

LEGISLATIVE COMMITTEE MINUTES

HB347

Bill as Introduced

HB 347-FN - AS INTRODUCED

2021 SESSION

21-0332
11/05

HOUSE BILL

347-FN

AN ACT

relative to driving with a suspended license.

SPONSORS:

Rep. Abbas, Rock. 8

COMMITTEE:

Criminal Justice and Public Safety

ANALYSIS

This bill makes driving after a license has been suspended for driving or operating under the influence of drugs or liquor in this or any out-of-state jurisdiction a misdemeanor, and imposes a fine on any person who does so. The bill also clarifies that prior out-of-state convictions for driving after revocation or suspension may be considered when determining whether a person is guilty of a misdemeanor for driving after revocation or suspension.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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

AN ACT relative to driving with a suspended license.

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

1 1 New Subparagraph; Motor Vehicles; Driving After Revocation or Suspension. Amend RSA
2 263:64, V-a by inserting after subparagraph (b) the following new subparagraph:

3 (c) A person violating this section whose license or driving privilege has been suspended
4 pursuant to the provisions of RSA 265-A:30, or pursuant to a reasonably equivalent law in any other
5 jurisdiction, shall be guilty of a misdemeanor and fined \$500 plus penalty assessment.

6 2 Motor Vehicles; Driving After Revocation or Suspension. Amend RSA 263:64, VI to read as
7 follows:

8 VI. Any person who violates the provisions of this section shall be guilty of a misdemeanor
9 upon conviction based upon a complaint which alleged that the person has had one or more prior
10 convictions for driving after revocation or suspension in this state ***or reasonably equivalent***
11 ***offenses in any other jurisdiction*** within the 7 years preceding the date of the second or
12 subsequent offense.

13 3 Effective Date. This act shall take effect 60 days after its passage.

**HB 347-FN- FISCAL NOTE
AS INTRODUCED**

AN ACT relative to driving with a suspended license.

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	Indeterminable	Indeterminable	Indeterminable
Expenditures	\$0	Indeterminable	Indeterminable	Indeterminable
Funding Source:	<input checked="" type="checkbox"/> General	<input type="checkbox"/> Education	<input checked="" type="checkbox"/> Highway	<input type="checkbox"/> Other

COUNTY:

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

METHODOLOGY:

This bill expands the criteria relative to driving under a suspended license to meet a misdemeanor level offense. 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 or fine revenue. However, the entities impacted have provided the potential costs associated with these penalties below.

Judicial Branch	FY 2021	FY 2022
Violation Level Offense	\$53	\$53
Class B Misdemeanor	\$55	\$55
Class A Misdemeanor	\$78	\$78
Simple Criminal Case	\$309	\$309
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 – Misdemeanor	\$300/Case	\$300/Case
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%).		
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.

The Department of Safety states it would incur no fiscal impact from this bill.

AGENCIES CONTACTED:

Judicial Branch, Department of Safety, Department of Justice, Judicial Council, and New Hampshire Association of Counties

HB 347-FN - AS AMENDED BY THE SENATE

01/05/2022 2291s

2021 SESSION

21-0332

11/05

HOUSE BILL **347-FN**

AN ACT relative to driving with a suspended license.

SPONSORS: Rep. Abbas, Rock. 8

COMMITTEE: Criminal Justice and Public Safety

ANALYSIS

This bill makes driving after a license has been suspended for driving or operating under the influence of drugs or liquor in this or any out-of-state jurisdiction a misdemeanor, and imposes a fine on any person who does so. The bill also clarifies that prior out-of-state convictions for driving after revocation or suspension may be considered when determining whether a person is guilty of a misdemeanor for driving after revocation or suspension.

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 Twenty One

AN ACT relative to driving with a suspended license.

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

- 1 1 New Subparagraph; Motor Vehicles; Driving After Revocation or Suspension. Amend RSA
2 263:64, V-a by inserting after subparagraph (b) the following new subparagraph:
3 (c) A person violating this section whose license or driving privilege has been suspended
4 pursuant to the provisions of RSA 265-A:30, or pursuant to a reasonably equivalent law in any other
5 jurisdiction, shall be guilty of a misdemeanor and fined \$500 plus penalty assessment.
6 2 Motor Vehicles; Driving After Revocation or Suspension. Amend RSA 263:64, VI to read as
7 follows:
8 VI. Any person who violates the provisions of this section shall be guilty of a misdemeanor
9 upon conviction based upon a complaint which alleged that the person has had one or more prior
10 convictions for driving after revocation or suspension in this state *or reasonably equivalent*
11 *offenses in any other jurisdiction* within the 7 years preceding the date of the second or
12 subsequent offense.
13 3 Effective Date. This act shall take effect January 1, 2023.

