

HB 1644-FN – AS INTRODUCED

2010 SESSION

10-2038

04/01

HOUSE BILL **1644-FN**

AN ACT including “unborn child” in the definition of “another” for the purpose of first and second degree murder, manslaughter, and negligent homicide.

SPONSORS: Rep. Wendelboe, Belk 1; Rep. Hagan, Rock 7; Rep. Bettencourt, Rock 4; Sen. Bradley, Dist 3

COMMITTEE: Criminal Justice and Public Safety

ANALYSIS

This bill provides that an unborn child shall be included in the definition of “another” for the purpose of first and second degree murder, manslaughter, and negligent homicide.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Ten

AN ACT including “unborn child” in the definition of “another” for the purpose of first and second degree murder, manslaughter, and negligent homicide.

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

1 Homicide; Capital Murder; Definition of Unborn Child. Amend RSA 630:1, IV to read as follows:

IV. As used in this section [~~and RSA 630:1-a, 1-b, 2, 3 and 4~~], the meaning of “another” does not include a [~~fetus~~] ***fetus***.

2 New Paragraphs; First Degree Murder; Definition of Another; Exemption for Abortion. Amend RSA 630:1-a by inserting after paragraph III the following new paragraphs:

IV. For the purpose of this section and RSA 630:1-b, RSA 630:2, RSA 630:3, and RSA 630:4, the meaning of “another” shall include an unborn child as defined in paragraph V.

V.(a) Nothing in this section or RSA 630:1-b, RSA 630:2, RSA 630:3, or RSA 630:4

shall apply to any act committed by the mother of the unborn child, to any medical procedure including abortion, performed by a physician or other licensed medical professional at the request of the pregnant woman or her legal guardian, or to the lawful dispensation or administration of lawfully prescribed medication. For the purposes of this section and RSA 630:1-b, RSA 630:2, RSA 630:3, or RSA 630:4, "abortion" means the act of using or prescribing any instrument, medicine, drug, or any other substance, device, or means with the intent to terminate the clinically diagnosable pregnancy of a woman with knowledge that the termination by those means will, with reasonable likelihood, cause the death of the unborn child. Such use, prescription, or means is not an abortion if done with the intent to save the life or preserve the health of an unborn child, or to remove a dead unborn child caused by spontaneous abortion, or to remove an ectopic pregnancy.

(b) In this section:

- (1) "Conception" means the fusion of a human spermatozoon with a human ovum.
- (2) "Pregnant" means the female reproductive condition of having an unborn child in the woman's body.
- (3) "Unborn child" means the offspring of human beings from conception until birth.

3 Effective Date. This act shall take effect upon its passage.

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HB 1644-FN - FISCAL NOTE

AN ACT including "unborn child" in the definition of "another" for the purpose of first and second degree murder, manslaughter, and negligent homicide.

FISCAL IMPACT:

The Judicial Branch, the Judicial Council, the Department of Justice, the Department of Corrections, and the New Hampshire Association of Counties state this bill may increase state and county expenditures by an indeterminable amount in FY 2010 and each year thereafter. There will be no fiscal impact on local expenditures or state, county, and local revenue.

METHODOLOGY:

The Judicial Branch states this bill will add RSA 630:1-a, IV to include an unborn child in the definition of "another" for purposes of first and second degree murder, manslaughter, and negligent homicide. The Branch states this bill may result in an additional count in cases that would have occurred where both an unborn child and someone else are victims of the crime or in a criminal case that would not otherwise have been brought in situations where the only victim is the unborn child. If this bill results in an additional count in a case the fiscal impact will be less than if an entirely new criminal case is brought. The Branch has no information to estimate how many prosecutions or the severity of the charges that will be brought as a result of this bill but

does have information on the cost for one full day of a jury trial. A full day (based on a 7 and half hour day) cost for a full day's jury trial in Superior Court is \$1,662.33 in FY 2010 and each year thereafter. The cost of a day's jury trial is as follows:

Position	Daily Cost
Judge	\$728.78
Jury	\$280.00
Jury Mileage	\$84.00
Court Monitor	\$182.40
Deputy Clerk	\$317.18
Bailiff	\$69.97
Total	\$1,662.33

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Additionally, there would be costs associated with preliminary hearings, time to write a charge to the jury, and for clerical processing that would result in the cost of jury trial in excess of \$2,000 per day.

The Judicial Council states this bill may result in an indeterminable increase in general fund expenditures. The Council states this bill will potentially expand the number of homicide cases, typically the most costly cases in the criminal justice system. If the public defender does not have a conflict of interest and is able to represent the case, they would be paid a flat fee of \$20,000. If an assigned counsel attorney must be used, the hourly rate of \$60 with a fee cap of \$20,000 for homicide cases will apply. The fee cap is readily increased by the Court. Finally, expenditures would increase if services other than counsel are requested and approved by the court during the defense of a case or during an appeal. The Council states to defend a capital murder case costs can easily exceed \$1 million.

The Department of Justice states this bill may result in an increase in expenditures. The Department states it would be responsible for handling the prosecution for cases involving first degree murder, second degree murder, and manslaughter. On average, there are 20 murders a year in the State. The Department has no information on how many new prosecutions will be

brought as a result of this bill, however it is estimated it will generate one or two homicide prosecutions a year.

The Department of Corrections states the average annual cost of incarcerating an individual in the general prison population for the fiscal year ending June 30, 2009 was \$33,110. The cost to supervise an individual by the Department's division of field services for the fiscal year ending June 30, 2009 was \$744. The Department states this bill may increase expenditures by an indeterminable amount, but is unable to predict the number of individuals that might be impacted.

The New Hampshire Association of Counties states to the extent an individual is charged with the new law and detained pre-trial in a county correctional facility or an individual is prosecuted, convicted, and sentenced to incarceration, the counties may have increased expenditures. The Association is unable to determine the number of individuals who might be detained or incarcerated as a result of this bill. The average cost to incarcerate an individual in a county facility is \$35,342 a year.