

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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