HB 347-FN- FISCAL NOTE
AS AMENDED BY THE SENATE (AMENDMENT #2021-2291s)

AN ACT relative to driving with a suspended license.

FISCAL IMPACT: State County Local None

STATE:	Estimated Increase / (Decrease)			
	FY 2022	FY 2023	FY 2024	FY 2025
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	Indeterminable	Indeterminable	Indeterminable
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	Indeterminable	Indeterminable

METHODOLOGY:

This bill, effective January 1, 2023, expands the criteria relative to driving under a suspended license to meet a misdemeanor level offense. There is no method to determine how many charges may 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 – Misdemeanor	\$300/Case	\$300/Case
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. 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.		
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 may have an indeterminable impact on the Judicial Branch system. There is no method to determine how many charges may 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.

The Department of Safety states this bill will have no impact on its budget.

AGENCIES CONTACTED:

Judicial Branch, Department of Safety, Department of Justice, Judicial Council, and New Hampshire Association of Counties

CHAPTER 248
HB 347-FN - FINAL VERSION

01/05/2022 2291s

2022 SESSION

21-0332
11/05

HOUSE BILL **347-FN**

AN ACT relative to driving with a suspended license.

SPONSORS: Rep. Abbas, Rock. 8

COMMITTEE: Criminal Justice and Public Safety

ANALYSIS

This bill makes driving after a license has been suspended for driving or operating under the influence of drugs or liquor in this or any out-of-state jurisdiction a misdemeanor, and imposes a fine on any person who does so. The bill also clarifies that prior out-of-state convictions for driving after revocation or suspension may be considered when determining whether a person is guilty of a misdemeanor for driving after revocation or suspension.

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.

CHAPTER 248
HB 347-FN - FINAL VERSION

01/05/2022 2291s

21-0332
11/05

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Two

AN ACT relative to driving with a suspended license.

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

1 248:1 New Subparagraph; Motor Vehicles; Driving After Revocation or Suspension. Amend RSA
2 263:64, V-a by inserting after subparagraph (b) the following new subparagraph:

3 (c) A person violating this section whose license or driving privilege has been suspended
4 pursuant to the provisions of RSA 265-A:30, or pursuant to a reasonably equivalent law in any other
5 jurisdiction, shall be guilty of a misdemeanor and fined \$500 plus penalty assessment.

6 248:2 Motor Vehicles; Driving After Revocation or Suspension. Amend RSA 263:64, VI to read
7 as follows:

8 VI. Any person who violates the provisions of this section shall be guilty of a misdemeanor
9 upon conviction based upon a complaint which alleged that the person has had one or more prior
10 convictions for driving after revocation or suspension in this state ***or reasonably equivalent***
11 ***offenses in any other jurisdiction*** within the 7 years preceding the date of the second or
12 subsequent offense.

13 248:3 Effective Date. This act shall take effect January 1, 2023.

Approved: June 24, 2022
Effective Date: January 01, 2023

Amendments

Sen. Carson, Dist 14
November 22, 2021
2021-2278s
11/04

Amendment to HB 347-FN

- 1 Amend the bill by replacing section 3 with the following:
- 2
- 3 3 Effective Date. This act shall take effect January 1, 2023.

UNAPPROVED

Senate Judiciary
December 14, 2021
2021-2291s
11/11

Amendment to HB 347-FN

- 1 Amend the bill by replacing section 3 with the following:
- 2
- 3 3 Effective Date. This act shall take effect January 1, 2023.

Committee Minutes

SENATE CALENDAR NOTICE

Judiciary

Sen Sharon Carson, Chair
Sen Bill Gannon, Vice Chair
Sen Harold French, Member
Sen Rebecca Whitley, Member
Sen Jay Kahn, Member

Date: April 15, 2021

HEARINGS

Tuesday		04/27/2021
(Day)		(Date)
Judiciary	REMOTE	1:00 p.m.
(Name of Committee)	(Place)	(Time)
1:00 p.m.	HB 179-FN relative to enhanced penalties based on prior convictions for driving under the influence of drugs or liquor.	
1:15 p.m.	HB 347-FN relative to driving with a suspended license.	
1:30 p.m.	HB 129-FN prohibiting the installation or use of electronic tracking software.	
1:45 p.m.	HB 125 relative to post-arrest photo distribution by law enforcement officers.	

