

HB 1609-FN - AS INTRODUCED

2022 SESSION

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05/10

HOUSE BILL            ***1609-FN***

AN ACT                relative to the scope of the fetal protection act.

SPONSORS:            Rep. Wolf, Merr. 5; Rep. Deshaies, Carr. 6; Rep. Allard, Merr. 21; Rep. Graham, Hills. 7; Rep. Ham, Graf. 5; Rep. Depalma IV, Graf. 1

COMMITTEE:          Health, Human Services and Elderly Affairs

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ANALYSIS

This bill adds certain exceptions to the fetal life protection act and requires the department of health and human services to publish an annual statistical report of pregnancy terminations.

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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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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 scope of the fetal protection act.

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

1 1 Short Title. This act may be known and cited as the Maternal Protection Act.

2 2 Fetal Life Protection Act; Prohibition. Amend RSA 329:44 to read as follows:

3 329:44 Prohibition.

4 I. Except ~~[in the case of]~~ **for pregnancy that results from felonious sexual assault, as**  
5 **defined in RSA 632-A:2 or RSA 632-A:3, incest, or fetal anomalies incompatible with life, or**  
6 a medical emergency as ~~[specifically]~~ defined in paragraph III, no abortion shall be performed,  
7 induced, or attempted by any health care provider unless a health care provider has first made a  
8 determination of the probable gestational age of the fetus. In making such a determination, the  
9 health care provider shall make such inquiries of the pregnant woman and perform or cause to be  
10 performed all such medical examinations, imaging studies, and tests as a reasonably prudent health  
11 care provider in the community, knowledgeable about the medical facts and conditions of both the  
12 woman and the fetus involved, would consider necessary to perform and consider in making an  
13 accurate diagnosis with respect to gestational age~~[- provided, however, that the health care provider~~  
14 ~~shall conduct an obstetric ultrasound examination of the patient for the purpose of making the~~  
15 ~~determination]~~.

16 II. Except in **the case of felonious sexual assault, as defined in RSA 632-A:2 or RSA**  
17 **632-A:3, incest, or fetal anomalies incompatible with life, or** a medical emergency as  
18 ~~[specifically]~~ defined in paragraph III, no health care provider shall knowingly perform, induce, or  
19 attempt to perform an abortion upon a pregnant woman when the probable gestational age of her  
20 fetus has been determined to be at least 24 weeks or in the absence of a determination by a health  
21 care provider pursuant to paragraph I as to the fetus' probable gestational age.

22 III. For the purposes of this subdivision only, "medical emergency" means a condition in  
23 which an abortion is necessary to preserve the **health or** life of the pregnant woman; **or** whose  
24 **health or** life is endangered by a physical disorder, physical illness, or physical injury, including a  
25 life-endangering physical condition caused by or arising from the pregnancy itself, or when  
26 continuation of the pregnancy will create a serious risk of substantial and irreversible impairment of  
27 a major bodily function, as defined in RSA 329:43, V, of the pregnant woman.

28 **IV. For the purpose of this subdivision only, "incest" shall mean sexual penetration**  
29 **by an individual of any age whom she knows to be her ancestor, descendant, or brother, of**  
30 **the whole or half blood, or uncle or nephew. The relationships referred to in this**

1 *paragraph include blood relationships without regard to legitimacy, stepchildren, and*  
2 *relationships of parents and child by adoption.*

3 3 Reporting. Amend RSA 329:45 to read as follows:

4 329:45 Reporting.

5 ~~[F.]~~ Any health care provider who performs an abortion *due to a medical emergency* under  
6 this subdivision shall report, in writing, to the medical facility in which the abortion is performed the  
7 reason for the determination that a medical emergency existed. The health care provider's written  
8 report shall be included in a written report from the medical facility to the department of health and  
9 human services. *The report shall be exempt from disclosure pursuant to RSA 91-A.* If the  
10 abortion is not performed in a medical facility, the health care provider shall report, in writing, the  
11 reason for the determination that a medical emergency existed to the department of health and  
12 human services as part of the written report made by the health care provider to the department.  
13 The health care provider and the medical facility shall retain a copy of the written reports required  
14 under this section for not less than 5 years.

15 4 Health Care Data; Department of Health and Human Services; Reporting Requirement.  
16 Amend RSA 126:28 to read as follows:

17 126:28 Availability of Data.

18 *I.* Notwithstanding any other provision of law, data collected under RSA 126:25 shall be  
19 made available:

20 ~~[F.]~~ *(a)* To the public upon request, provided that individual patients or health care  
21 practitioners shall not be directly or indirectly identifiable.

