

HB 628-FN – AS AMENDED BY THE HOUSE

5Jan2012... 2768h

2011 SESSION

11-0798

03/04

HOUSE BILL 628-FN

AN ACT relative to searches conducted for purposes of transportation-related security.

SPONSORS: Rep. Lambert, Hills 27; Rep. Manuse, Rock 5; Rep. L. Jones, Straff 1; Rep. Itse, Rock 9; Rep. Sapareto, Rock 5

COMMITTEE: Children and Family Law

AMENDED ANALYSIS

This bill requires law enforcement officers to document complaints relating to administrative searches by agents of the Transportation Security Administration.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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

AN ACT relative to searches conducted for purposes of transportation-related security.

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

1 New Chapter; Federal Agency Searches Recorded. Amend RSA by inserting after chapter 595-B the following new chapter:

CHAPTER 595-C**FEDERAL AGENCY SEARCHES RECORDED**

595-C:1 Federal Agency Searches Recorded.

I. Any law enforcement officer, as defined in RSA 651:6, I-a(a) who is stationed or present at an airport, bus station, train station, highway, or other transportation-related location or is in the presence of or who is working with an agent of the federal Transportation Security Administration or its equivalent while such agent is conducting an administrative search for transportation security of persons about to travel or already traveling in a vehicle of any kind shall record all interactions between the agent and citizen when that citizen complains to the law enforcement officer about the manner in which the administrative search is being or has been conducted.

II. When a law enforcement officer is not available at the site of an administrative search conducted for transportation security, a citizen may file a complaint at any office of the county sheriff within the state of New Hampshire, and the officer taking the report shall follow the same procedures as would be required had he or she been at the scene.

III. In such cases as described in paragraphs I and II, the law enforcement officer shall record the name and address of the citizen as well as the name and address or official identification of the agent, along with an accurate statement of the details involving the complaint and his or her observations of the federal agent's behavior when applicable.

IV. Such records described in paragraph III shall be submitted within 5 business days to the division of state police for inclusion on an electronic database specifically identified as "Citizen Complaints About TSA Searches." The division of state police shall maintain the reports on the electronic database for at least 5 years, after which the records may be archived but not destroyed.

V. The information recorded pursuant to this section, with the name and other identifying information of the complainant redacted, shall be a public record under RSA 91-A.

VI. The department of safety and its employees and agents shall not be held liable for errors of omission or commission in the recording and maintenance of information under this section unless the error is shown to be the result of gross negligence or an intentional act.

VII.(a) In order to assist in the accuracy of records created by law enforcement officers in paragraph III, all citizens being searched shall be afforded their rights under the First Amendment to the Constitution for the United States of America and under Part 1, Article 22 of the New Hampshire Constitution to record, or designate a person to record, using any type of audio and video recording device, or a device that records just audio or just video, all interactions with an agent described in paragraph I, even in the presence of a law enforcement officer, without exception.

(b) If a citizen is prevented in any way from exercising his or her rights as specified in this section, he or she may require a law enforcement officer to enforce the provisions of this section.

(c) If a law enforcement officer does not enforce the provisions of this chapter or makes it difficult for a citizen to exercise his or her rights as specified in this section, the law enforcement officer may be guilty of official oppression pursuant to RSA 643:1.

2 Effective Date. This act shall take effect 90 days after its passage.

LBAO

11-0798

Revised 02/14/11

HB 628 FISCAL NOTE

AN ACT making the touching or viewing with a technological device of a person's breasts or genitals by a government security agent without probable cause a sexual assault.

FISCAL IMPACT:

The Judicial Branch, Judicial Council, Department of Justice, Department of Corrections, New Hampshire Association of Counties, and New Hampshire Municipal Association state this bill may increase state, county, and local expenditures and revenue by an indeterminable amount in FY 2012 and each year thereafter. The Department of Safety states this bill may increase state restricted revenue and expenditures, and local expenditures and revenue by an indeterminable amount in FY 2012 and each year thereafter. There will be no fiscal impact on county revenue.

METHODOLOGY:

The Judicial Branch states this bill adds RSA 632-A:4, I(d) to provide that touching or viewing with a technological device a person's breasts or genitals by a government security agent without probable cause is a misdemeanor sexual assault punishable as a class A misdemeanor. This bill will classify individuals convicted of this offense as tier III offenders under the criminal offenders registry. The Branch states this bill could result in an increase in costs to the Branch by adding the misdemeanor A. The Branch has no information to estimate how many cases will be brought but does have estimated costs for processing a misdemeanor A case and a complex civil case. The Branch states a misdemeanor A case costs \$60.03 per case in FY 2012 and \$60.88 per case in FY 2013 and each year thereafter. The possibility of appeals increases the likelihood the fiscal impact on the Branch will exceed \$10,000.

The Judicial Council states this bill may result in an indeterminable increase in general fund expenditures. The Council states if an individual is found to be indigent, the flat fee of \$275 per misdemeanor is charged by a public defender or contract attorney. If an assigned counsel attorney is used the fee is \$60 per hour with a cap of \$1,400 for a misdemeanor charge. The Council also states additional costs could be incurred if an appeal is filed. The public defender, contract attorney and assigned counsel rates for Supreme Court appeals is capped at \$2,000 per case, with many assigned counsel attorneys seeking permission to exceed the fee cap. Requests to exceed the fee cap are seldom granted. 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 Department of Justice states its public integrity unit investigates and prosecutes criminal conduct undertaken by certain officials in their official capacity. This bill will result in an increased number of investigations and/or prosecutions by the unit, increasing state expenditures by an indeterminable amount.

The Department of Safety states the sex offender registry collects a registration fee of \$50.00 per year per offender to help defray the cost of registration. Of the \$50.00

collected per registration, \$40.00 is retained by the state police in the criminal records fund and \$10.00 is sent to the local police department where the offender resides. The Department is not able to determine the extent that state restricted revenue and expenditures and local expenditures and revenue will increase as a result of this bill as it cannot determine the number of individuals that will be convicted of this offense.

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, 2010 was \$32,492. The cost to supervise an individual by the Department's division of field services for the fiscal year ending June 30, 2010 was \$659. 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 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, prosecuted or incarcerated as a result of this bill. The average annual cost to incarcerate an individual in a county correctional facility is approximately \$35,000.

The New Hampshire Municipal Association states the fiscal impact of this bill on local expenditures and revenue is indeterminable. To the extent local police officers or corrections officers are considered government security officers, then significant litigation costs may be incurred by municipalities.