Committee members will receive secure Zoom invitations via email.

Members of the public may attend using the following links:

1. Link to Zoom Webinar: <https://www.zoom.us/j/98124930370>
2. To listen via telephone: Dial (for higher quality, dial a number based on your current location): 1-301-715-8592, or 1-312-626-6799 or 1-929-205-6099, or 1-253-215-8782, or 1-346-248-7799, or 1-669-900-6833
3. Or iPhone one-tap: US: +16465588656,,98124930370# or +13017158592,,98124930370#
4. Webinar ID: [981 2493 0370](https://www.zoom.us/j/98124930370)
5. To view/listen to this hearing on YouTube, use this link:
<https://www.youtube.com/channel/UCjBZdtrjRnQdmg-2MPMiWrA>
6. To sign in to speak, register your position on a bill and/or submit testimony, use this link:
<http://gencourt.state.nh.us/remotecommittee/senate.aspx>

The following email will be monitored throughout the meeting by someone who can assist with and alert the committee to any technical issues: remotesenate@leg.state.nh.us or call (603-271-6931).

EXECUTIVE SESSION MAY FOLLOW

Sponsors:
HB 179-FN
Rep. Abbas
HB 347-FN
Rep. Abbas
HB 129-FN
Rep. Testerman

HB 125

Rep. Klein-Knight

Rep. Bouchard

Rep. Roy

Jennifer Horgan 271-7875

Sharon M Carson
Chairman

Senate Judiciary Committee

Jennifer Horgan 271-7875

HB 347-FN, relative to driving with a suspended license.

Hearing Date: April 27, 2021

Time Opened: 1:22 p.m.

Time Closed: 1:34 p.m.

Members of the Committee Present: Senators Carson, Gannon, French, Whitley and Kahn

Members of the Committee Absent : None

Bill Analysis: This bill makes driving after a license has been suspended for driving or operating under the influence of drugs or liquor in this or any out-of-state jurisdiction a misdemeanor, and imposes a fine on any person who does so. The bill also clarifies that prior out-of-state convictions for driving after revocation or suspension may be considered when determining whether a person is guilty of a misdemeanor for driving after revocation or suspension.

Sponsors:

Rep. Abbas

Who supports the bill: Representative Abbas; John Simonds, Sullivan County; David Goldstein; Chief Tara Laurent, Greenland Police Department; Andrew Shagoury; Chief Joseph Hoebeke, Hollis Police Department; Brendan LaFlamme, Hollis Police Department; James Maloney, Hollis Police Department; Domenic Richardi; Sheriff Mark Brave; Christopher Connelly; Joanne Connelly; Andrew Connelly; Gary Fisher; Charles Pelton; Michael Bagan; Beth Sargent, NH Association of Chiefs of Police; Anthony Bean Burpee; Patrick Sullivan; Charles Reynolds; John Parsons; Emily Cobb; Timothy Carpenter; Bradley Osgood; Gregory Patten; David Noyes; Michael Bilodeau; Scott Lester; Gerald Lewis; Timothy Crowley; Eric Pauer; Peter Morency; Joe Mahoney; Robert Krieger

Who opposes the bill: Katherine Cooper, NHACDL; Devon Chaffee, ACLU; David Croft

Who is neutral on the bill: Richard Head, Judicial Branch

Summary of testimony presented in support:

Representative Abbas

- Reviewed the legislative history of the bill.

- In NH many driving offenses, like drunk driving, are taken into consideration if they occur out-of-state.
- Driving with a suspended license only factors in in-state convictions.
- In the past, it was often necessary to get a certified copy of a prior conviction, but now they are digital and can be easily transferred electronically.
- There are a lot of arrests made in NH for individuals driving with a suspended license who reside out-of-state.
- Currently, the state cannot take into account a prior conviction.
- It is rare that driving with a suspended license is a stand alone charge.