22 ~~[H.]~~ *(b)* To individuals or entities for research, public health, or health care operations as  
23 defined by HIPAA, or any other individual or entity as allowable by law, demonstrating a legitimate  
24 need for such information, if such disclosure is consistent with all applicable HIPAA standards and  
25 approved by the commissioner, or designee, in accordance with rules adopted under RSA 126:27.  
26 Use of data disclosed shall not be for marketing or fundraising targeted to individuals except such  
27 use or disclosure shall be permissible for market analysis.

28 ~~[H.]~~ *(c)* To the insurance department, the department of justice, or any other state or  
29 federal agency, and any agency's contractors, for review of health care matters within the agency's  
30 respective jurisdictional authority. An agency or contractor receiving health care data under this  
31 section shall comply with all state and federal confidentiality, privacy, and security protections.

32 *II. Due to the state's interest in termination of pregnancy after 24 weeks gestational*  
33 *age pursuant to RSA 329:44-46, the commissioner of the department of health and human*  
34 *services shall publish an annual report relative to pregnancy terminations after 24 weeks,*  
35 *commencing with data to be reported as of January 1, 2022, to be posted on the*  
36 *department's website not later than June 30 of the subsequent year. In preparing this*  
37 *report, the commissioner or his or her designee may utilize data relative to pregnancy*

1 *terminations after 24 weeks collected from facilities pursuant to RSA 126:25, data relative*  
2 *to pregnancy terminations after 24 weeks available through the uniform healthcare*  
3 *facility discharge data set (UHFDDS), data contained in the healthcare common*  
4 *procedure coding system (HCPCS) codes S2265 thru S2267, or other resources that may be*  
5 *available relative to pregnancy terminations after 24 weeks, including statistical data*  
6 *from the department of insurance. The department shall publish aggregate results at the*  
7 *New Hampshire Health WISDOM system, and provide annual reporting to the National*  
8 *Centers for Disease Control and Prevention. No data shall be released by the department*  
9 *that may personally identify either the health care provider who performed an induced*  
10 *termination of pregnancy or the patient on whom it was performed.*

11       5 Effective Date. This act shall take effect upon its passage.

**HB 1609-FN- FISCAL NOTE  
AS INTRODUCED**

AN ACT relative to the scope of the fetal protection act.

**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>	DHHS: \$41,400; Judicial & Correctional Systems: Indeterminable decrease	DHHS: \$18,200; Judicial & Correctional Systems: Indeterminable decrease	DHHS: \$18,600; Judicial & Correctional Systems: Indeterminable decrease	DHHS: \$19,000; Judicial & Correctional Systems: Indeterminable decrease
<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>	Indeterminable decrease	Indeterminable decrease	Indeterminable decrease	Indeterminable decrease

**METHODOLOGY:**

This bill provides exceptions to the Fetal Life Protection Act by amending RSA 329:44 and adding exceptions for abortions in the cases of felonious sexual assault, incest, or fetal anomalies incompatible with life or a medical emergency. In addition, the bill requires the Department of Health and Human Services to compile and publish an annual report of statistics relative to termination of pregnancy after 24 weeks. The Department states that data analysis and reporting will be conducted through a contract with the University of New Hampshire. The Department estimates that a contracted position equal to 0.1 full-time equivalent position will be needed to complete the work, at a cost shown below. Also shown below are the estimated costs for development of a database system that is compliant with federal Health Insurance Portability and Accountability Act (HIPAA) standards for the collection of health data.

	FY 2022 (6 months)	FY 2023	FY 2024	FY 2025
Salary (3% increase yearly)	\$4,500	\$9,300	\$9,600	\$9,900

Fringe (3% increase yearly)	\$1,900	\$3,900	\$4,000	\$4,100
Training	\$10,000			
Data System	\$25,000	\$5,000	\$5,000	\$5,000
<b>Total</b>	<b>\$41,400</b>	<b>\$18,200</b>	<b>\$18,600</b>	<b>\$19,000</b>

As the bill is effective upon passage, the Department assumes there may be some cost in the remainder of FY22. Accordingly, the salary and fringe benefits in the table above have been adjusted to reflect six months rather than a complete fiscal year.

To the extent that the added exceptions in the bill result in fewer felony cases, the bill may reduce costs to the state judicial and corrections systems. There is no method to determine the decrease in the number of charges that may be brought. However, the entities impacted have provided the costs associated with felony cases 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
Assigned Counsel – Felony. Homicide (Including capital cases)	\$100/Hour up to \$20,000	\$100/Hour up to \$20,000
Assigned Counsel – Felony	\$60/Hour up to \$4,100	\$60/Hour up to \$4,100
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.		
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

With respect to the Judicial Branch, the potential impact is indeterminable. 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.

**AGENCIES CONTACTED:**

Department of Health and Human Services, Judicial Branch, Judicial Council, Department of Corrections, and New Hampshire Association of Counties