

**REGULAR CALENDAR**

**April 13, 2022**

**HOUSE OF REPRESENTATIVES**

**REPORT OF COMMITTEE**

**The Committee on Criminal Justice and Public Safety  
to which was referred SB 299-FN,**

**AN ACT relative to the penalty for escape. Having  
considered the same, report the same with the  
recommendation that the bill OUGHT TO PASS.**

**Rep. Terry Roy**

**FOR THE COMMITTEE**

## COMMITTEE REPORT

Committee:	<b>Criminal Justice and Public Safety</b>
Bill Number:	<b>SB 299-FN</b>
Title:	<b>relative to the penalty for escape.</b>
Date:	<b>April 13, 2022</b>
Consent Calendar:	<b>REGULAR</b>
Recommendation:	<b>OUGHT TO PASS</b>

### STATEMENT OF INTENT

New Hampshire is one of only a few States where escape is a misdemeanor. The majority found that the danger to the public, law enforcement, other inmates, and the escapees themselves, both in attempting an escape and apprehending an escapee, warrants a felony level offense. We heard testimony that leaving the offense of escape as a misdemeanor also presents difficulties in apprehending escapees who are fleeing or have fled the state. Law enforcement is only permitted to pursue people across state lines for felony level offenses. Further, many states will not hold arrested people for rendition for misdemeanor offenses. The minority expressed concerns about people being convicted of a felony for escape if they were incarcerated for misdemeanor charges or if they "innocently" left home confinement over a short distance or small period of time. The majority found those arguments without merit. First, regardless of the offense for which one is incarcerated, escape is a new and unrelated offense, that as stated above, brings a level of danger to everyone. This includes officers attempting to stop the escape, apprehending the escapee, the general public, and other inmates who could be unintentionally injured in a pursuit or use of force by officers attempting to stop the escape. Officers involved do not have the luxury of weighing the underlying offenses for which an inmate was incarcerated when attempting to stop or arrest an escapee. Most importantly, an escape is a demonstration of utter contempt for the rule of law and a civil society. It rejects responsibility for the offenses committed that led to incarceration and any attempt at rehabilitation. With regard to so called "innocent" violations of home or community confinement, these would be dealt with on a case by case basis and would likely be treated as a violation of the terms of the person's parole or confinement if they return to there before an attempt to apprehend them has been made. The discretion on how to deal with these cases is left to the prosecutors and the judicial system, where they rightly belong. It is not the role of the legislature to determine or prejudge the potential fact patterns in each individual case. We either deem behavior illegal or not and if so, what level the offense should be charged at after taking into account the impact of the offense on the general welfare, stability and security of society. In this case, the majority believes a felony level offense is just and proper for the good of society and the inmates themselves. Knowing an escape could add years to their incarceration as well as the negative effects of a felony conviction should make any reasonable person think twice about such activity.

Vote 14-4.

Original: House Clerk  
Cc: Committee Bill File

Rep. Terry Roy  
FOR THE COMMITTEE

Original: House Clerk  
Cc: Committee Bill File

## REGULAR CALENDAR

Criminal Justice and Public Safety

**SB 299-FN**, relative to the penalty for escape. **OUGHT TO PASS.**

Rep. Terry Roy for Criminal Justice and Public Safety. New Hampshire is one of only a few States where escape is a misdemeanor. The majority found that the danger to the public, law enforcement, other inmates, and the escapees themselves, both in attempting an escape and apprehending an escapee, warrants a felony level offense. We heard testimony that leaving the offense of escape as a misdemeanor also presents difficulties in apprehending escapees who are fleeing or have fled the state. Law enforcement is only permitted to pursue people across state lines for felony level offenses. Further, many states will not hold arrested people for rendition for misdemeanor offenses. The minority expressed concerns about people being convicted of a felony for escape if they were incarcerated for misdemeanor charges or if they "innocently" left home confinement over a short distance or small period of time. The majority found those arguments without merit. First, regardless of the offense for which one is incarcerated, escape is a new and unrelated offense, that as stated above, brings a level of danger to everyone. This includes officers attempting to stop the escape, apprehending the escapee, the general public, and other inmates who could be unintentionally injured in a pursuit or use of force by officers attempting to stop the escape. Officers involved do not have the luxury of weighing the underlying offenses for which an inmate was incarcerated when attempting to stop or arrest an escapee. Most importantly, an escape is a demonstration of utter contempt for the rule of law and a civil society. It rejects responsibility for the offenses committed that led to incarceration and any attempt at rehabilitation. With regard to so called "innocent" violations of home or community confinement, these would be dealt with on a case by case basis and would likely be treated as a violation of the terms of the person's parole or confinement if they return to there before an attempt to apprehend them has been made. The discretion on how to deal with these cases is left to the prosecutors and the judicial system, where they rightly belong. It is not the role of the legislature to determine or prejudge the potential fact patterns in each individual case. We either deem behavior illegal or not and if so, what level the offense should be charged at after taking into account the impact of the offense on the general welfare, stability and security of society. In this case, the majority believes a felony level offense is just and proper for the good of society and the inmates themselves. Knowing an escape could add years to their incarceration as well as the negative effects of a felony conviction should make any reasonable person think twice about such activity. **Vote 14-4.**