Summary of testimony presented in opposition:

Katherine Cooper (NHACDL)

- This bill elevates a garden variety violation level operating after suspension charge based on an administrative suspension from a violation to a misdemeanor.
- Does not believe this will do anything to deter people from their need to drive.
- This will be expensive to the state because prosecutors will have the ability to charge this as a misdemeanor, which triggers potential jail time, a right to a jury trial, and right to an attorney.
- NH is in a major crisis with trying to find counsel for all those that have received criminal charges over the past year.
- The state wins these administrative license suspension (ALS) hearings 93% of the time but there are also substantial delays from when a person has a hearing, and the decision is provided.
- The ALS suspension goes into effect before the hearing.
- If a person gets arrested and they refuse a breathalyzer or blow over a .08, they will then request an ALS hearing, the suspension goes into effect 30 days after the arrest, the hearing is scheduled for 35 days after the arrest, and the ALS decision usually takes 15 days after the hearing.
- This results in 20 days of suspension even if a person is factually and legally innocent.

Neutral Information Presented:

Richard Head (Judicial Branch)

- Asking for an amended effective date.
- RSA 14:9-a states that each law effecting judicial practice and procedure, or establishing or eliminating criminal prohibitions, civil causes of action or remedies, or limitations of actions, shall take effect on the January 1 following passage.
- The Judicial Branch goes through all bills that are passed in a legislative year and completes a modified Uniform Charge Table.
- The Uniform Charge Table is used by all state prosecutors, police, and state agencies to ensure a standardize method of identifying crimes.

- This is a very detailed chart that takes a great deal of time to get through.
- Senator Kahn asked how the seven year look back period compares to other statutes.
 - Is not taking a position on the policy. The seven years is existing language, this bill is looking at the charge in other jurisdictions. Doesn't know the comparison to other jurisdictions.

jch

Date Hearing Report completed: April 30, 2021

Speakers

Senate Remote Testify

Judiciary Committee Testify List for Bill HB347 on 2021-04-27

Support: 34 Oppose: 3 Neutral: 1 Total to Testify: 4

<u>Name</u>	<u>Email Address</u>	<u>Phone</u>	<u>Title</u>	<u>Representing</u>	<u>Position</u>	<u>Testifying</u>	<u>Signed Up</u>
Head, Richard	rhead@courts.state.nh.us	603-716-8235	State Agency Staff	Myself	Neutral	Yes	4/26/2021 12:46 PM
Abbas, Daryl	daryl.abbas@leg.state.nh.us	(603) 560 -	An Elected Official	Rockingham / District 8	Support	Yes	4/27/2021 10:48 AM
Cooper, Katherine	katherine@nhacdl.org	603-674-4885	A Lobbyist	NH Association of Criminal Defense Lawyers	Oppose	Yes	4/27/2021 12:21 PM
Simonds, John	jsimonds@sullivancountynh.gov	603.863.4200	An Elected Official	Sullivan County	Support	Yes	4/27/2021 9:16 AM
Goldstein, David	dgoldstein@franklinnh.org	16039989782	A Member of the Public	Myself	Support	No	4/27/2021 1:11 PM
Chaffee, Devon	Not Given	Not Given	A Lobbyist	ACLU of NH	Oppose	No	4/27/2021 9:50 AM
Laurent, Tara	tlaurent@greenlandpd.us	160.343.1462	A Member of the Public	Greenland Police Department	Support	No	4/27/2021 9:57 AM
Shagoury, Andrew	Not Given	Not Given	A Member of the Public	Myself	Support	No	4/27/2021 10:38 AM
Hoebeke, Joseph	jhoebeke@hollisnh.org	603.765.1595	State Agency Staff	Hollis Police Department	Support	No	4/27/2021 10:54 AM
LaFlamme, Brendan	blaflamme@hollisnh.org	603.465.7637	State Agency Staff	Hollis Police Department	Support	No	4/27/2021 10:55 AM
Maloney, James	jmaloney@hollisnh.org	603.465.7637	State Agency Staff	Hollis Police Department	Support	No	4/27/2021 10:55 AM
Richard, Domenic	Not Given	Not Given	An Elected Official	Myself	Support	No	4/27/2021 7:12 AM
Croft, David	Not Given	Not Given	A Member of the Public	Myself	Oppose	No	4/27/2021 7:21 AM
Brave, Sheriff Mark	Mbrave@co.strafford.nh.us	Not Given	An Elected Official	Myself	Support	No	4/27/2021 7:29 AM
Connelly, Christopher	Not Given	Not Given	A Member of the Public	Myself	Support	No	4/27/2021 7:29 AM
Connelly, Joanne	Not Given	Not Given	A Member of the Public	Myself	Support	No	4/27/2021 7:30 AM
Connelly, Andrew	Not Given	Not Given	A Member of the Public	Myself	Support	No	4/27/2021 7:31 AM
Fisher, Gary	Not Given	Not Given	A Member of the Public	Myself	Support	No	4/27/2021 8:15 AM
Pelton, Charles	Not Given	Not Given	A Member of the Public	Myself	Support	No	4/27/2021 8:19 AM
Bagan, Michael	mbagan@grotonnh.org	603.530.1000	A Member of the Public	Myself	Support	No	4/27/2021 8:38 AM
Sargent, Elizabeth	echasesargent@gmail.com	603.568.0213	A Lobbyist	NH Association of Chiefs of Police	Support	No	4/26/2021 5:21 PM
Bean Burpee, Anthony	Not Given	Not Given	A Member of the Public	Myself	Support	No	4/26/2021 2:17 PM
Sullivan, Patrick	Patsully@comcast.net	Not Given	A Member of the Public	Myself	Support	No	4/26/2021 2:23 PM
Reynolds, Charles	reynolds.charles@comcast.net	603.781.0168	A Member of the Public	Myself	Support	No	4/26/2021 5:35 PM
Parsons, John	Not Given	Not Given	A Member of the Public	Myself	Support	No	4/26/2021 2:51 PM
Cobb, Emily	Not Given	Not Given	A Member of the Public	Myself	Support	No	4/26/2021 2:52 PM

