

SB 465-FN - AS INTRODUCED

2016 SESSION

16-2771
04/03

SENATE BILL **465-FN**

AN ACT relative to the dissemination of images depicting sexually explicit conduct.

SPONSORS: Sen. Woodburn, Dist 1; Sen. Lasky, Dist 13; Sen. Carson, Dist 14; Rep. Shurtleff, Merr. 11; Rep. M. Hennessey, Graf. 12

COMMITTEE: Judiciary

ANALYSIS

This bill establishes a penalty for 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 struckthrough~~].
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

16-2771
04/03

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Sixteen

AN ACT relative to the dissemination of images depicting sexually explicit conduct.

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

1 New Section; Breaches of the Peace and Related Offenses; Nonconsensual Dissemination of Private Sexual Images. Amend RSA 644 by inserting after section 9 the following new section:

644:9-a Nonconsensual Dissemination of Private Sexual Images.

I. In this section:

- (a) "Image" includes a photograph, film, videotape, or digital image or recording.
- (b) "Intimate parts" means the fully unclothed, partially unclothed, or transparently clothed genitals, public area, or anus, or, if the person is female, a partially or fully exposed nipple, including exposure through transparent clothing.
- (c) "Sexual act" means sexual penetration, masturbation, or sexual activity.
- (d) "Sexual activity" means any:
 - (1) Knowing touching or fondling by any person, either directly or through clothing, of the sex organs, anus, or breast of that person, or another person, or animal; or
 - (2) Any transfer or transmission of semen upon any part of the clothed or unclothed body of a person; or
 - (3) An act of urination within a sexual context; or
 - (4) Any bondage, fetter, or sadism masochism; or
 - (5) Sadomasochism abuse in any sexual context.

- II. A person commits nonconsensual dissemination of private sexual images when he or she:
- (a) Intentionally disseminates an image of another person:
 - (1) Who is at least 18 years of age; and
 - (2) Who is identifiable from the image itself or information displayed in connection with the image; and
 - (3) Who is engaged in a sexual act or whose intimate parts are exposed, in whole or in part; and
 - (b) Obtains the image under circumstances in which a reasonable person would know or understand that the person in the image, intended that the image was to remain private; and
 - (c) Knows or should have known that the person in the image has not consented to the dissemination.
- III. The intentional dissemination of an image of another identifiable person who is engaged in a sexual act or whose intimate parts are exposed is exempt from the provision of this section:
- (a) When the dissemination is made for the purpose of a criminal investigation that is otherwise lawful.
 - (b) When the dissemination is for the purpose of, or in connection with, the reporting of unlawful conduct.
 - (c) When the images involve voluntary exposure in public or commercial settings.
 - (d) When the dissemination serves a lawful public purpose.
 - (e) When the dissemination is done in compliance with a subpoena or court order.
- IV. Nothing in this section shall be construed to impose liability upon the following entities solely as a result of content or information provided by another person:
- (a) An interactive computer service, as defined in 47 U.S.C. section 230(f)(2);
 - (b) A provider of public cellular or mobile services or private radio services; or
 - (c) A telecommunications network or broadband provider.
- V. Any property used in committing, or facilitating the commission of, any offense under this section shall be subject to forfeiture.
- VI. Any person who violates the provisions of this section shall be guilty of a class B felony.
- 2 Effective Date. This act shall take effect January 1, 2017.

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SB 465-FN- FISCAL NOTE

AN ACT relative to the dissemination of images depicting sexually explicit conduct.

FISCAL IMPACT:

The Office of Legislative Budget Assistant states this bill, **as introduced**, may increase state and county expenditures by an indeterminable amount in FY 2017 and each year thereafter. There will be no fiscal impact on local expenditures or state, county, and local revenue.

METHODOLOGY:

The Office of Legislative Budget Assistant states 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 Judicial Branch, Department of Corrections, Judicial Council and New Hampshire Association of Counties have provided the Office with potential costs associated with the penalties contained in this bill. See table below for average cost information:

	FY 2017	FY 2018
<u>Judicial Branch</u>		
Routine Criminal Felony Case	\$449	\$470

Appeals	Varies	Varies
It should be noted average case cost estimates for FY 2017 and FY 2018 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.		
Judicial Council		
Public Defender Program	Has contract with State to provide services.	Has contract with State to provide services.
Contract Attorney – Felony	\$756/Case	\$756/Case
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. 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 2015 Average Cost of Incarcerating an Individual	\$34,336	\$34,336
FY 2015 Average Cost of Supervising an Individual on Parole/Probation	\$520	\$520
NH Association of Counties		
County Prosecution Costs	Indeterminable	Indeterminable
Estimated Average Daily Cost of Incarcerating an Individual	\$85 to \$110	\$85 to \$110

Many offenses are prosecuted by local and county prosecutors. In those instances where the Department of Justice has prosecutorial responsibility or is involved with appeals for a conviction related to the offense contained in this bill, the Department would absorb the cost within its existing budget. If the bill results in the Department needing to prosecute significantly more cases or be involved in significantly more appeals, then there may be an indeterminable increase in costs to the Department.