Original: House Clerk

Cc: Committee Bill File

**HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY**

**EXECUTIVE SESSION on SB 299-FN**

**BILL TITLE:** (New Title) relative to the penalty for escape and relative to home cultivation of cannabis plants and the possession of certain cannabis-infused products.

**DATE:** April 13, 2022

**LOB ROOM:** 202-204

**MOTIONS: OUGHT TO PASS**

Moved by Rep. Roy

Seconded by Rep. Rhodes

Vote: 14-4

**CONSENT CALENDAR: NO**

**Statement of Intent:** Refer to Committee Report

Respectfully submitted,

Rep Scott Wallace, Clerk

OFFICE OF THE HOUSE CLERK



2/8/2022 3:07:34 PM  
 Roll Call Committee Registers  
 Report

2022 SESSION

Criminal Justice and Public Safety

Bill #: SB299 Motion: OTP AM #: \_\_\_\_\_ Exec Session Date: 4-13-22

<u>Members</u>	<u>YEAS</u>	<u>Nays</u>	<u>NV</u>
Abbas, Daryl A. Chairman	14		
Roy, Terry Vice Chairman	1		
Welch, David A.	2		
Burt, John A.		1	
Rhodes, Jennifer	3		
Green, Dennis E.			1
Wallace, Scott Clerk	4		
Testerman, Dave	5		
<del>True, Chris</del> JANIGAN	6		
Pratt, Kevin M.	7		
Marston, Dick	8		
Harriott-Gathright, Linda C. A'S VOTES	9	4	
<del>Pantelakes, Laura G.</del> MANGIAPISI	10		
O'Hearne, Andrew S.			2
Bordenet, John		2	
<del>Meuse, David</del> SCHULTZ	11		
Newman, Ray E.	12		
<del>Bouldin, Amanda C.</del> VAN	13		
Conley, Casey M.	14		
Bradley, Amy		3	
Espitia, Manny			3



2/8/2022 3:07:34 PM  
Roll Call Committee Registers  
Report

2022 SESSION

Criminal Justice and Public Safety

Bill #: SB299 Motion: OTP AM #: / Exec Session Date: 4-13-22

TOTAL VOTE: 

	14	4	3
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HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

PUBLIC HEARING ON SB 299-FN

**BILL TITLE:** relative to the penalty for escape.

**DATE:** April 8, 2022

**LOB ROOM:** 202-204                      **Time Public Hearing Called to Order:** 1345

**Time Adjourned:** 1420

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

**Bill Sponsors:**

Sen. Carson

Sen. D'Allesandro

Sen. Prentiss

**TESTIMONY**

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

**Senator Carson - SD #14**

- Introduced the bill at the request of DOC.

**\*Lyn Cusack - NH DOC**

- Supports bill
- Relates the history of escapes and issues associated thereto.