Carpenter, Timothy	Not Given	Not Given	A Member of the Public	Myself	Support	No	4/26/2021 2:55 PM
Osgood, Bradley	Not Given	Not Given	A Member of the Public	Myself	Support	No	4/26/2021 2:58 PM
Patten, Gregory	Not Given	Not Given	A Member of the Public	Myself	Support	No	4/26/2021 2:59 PM
Noyes, David	pdchief@wvpublicsafety.com	603.236.8809	A Member of the Public	Myself	Support	No	4/26/2021 3:10 PM
Bilodeau, Michael	Not Given	Not Given	A Member of the Public	Myself	Support	No	4/26/2021 3:22 PM
Lester, Scott	Not Given	Not Given	A Member of the Public	Myself	Support	No	4/26/2021 3:25 PM
Lewis, Gerald	Not Given	Not Given	A Member of the Public	Myself	Support	No	4/26/2021 3:42 PM
Crowley, Timothy	tcrowley@atkinson-nh.gov	978.888.3248	A Member of the Public	Myself	Support	No	4/26/2021 3:59 PM
Pauer, Eric	secretary@BrooklineGOP.org	603.732.8489	A Member of the Public	Myself	Support	No	4/26/2021 10:24 PM
Morency, Peter	Not Given	Not Given	A Member of the Public	Myself	Support	No	4/27/2021 6:08 AM
Mahoney, Joe	Not Given	Not Given	A Member of the Public	Myself	Support	No	4/27/2021 6:55 AM
Krieger, Robert	Not Given	Not Given	A Member of the Public	Myself	Support	No	4/27/2021 9:05 AM

Testimony

New Hampshire Association of Criminal Defense Lawyers

To: The New Hampshire Senate
Judiciary Committee

From: Katherine Cooper, executive director
The New Hampshire Association of Criminal Defense Lawyers

Date: April 26, 2021

Re: Written Testimony on HB 347

I. INTRODUCTION

The New Hampshire Association of Criminal Defense Lawyers (NHACDL) consists of more than 250 Granite State lawyers whose practices include a significant amount of criminal defense work. Our membership includes private practitioners and state and federal public defenders. NHACDL is an affiliate of the National Association of Criminal Defense Lawyers and shares its mission to ensure justice and due process for persons accused of crime and to promote the proper and fair administration of criminal and juvenile justice.

II. HB 347

This bill has two parts; we offer testimony opposing the first part of the bill as follows:

The first part of this bill elevates a garden variety, violation-level operating after suspension charge based on an administrative suspension from a violation to a misdemeanor. This applies to first offenses. Increasing this penalty will do NOTHING to deter people from the need to drive. Nearly all drivers will have no idea what the penalty is when they make the decision, usually out of desperation, to drive while still suspended. And those who are flouting the administrative rules will not care any more about a misdemeanor than they do about a violation.

