify: 0

[Export to Excel](#)

<u>Name</u>	<u>City, State</u> <u>Email Address</u>	<u>Title</u>	<u>Representing</u>	<u>Position</u>	<u>Testifying</u>	<u>Non-Germane</u>	<u>Signed Up</u>
Fordey, Nicole	Litchfield, NH nikkif610@gmail.com	A Member of the Public	Myself	Support	No	No	2/20/2021 1:54 PM
Bates, David	Warner, NH dbates3@yahoo.com	A Member of the Public	Myself	Support	No	No	2/21/2021 10:43 AM
Nardino, Marie	Andover, NH mdnardino@gmail.com	A Member of the Public	Myself	Support	No	No	2/21/2021 5:31 PM
Clark, Lynn	Contoocook, NH rubylynn862@gmail.com	A Member of the Public	Myself	Support	No	No	2/21/2021 2:16 PM
Johnson, Sara	Warner, NH nhchicagocubfan@gmail.com	A Member of the Public	Myself	Support	No	No	2/21/2021 4:09 PM
DeMark, Richard	Meredith, NH demarknh114@gmail.com	A Member of the Public	Myself	Support	No	No	2/21/2021 2:48 PM
Pospychala, Erin	WILMOT, NH erinmvp@gmail.com	A Member of the Public	Myself	Support	No	No	2/21/2021 6:59 PM
Larson, Ruth	Alton, NH ruthlarson@msn.com	A Member of the Public	Myself	Support	No	No	2/21/2021 10:44 PM
Wells, Ken	Andover, NH kenwells3@gmail.com	A Member of the Public	Myself	Support	No	No	2/21/2021 10:44 PM
Wells, Lee	Andover, NH leewells.locustfarm@gmail.com	A Member of the Public	Myself	Support	No	No	2/21/2021 10:58 PM
Fenner-Lukaitis, Elizabeth	Warner, NH glukaitis@mcttelecom.com	A Member of the Public	Myself	Support	No	No	2/22/2021 6:40 AM
McKevitt, Susan	Bradford, NH mewil@tds.net	A Member of the Public	Myself	Support	No	No	2/22/2021 9:12 AM
Courser, Rebecca	Warner, NH rcourser@hotmail.com	A Member of the Public	Myself	Support	No	No	2/22/2021 9:36 AM

Cook, Richard	Warner, NH r_cook@mcttelecom.com	A Member of the Public	Myself	Support	No	No	2/22/2021 9:54 AM
Vogt, Robin	Portsmouth, NH robin.w.vogt@gmail.com	A Member of the Public	Myself	Support	No	No	2/23/2021 9:38 AM
Ingram, April	Warner, NH aandk@tds.net	A Member of the Public	Myself	Support	No	No	2/23/2021 12:45 PM
Yen, Lidia	Concord, NH lyen@afsc.org	A Member of the Public	Myself	Support	No	No	2/23/2021 2:57 PM
Warren, Joan	Warner, NH joanbcwarren@gmail.com	A Member of the Public	Myself	Support	No	No	2/23/2021 5:02 PM
Pelkey, Mary	Warner, NH, NH mar.pelkey@gmail.com	A Member of the Public	Myself	Support	No	No	2/23/2021 11:07 PM
Cooper, Katherine	Epping, NH katherine@NHACDL.org	A Lobbyist	NH Association of Criminal Defense Lawyers	Oppose	No	No	2/25/2021 10:35 AM
Groetzinger, Tonda	Farmington, NH groetzinger6@aol.com	A Member of the Public	Myself	Support	No	No	2/25/2021 2:06 PM

Testimony

Archived: Friday, March 5, 2021 9:57:27 AM
From: [Katherine Cooper](#)
Sent: Thursday, February 25, 2021 10:39:07 AM
To: ~House Criminal Justice and Public Safety
Subject: HB 200
Importance: Normal
Attachments:
[HB200 penalties for photos.doc](#) 

Attached please find written testimony opposing HB 200, which is scheduled for tomorrow at 2:30 p.m. I am happy to answer any questions via email or over the phone. Thank you!

--

Katherine Cooper
Executive Director
New Hampshire Association of Criminal Defense Lawyers
www.NHACDL.org
603-556-8294
katherine@NHACDL.org

Bill as
Introduced

HB 200-FN - AS INTRODUCED

2021 SESSION

21-0388

04/10

HOUSE BILL **200-FN**

AN ACT increasing the penalty for certain invasions of privacy.

SPONSORS: Rep. Vincent, Straf. 17

COMMITTEE: Criminal Justice and Public Safety

ANALYSIS

This bill increases the criminal penalty for certain violations of privacy and nonconsensual dissemination of private sexual images.

.....

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 Twenty One

AN ACT increasing the penalty for certain invasions of privacy.