**Respectfully submitted,**

**Rep. Scott Wallace, Clerk**





# House Remote Testify

## Criminal Justice and Public Safety Committee Testify List for Bill SB299 on 2022-04-08

Support: 1 Oppose: 0 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>
Carson, Senator Sharon	SD 14, NH sharon.carson@leg.state.nh.us	An Elected Official	Myself	Support	No	No	4/5/2022 11:33 AM



STATE OF NEW HAMPSHIRE  
DEPARTMENT OF CORRECTIONS  
DIVISION OF PROFESSIONAL STANDARDS

Helen Hanks, MM  
Commissioner

Lynmarie C. Cusack, Esq.  
Director

PO Box 1806, Rm. 328A  
Concord, NH 03302-1806  
603-271-3707 FAX: 603-223-2333  
TDD Access: 1-800-735-2964

To: The Honorable Members of the Senate Judiciary Committee

From: Lynmarie Cusack, Esq., Director, Professional Standards Division  
New Hampshire Department of Corrections

Date: April 7, 2022

Re: SB 299 *An act relative to penalty for escape.*

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The New Hampshire Department of Corrections (NHDOC) supports the adoption of SB 299 *relative to penalty for escape* as amended by the Senate and provides the following testimony.

The New Hampshire Department of Corrections requested the legislation to aid in a deterrent for those incarcerated individuals who escape from a secure facility, a transitional housing unit, transitional work center, or who abscond from Administrative Home Confinement (AHC).

An amendment to the current law found in RSA 642:6 relative to criminal charges relating to persons escaping from official custody is warranted to act as a preventive measure for those contemplating an escape from prison or walking away from a transitional housing unit. The change is necessary to remedy unforeseen consequences from a legislative amendment made in 2015. For years, prior to 2015, an escape from a penal institution (which includes a jail, prison, or a Corrections' transitional housing unit) was considered a class A felony if physical force or a deadly weapon was used to affect the escape. If no force or weapon was involved, an individual was charged with a class B felony.

Effective January 1, 2015, the law changed reducing the criminal penalty to a class A misdemeanor if no force was used, and no person other than the actor sustained bodily injury during the escape. The resulting implications have been the failure to prosecute when a person sentenced to a lengthy commitment absconds from supervision. For example, a County Attorney has refused to prosecute cases in which felons have absconded from the transitional housing units in Concord. Where the cases have been prosecuted, the deterrent value of a suspended one-year sentence or one year added to an already lengthy sentence is nominal at best. This concern arises as well if a resident escaped from behind the walls of the prison and no force was used by the escapee— the escapee would face no more than one year added to his or her sentence.

As an illustration, consider an escape of a convicted person who somehow “breaks out” from behind the walls of one of our prisons, where no physical force or deadly weapon is used by the

prisoner during the escape. If those circumstances existed under current New Hampshire law, the escaping incarcerated individual would only be charged with a class A misdemeanor, which is punishable by no more than a year – and at best would be served at a county facility, only after the remaining sentence was served if the escape sentence was not suspended or made to run concurrent with the existing sentence on the original offense.

As another example, the Department has one case in which a resident absconded from parole in October 2018 and was a fugitive from justice for approximately 4 months. No criminal charges were brought despite the escaped felon having been charged and sentenced for a previous escape in 2010. When he returned to prison on the parole warrant in February 2019, he was given a minimum setback and escaped from custody in November, by absconding from the North End House in Concord.

In that case, the ambiguities in the current version of RSA 642:6 made it unclear that the individual could be charged with the class B felony, despite the prior conviction. It was the position of the prosecuting attorneys that because the last sentence of the current statute reads “If no physical force was used by the actor and no persons other than the actor sustained bodily injury as a result of the escape, the offense is a class A misdemeanor,” the section nullifies the ability to bring the felony charge despite a previous escape conviction.

In another case a resident enlisted the aid of his girlfriend to help him escape from the transitional work center, rent him a hotel room, procure him a weapon, and provide him a rented automobile. He was found, weeks later in Virginia, but only after considerable effort was made to extend the warrant outside of New Hampshire, since warrants generally will not extend beyond New Hampshire, or in some instances New England, when the charged crime only carries a misdemeanor sentence.

The proposed bill, SB 299, is an effort to return the state of the law to that which existed prior to the 2015 change only for incarcerated individuals and those still serving a prison sentence but leave the intent of the 2015 changes applicable to those under arrest, subject to a bail order or other confinement.

Thank you for considering this testimony.

If you have questions, please feel free to call me at 603-271-5603 or to e-mail me at [Lynmarie.C.Cusack@doc.nh.gov](mailto:Lynmarie.C.Cusack@doc.nh.gov).