This will also be expensive to the State because the prosecutor has the ability to charge this as an A misdemeanor, which would trigger potential for jail time, right to a state-funded attorney, and right to a jury trial – all of which are very expensive to tax payers.

This is an unnecessary elevation. If the person has an administrative suspension and a conviction for driving while intoxicated they are already subject to the 7-day mandatory minimum jail sentence for DWI suspension. If the OAS is based on a reckless driving conviction, they are already subject to a class A misdemeanor.

The state wins ALS hearings in New Hampshire 93% of the time. There is also a substantial delay between an ALS hearing and when the decision is provided. And the ALS suspension goes into effect PRIOR to the person getting a hearing.

Here is a common scenario: person arrested; refuses tests or blows over .08; requests an ALS hearing after arrest; ALS suspension goes into effect 30 days after arrest; ALS hearing scheduled 35 days after the arrest; ALS decision issued 15 days after hearing (20 days after suspension has taken effect). Even if that person wins the ALS, the built-in delays in the system have them under suspension without recourse. They could be innocent of the charge, win their hearing and still have no way to get their license back even though they are factually and legally innocent. These people should not be looking at jail time or a criminal conviction for driving.

Summary: this will be expensive (adding jury trials and indigent defense costs in a system that is already overwhelmed) and it is unnecessary (if the defendant has a dwi conviction or a reckless driving conviction that serves as the basis for their license suspension then they are **already** subject to the same or higher penalty).

Jennifer Horgan

From: Richard W. Head <RHead@courts.state.nh.us>
Sent: Thursday, April 22, 2021 11:55 AM
To: Sharon Carson; William Gannon; Harold French; Becky Whitley; Jay Kahn; Jennifer Horgan
Subject: HB 347 (driving with a suspended license) - NHJB Request for Amended Effective Date
Attachments: HB 347 NHJB Written Testimony.pdf

Good morning Senator Carson and members of Senate Judiciary – In anticipation of a hearing scheduled for April 27th, attached is a request from the Judicial Branch for an amendment to House Bill 347 seeking a change in the effective date from 60 days to January 1, 2021. Under RSA 14:9-a “[e]ach law affecting judicial practice and procedure, or establishing or eliminating criminal prohibitions, civil causes of action or remedies, or limitations of actions, shall take effect on the January 1 following passage.” Because this law would establish new criminal prohibitions, RSA 14:9-a provides that it should be effective no sooner than January 1, 2022. The reasons for needing the additional time are outlined in the attached letter.

Thank you for your consideration. Please do not hesitate to contact me should you have any questions. I also anticipate being present at the hearing should you have questions.

Richard

Richard W. Head
Government Affairs Coordinator
New Hampshire Judicial Branch
One Granite Place, Suite N400
Concord, NH 03301
rhead@courts.state.nh.us
Direct dial: 603-415-0779
Cell: 603-716-8235

The State of New Hampshire

ADMINISTRATIVE OFFICE OF THE COURTS

Christopher Keating
Director

1 Granite Place, Suite N400
Concord, NH 03301
(603) 271-2521
Fax: (603) 513-5454
eMail: aoc@courts.state.nh.us
TTY/TDD Relay: (800) 735-2964

April 22, 2021

The Honorable Sharon Carson, Chair
Senate Judiciary Committee
State House, Room 100
Concord, New Hampshire 03301

RE: HB 347 (Relative to Driving with A Suspended License)
Request for Amended Effective Date

Dear Senator Carson and members of Senate Judiciary:

I am writing to make you aware of a concern the Judicial Branch has with regard to the proposed effective date of House Bill 347. The current draft has a proposed effective date of 60 days after its passage. Under RSA 14:9-a “[e]ach law affecting judicial practice and procedure, or establishing or eliminating criminal prohibitions, civil causes of action or remedies, or limitations of actions, shall take effect on the January 1 following passage.” Because this law would establish new criminal prohibitions, RSA 14:9-a provides that it should be effective no sooner than January 1, 2022.

The additional time is needed for the Judicial Branch to implement the collective changes that will be made to laws during this legislative session that impact criminal and civil cases. After each legislative session, the Judicial Branch must update the uniform charge table and the Judicial Branch’s Odyssey database, modify or create new forms, make necessary changes to the e-filing system, and notify and train judges and staff on the hundreds of changes that affect the court system. Implementation of these changes must accurately reflect the changes in law and be properly programed into the case management database and e-filing system. Given the number of changes that must be implemented, it takes several months to complete this effort.

