

HB 431-FN – AS INTRODUCED

2013 SESSION

13-0601  
04/03

HOUSE BILL            ***431-FN***

AN ACT                relative to witness tampering.

SPONSORS:            Rep. Pantelakos, Rock 25; Rep. Shurtleff, Merr 11; Rep. Charron, Rock 4

COMMITTEE:          Criminal Justice and Public Safety

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ANALYSIS

This bill establishes a misdemeanor offense of witness tampering and makes this offense eligible for annulment. The bill also provides for sentence review for any person convicted of felony witness tampering based on charges that would have constituted misdemeanor witness tampering and makes a person who receives a sentence reduction eligible to petition for annulment of the criminal record relating to the witness tampering.

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                                Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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

AN ACT                    relative to witness tampering.

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

1            1 Tampering With Witnesses and Informants. Amend RSA 641:5 to read as follows:

2            641:5 Tampering With Witnesses and Informants.

3            **I.** A person is guilty of a class B felony if:

4            ~~[I.]~~(a) Believing that an official proceeding, as defined in RSA 641:1, II, or investigation is  
5 pending or about to be instituted, ~~[he attempts to induce]~~ **the person induces** or otherwise ~~[cause a~~  
6 ~~person]~~ **causes another** to:

7                    ~~(a)~~ (1) Testify or inform falsely; or

8                    ~~(b)~~ (2) Withhold any testimony, information, document, or thing; or

9                    ~~(c)~~ (3) Elude legal process summoning him **or her** to provide evidence; or

10                   ~~(d)~~ (4) Absent himself **or herself** from any proceeding or investigation to which he **or**  
11 **she** has been summoned; or

12            ~~[H.]~~ (b) ~~[He]~~ **The person** commits any unlawful act in retaliation for anything done by  
13 another in his **or her** capacity as witness or informant; or

14            ~~[HH.]~~ (c) ~~[He]~~ **The person** solicits, accepts, or agrees to accept any benefit in consideration of  
15 his **or her** doing any of the things specified in **this** paragraph ~~[H]~~.

16            **II.** *A person is guilty of a class A misdemeanor if, believing that an official*  
17 *proceeding, as defined in RSA 641:1, II, or investigation is pending or about to be*  
18 *instituted:*

19                    (a) *He or she attempts to commit any of the acts specified in subparagraphs*  
20 *I(a)-(c); and*

21                    (b) *The victim had no knowledge of the attempt; and*

22                    (c) *The attempt contained no threat of any kind.*

23            2 Annulment of Criminal Records. Amend RSA 651:5, XIV(a) to read as follows:

24                    (a) Tampering with witnesses or informants under RSA 641:5, **I**, or falsifying evidence  
25 under RSA 641:6; or

26            3 Conviction for Felony Witness Tampering; Sentence Review. Any person convicted of felony  
27 witness tampering pursuant to the version of RSA 641:5 in effect prior to the effective date of this act  
28 based on charges which would have only constituted misdemeanor witness tampering under  
29 RSA 641:5, II, as inserted by section 1 of this act, and who has not yet completed the terms and  
30 conditions of his or her sentence for such conviction, may petition the review division of the superior  
31 court for a review and possible reduction of his or her sentence pursuant to RSA 651:57 through

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1 RSA 651:61. If the petitioner is granted a sentence reduction, the review division shall contact the  
2 department of corrections and any other appropriate state agency to instruct them to amend the  
3 petitioner's record and make any necessary changes to the terms and conditions of the petitioner's  
4 sentence. A petitioner whose sentence for witness tampering is reduced shall be eligible for  
5 annulment of the criminal record related to the witness tampering in accordance with RSA 651:5.

6 4 Effective Date. This act shall take effect January 1, 2014.

**HB 431 FISCAL NOTE**

AN ACT                    relative to witness tampering.

**FISCAL IMPACT:**

The Judicial Branch and Judicial Council state this bill, **as introduced**, will have an indeterminable impact on state expenditures in FY 2014 and each year thereafter. The New Hampshire Association of Counties states this bill may increase county expenditures by an indeterminable amount in FY 2014 and each year thereafter. There will be no impact on state, county, or local revenue, or local expenditures.

**METHODOLOGY:**

The Judicial Branch states this bill amends the witness tampering statute, RSA 641:5, by reducing witness tampering from a class B felony to a class A misdemeanor in instances where the witness had no knowledge of the attempt and where the attempt contained no threat. In addition, the bill makes the offense eligible for annulment, and provides for sentence review for any person previously convicted of felony witness tampering that would have constituted a misdemeanor offense under the bill. Those who receive a sentence reduction will be eligible to petition for annulment. The Branch states the portion of the bill that reduces the offense from a felony to a misdemeanor may result in lower state expenditures. While the Branch states it has no information regarding how many charges will be affected by the change, the Branch can provide the projected average cost of processing each case type. The Branch projects the average cost of processing a routine criminal case (which is how witness tampering is classified according to a judicial needs assessment conducted in 2005) will be \$405.37 in FY 2014 and \$415.78 in FY 2015, while the average cost of processing a class A misdemeanor will be \$62.71 in FY 2014 and \$64.40 in FY 2015. Thus, the cost savings to the branch of processing a misdemeanor charge as opposed to a felony charge will be \$342.66 per case in FY 2014 (\$405.37 - \$62.71) and \$351.38 per case in FY 2015 (\$415.78 - \$64.40). The Branch states the case cost estimates are based on data that is more than seven years old and does not reflect the changes to the courts over that same period of time or the impact these changes may have on the processing of these types of cases. The Branch states the bill's other two provisions – making the offense eligible for annulment, and providing for sentencing review for those previously convicted of the offense – may increase expenditures by an indeterminable amount. The Branch states it does not have data regarding the cost of processing annulment petitions or reviewing sentences.

The Judicial Council states the bill may slightly decrease the Council's expenditures. The potential savings would derive from the presumably small number of felony cases that would be reduced to misdemeanor cases. The Council states that when counsel is appointed in a felony matter, the case initially goes to the public defender program, and decreasing the public defender program's caseload by a small number of cases is not likely to have a significant impact on indigent defense expenditures. Identifiable savings will occur only when the public defender program is unavailable and the case goes to assigned counsel or contract attorneys. For felony offenses, assigned counsel receives \$60 per hour with a cap of \$4,100, while contract attorneys receive a flat fee of \$756.25 per case. For misdemeanors, assigned counsel receives \$60 per hour with a cap of \$1,400, while contract attorneys receive \$275 per case. Accordingly, reducing cases from felonies to misdemeanors may result in cost savings if assigned counsel or contract attorneys are used. The Council states that, to the extent individuals will qualify for sentence review as a result of the bill, the Council will be obligated to provide representation in the sentence-review process. There will be no additional cost to the state if such matters are handled by the public defender program, but if the case goes to contract counsel the cost will be \$206.25 per case.

The New Hampshire Association of Counties states the bill may increase county expenditures by an indeterminable amount. By reducing the offense from a felony to a misdemeanor, the bill may result in individuals being sentenced to county jails instead of the state prison. The Association states to the extent more individuals are charged, convicted, and sentenced to incarceration in a county correctional facility, the counties may have increased expenditures. The Association is unable to determine the number of individuals who might be charged, convicted or incarcerated as a result of this bill to determine an exact fiscal impact. The average annual cost to incarcerate an individual in a county correctional facility is approximately \$35,000.

The Department of Justice states that because it prosecutes a minimal number of witness tampering cases per year, the Department is unlikely to see a fiscal impact as a result of the bill.