SB 299-FN - AS AMENDED BY THE SENATE

02/16/2022 0666s

2022 SESSION

22-2976

04/11

SENATE BILL **299-FN**

AN ACT relative to the penalty for escape.

SPONSORS: Sen. Carson, Dist 14; Sen. D'Allesandro, Dist 20; Sen. Prentiss, Dist 5

COMMITTEE: Judiciary

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AMENDED ANALYSIS

This bill amends the penalty for escape.

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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 Two*

AN ACT relative to the penalty for escape.

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

1 1 Obstructing Governmental Operations; Escape. Amend RSA 642:6, III to read as follows:

2 III. The offense is a class A felony if the actor employs force against any person or threatens  
3 any person with a deadly weapon to effect the escape, except that if the deadly weapon is a firearm,  
4 the actor shall be sentenced in accordance with RSA 651:2, II-g. The offense is a class B felony,  
5 **regardless of whether force is used**, if the actor was on parole, subject to a bail order, was a  
6 prisoner at an adult or juvenile correction facility at the time, or had been released from any  
7 correctional institution pursuant to administrative home confinement or any treatment program or  
8 other place as directed by the correctional authority or sentencing court, or had a prior conviction of  
9 the crime of escape. **In all other cases**, if no physical force was used by the actor and no persons  
10 other than the actor sustained bodily injury as a result of the escape, the offense is a class A  
11 misdemeanor.

12 2 Effective Date. This act shall take effect January 1, 2023.

**SB 299-FN- FISCAL NOTE**  
AS AMENDED BY THE SENATE (AMENDMENT #2022-0666s)

AN ACT relative to the penalty for escape.

**FISCAL IMPACT:**     State             County             Local             None

STATE:	Estimated Increase / (Decrease)			
	FY 2022	FY 2023	FY 2024	FY 2025
<b>Appropriation</b>	\$0	\$0	\$0	\$0
<b>Revenue</b>	\$0	\$0	\$0	\$0
<b>Expenditures</b>	\$0	Indeterminable	Indeterminable	Indeterminable
<b>Funding Source:</b>	<input checked="" type="checkbox"/> General	<input type="checkbox"/> Education	<input type="checkbox"/> Highway	<input type="checkbox"/> Other

**COUNTY:**

<b>Revenue</b>	\$0	\$0	\$0	\$0
<b>Expenditures</b>	\$0	Indeterminable	Indeterminable	Indeterminable

**METHODOLOGY:**

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 Council	FY 2022	FY 2023
Public Defender Program	Has contract with State to provide services.	Has contract with State to 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
<p>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. Historically, approximately 85% of the indigent defense caseload has been handled by the public defender program, with the remaining cases going to contract attorneys (14%) or assigned counsel (1%). Beginning in March of 2021, the public defender program has had to close intake to new cases due to excessive caseloads. Due to these closures, the contract and assigned counsel program have had to absorb significantly more cases. The system is experiencing significant delays in appointing counsel and the costs of representation have increased due to travel time and multiple appointments.</p>		
Department of Corrections	FY 2022	FY 2023

FY 2021 Average Cost of Incarcerating an Individual	\$54,386	\$54,386
FY 2021 Annual Marginal Cost of a General Population Inmate	\$5,715	\$5,715
FY 2021 Average Cost of Supervising an Individual on Parole/Probation	\$603	\$603
NH Association of Counties	FY 2022	FY 2023
County Prosecution Costs	Indeterminable	Indeterminable
Estimated Average Daily Cost of Incarcerating an Individual	\$105 to \$125	\$105 to \$125

This bill contains penalties that will have an indeterminable impact on the Judicial Branch system. 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. In the past the Judicial Branch has used averaged caseload data based on time studies to estimate the fiscal impact of proposed legislation. The per case data on costs for routine criminal cases currently available to the Judicial Branch are based on studies of judicial and clerical weighted caseload times for processing average routine criminal cases that are more than fifteen years old so the data does not have current validity. A new case study is being conducted and updated estimates will be available in the future.

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 may be able to absorb the cost within its existing budget. However, if the Department needs to prosecute significantly more cases or handle more appeals, then costs will increase by an indeterminable amount.

**AGENCIES CONTACTED:**

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