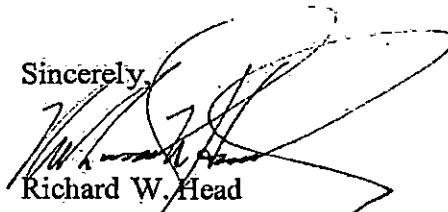
I am writing to request the bill be amended to change the effective date to January 1, 2022 which will allow the Judicial Branch sufficient time to implement all of the changes described in the bills that are passed in this session.

April 22, 2021

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Thank you for your consideration of this request. Please do not hesitate to contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard W. Head", is written over the word "Sincerely," and extends into the typed name below.

Richard W. Head

Government Affairs Coordinator

Email: rhead@courts.state.nh.us

Cell: 603-716-8235

Voting Sheets

Senate Judiciary Committee
EXECUTIVE SESSION RECORD
2021-2022 Session

Bill # HB347

Hearing date: _____

Executive Session date: _____

Motion of: ReRefer Vote: 5-0

Committee Member	Made by	Second	Yes	No
Sen. Carson, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Gannon, V-Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. French	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Kahn	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Whitley	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Motion of: consent Vote: 5-0

Committee Member	Made by	Second	Yes	No
Sen. Carson, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Gannon, V-Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. French	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Kahn	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Whitley	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Motion of: _____ Vote: _____

Committee Member	Made by	Second	Yes	No
Sen. Carson, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Gannon, V-Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. French	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Kahn	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Whitley	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Reported out by: Carson

Notes: _____

Senate Judiciary Committee
EXECUTIVE SESSION RECORD
2021-2022 Session

Bill # HB 347

Hearing date: _____

Executive Session date: _____

Motion of: 2278 Vote: 5-0

Committee Member	Made by	Second	Yes	No
Sen. Carson, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Gannon, V-Chair	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. French	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Kahn Sherman	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Whitley	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Motion of: OTPA Vote: 3-2

Committee Member	Made by	Second	Yes	No
Sen. Carson, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Gannon, V-Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. French	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Kahn Sherman	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Sen. Whitley	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Motion of: _____ Vote: _____

Committee Member	Made by	Second	Yes	No
Sen. Carson, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Gannon, V-Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. French	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Kahn	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Whitley	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Reported out by: Carson

Notes: change requested by court time to implement

Committee Report

STATE OF NEW HAMPSHIRE

SENATE

REPORT OF THE COMMITTEE
FOR THE CONSENT CALENDAR

Wednesday, May 5, 2021

THE COMMITTEE ON Judiciary

to which was referred **HB 347-FN**

AN ACT relative to driving with a suspended license.

Having considered the same, the committee recommends that the Bill

BE RE-REFERRED TO COMMITTEE

BY A VOTE OF: 5-0

Senator Sharon Carson
For the Committee

This bill would make driving after a license has been suspended for driving or operating under the influence of drugs or liquor in this or any out-of-state jurisdiction a misdemeanor, and would impose a fine on any person who does so. Further, it would also clarify that prior out-of-state convictions for driving after revocation or suspension may be considered when determining whether a person is guilty of a misdemeanor for driving after revocation or suspension. The Committee would like more time to look over this language as it deals with out-of-state jurisdictions and therefore, recommends the bill to be Re-Referred back to Committee.

Jennifer Horgan 271-7875

FOR THE CONSENT CALENDAR

JUDICIARY

HB 347-FN, relative to driving with a suspended license.

Re-refer to Committee, Vote 5-0.

Senator Sharon Carson for the committee.

This bill would make driving after a license has been suspended for driving or operating under the influence of drugs or liquor in this or any out-of-state jurisdiction a misdemeanor, and would impose a fine on any person who does so. Further, it would also clarify that prior out-of-state convictions for driving after revocation or suspension may be considered when determining whether a person is guilty of a misdemeanor for driving after revocation or suspension. The Committee would like more time to look over this language as it deals with out-of-state jurisdictions and therefore, recommends the bill to be Re-Referred back to Committee.

STATE OF NEW HAMPSHIRE
SENATE
REPORT OF THE COMMITTEE

Wednesday, December 15, 2021

THE COMMITTEE ON Judiciary

to which was referred **HB 347-FN**

AN ACT relative to driving with a suspended license.