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

1 1 Breaches of the Peace; Violation of Privacy. Amend RSA 644:9, I-IV to read as follows:

2 I. A person is guilty of a class A misdemeanor **for a first offense, and a class B felony for**
3 **a second or subsequent offense**, if such person unlawfully and without the consent of the persons
4 entitled to privacy therein, installs or uses:

5 (a) Any device for the purpose of observing, photographing, recording, amplifying,
6 broadcasting, or in any way transmitting images or sounds of the private body parts of a person
7 including the genitalia, buttocks, or female breasts, or a person's body underneath that person's
8 clothing; or

9 (b) In any private place, any device for the purpose of observing, photographing,
10 recording, amplifying or broadcasting, or in any way transmitting images or sounds in such place; or

11 (c) Outside a private place, any device for the purpose of hearing, recording, amplifying,
12 broadcasting, observing, or in any way transmitting images, location, movement, or sounds
13 originating in such place which would not ordinarily be audible, visible, or comprehensible outside
14 such place. ***This subparagraph shall not include a device placed in a non-populated area***
15 ***for the purpose of capturing video or images of wildlife.***

16 II. As used in this section, "private place" means a place where one may reasonably expect to
17 be safe from surveillance including public restrooms, locker rooms, the interior of one's dwelling
18 place, or any place where a person's private body parts including genitalia, buttocks, or female
19 breasts may be exposed.

20 III. A person is guilty of a class [~~A misdemeanor~~] **B felony** if that person knowingly
21 disseminates or causes the dissemination of any photograph or video recording of himself or herself
22 engaging in sexual activity with another person without the express consent of the other person or
23 persons who appear in the photograph or videotape. In this paragraph, "disseminate" and "sexual
24 activity" shall have the same meaning as in RSA 649-A:2.

25 III-a. A person is guilty of a **class A** misdemeanor **for a first offense, and a class B**
26 **felony for a second or subsequent offense** if, for the purpose of arousing or gratifying the person's
27 sexual desire, he or she knowingly views another person, without that person's knowledge or
28 consent, in a place where one would have a reasonable expectation of privacy. For purposes of this
29 paragraph, "views" means looking at another person with the unaided eye or any device intended to
30 improve visual acuity.

1 IV. A person is guilty of a [~~misdemeanor~~] **class B felony** if such person knowingly enters
2 any residential curtilage, as defined in RSA 627:9, I, or any other private place as defined in
3 paragraph II of this section, without lawful authority and looks into the residential structure
4 thereon or other private place with no legitimate purpose.

5 2 Effective Date. This act shall take effect January 1, 2022.

**HB 200-FN- FISCAL NOTE
AS INTRODUCED**

AN ACT increasing the penalty for certain invasions of privacy.

FISCAL IMPACT: State County Local None

STATE:	Estimated Increase / (Decrease)			
	FY 2021	FY 2022	FY 2023	FY 2024
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase
Funding Source:	<input checked="" type="checkbox"/> General	<input type="checkbox"/> Education	<input type="checkbox"/> Highway	<input type="checkbox"/> Other

COUNTY:

Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase

METHODOLOGY:

This bill increases the criminal penalty for certain violations of privacy and nonconsensual dissemination of private sexual images. This bill contains penalties that may have an impact on the New Hampshire judicial and correctional systems. 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 entities impacted have provided the potential costs associated with these penalties below.

Judicial Branch	FY 2021	FY 2022
Class B Misdemeanor	\$55	\$55
Class A Misdemeanor	\$78	\$78
Simple Criminal Case	\$309	\$309
Routine Criminal Felony Case	\$494	\$494
Appeals	Varies	Varies
It should be noted that average case cost estimates for FY 2021 and FY 2022 are based on data that is more than ten 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. An unspecified misdemeanor can be either class A or class B, with the presumption being a class B misdemeanor.		
Judicial Council		
Public Defender Program	Has contract with State to	Has contract with State to

	provide services.	provide services.
Contract Attorney – Felony	\$825/Case	\$825/Case
Contract Attorney – Misdemeanor	\$300/Case	\$300/Case
Assigned Counsel – Felony	\$60/Hour up to \$4,100	\$60/Hour up to \$4,100
Assigned Counsel – Misdemeanor	\$60/Hour up to \$1,400	\$60/Hour up to \$1,400
It should be noted that a person needs to be found indigent and have the potential of being incarcerated to be eligible for indigent defense services. The majority of indigent cases (approximately 85%) are handled by the public defender program, with the remaining cases going to contract attorneys (14%) or assigned counsel (1%).		
Department of Corrections		
FY 2020 Average Cost of Incarcerating an Individual	\$47,691	\$47,691
FY 2020 Annual Marginal Cost of a General Population Inmate	\$6,407	\$6,407
FY 2020 Average Cost of Supervising an Individual on Parole/Probation	\$584	\$584
NH Association of Counties		
County Prosecution Costs	Indeterminable	Indeterminable
Estimated Average Daily Cost of Incarcerating an Individual	\$105 to \$120	\$105 to \$120

Many offenses are prosecuted by local and county prosecutors. When the Department of Justice has investigative and prosecutorial responsibility or is involved in an appeal, the Department would likely absorb the cost within its existing budget. If the Department needs to prosecute significantly more cases or handle more appeals, then costs may increase by an indeterminable amount.

AGENCIES CONTACTED:

Judicial Branch, Departments of Corrections and Justice, Judicial Council, and New Hampshire Association of Counties