Having considered the same, the committee recommends that the Bill

OUGHT TO PASS WITH AMENDMENT

BY A VOTE OF: 3-2

AMENDMENT # 2021-2291s

Senator Sharon Carson
For the Committee

Jennifer Horgan 271-7875

JUDICIARY

HB 347-FN, relative to driving with a suspended license.

Ought to Pass with Amendment, Vote 3-2.

Senator Sharon Carson for the committee.

HB347-FN

Bill Details

Title: relative to driving with a suspended license.

Sponsors: *(Prime)* [Abbas \(R\)](#)

LSR Number: **21-0332**

General Status: **SIGNED BY GOVERNOR**

Chapter Number: **248**

House:

Committee: Criminal Justice and Public Safety

Due Out: 4/1/2021

Status: CONCURRED

Senate:

Committee: Judiciary

Floor Date: 1/5/2022

Status: PASSED/ADOPTED WITH AMENDMENT

Bill Docket

Body	Description
H	Introduced (in recess of) 01/06/2021 and referred to Criminal Justice and Public Safety HJ 2 P. 44
H	Public Hearing: 03/10/2021 10:30 am Members of the public may attend using the following link: To join the webinar: https://www.zoom.us/j/92387218591 / Executive session on pending legislation may be held throughout the day (time permitting) from the time the committee is initially convened.
H	Committee Report: Ought to Pass (Vote 14-7; RC) HC 18 P. 36
H	Ought to Pass: MA VV 04/08/2021 HJ 6 P. 4
S	Introduced 04/08/2021 and Referred to Judiciary; SJ 12
S	Remote Hearing: 04/27/2021. 01:15 pm; Links to join the hearing can be found in the Senate Calendar; SC 20
S	Committee Report: Rereferred to Committee, 05/13/2021; Vote 5-0; CC: SC 23
S	Rereferred to Committee, MA, VV; 05/13/2021; SJ 15
S	Committee Report: Ought to Pass with Amendment # 2021-2291s, 01/05/2022; SC 49
S	Committee Amendment # 2021-2291s, AA, VV; 01/05/2022; SJ 1
S	Ought to Pass with Amendment 2021-2291s, MA, VV; OT3rdg; 01/05/2022; SJ 1
H	House Concurs with Senate Amendment (Rep. Abbas); MA VV 05/12/2022 HJ 13
S	Enrolled Adopted, VV. (in recess 05/26/2022); SJ 13
H	Enrolled (in recess of) 05/26/2022 HJ 14
H	Signed by Governor Sununu 06/24/2022; Chapter 248; eff. 01/01/2023 HJ 14

Other Referrals

Senate Inventory Checklist for Archives

Bill Number: HB347

Senate Committee: Judiciary

Please include all documents in the order listed below and indicate the documents which have been included with an "X" beside

Final docket found on Bill Status

Bill Hearing Documents: {Legislative Aides}

Bill version as it came to the committee

All Calendar Notices

Hearing Sign-up sheet(s)

Prepared testimony, presentations, & other submissions handed in at the public hearing

Hearing Report

Revised/Amended Fiscal Notes provided by the Senate Clerk's Office

Committee Action Documents: {Legislative Aides}

All amendments considered in committee (including those not adopted):

- amendment # 2278s - amendment # 2296

- amendment # _____ - amendment # _____

Executive Session Sheet

Committee Report

Floor Action Documents: {Clerk's Office}

All floor amendments considered by the body during session (only if they are offered to the senate):

- amendment # _____ - amendment # _____

- amendment # _____ - amendment # _____

Post Floor Action: (if applicable) {Clerk's Office}

Committee of Conference Report (if signed off by all members. Include any new language proposed by the committee of conference):

Enrolled Bill Amendment(s)

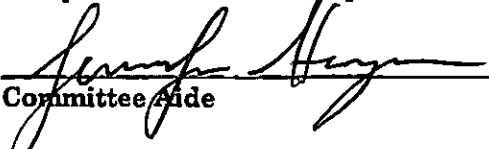
Governor's Veto Message

All available versions of the bill: {Clerk's Office}

as amended by the senate as amended by the house

final version

Completed Committee Report File Delivered to the Senate Clerk's Office By:


Committee Aide

8/12/22
Date

Senate Clerk's Office AK