

HB 616-FN – AS INTRODUCED

2013 SESSION

13-0834  
08/09

HOUSE BILL            **616-FN**

AN ACT                relative to the enforcement of false swearing and perjury in official matters.

SPONSORS:            Rep. Oigny, Rock 34; Rep. Burt, Hills 6; Rep. Lambert, Hills 44; Rep. Sapareto,  
Rock 6; Rep. Itse, Rock 10

COMMITTEE:          Criminal Justice and Public Safety

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ANALYSIS

This bill establishes a penalty against the attorneys in the attorney general's office and the county attorney's office for failing to prosecute a person who has committed an offense related to falsification in official matters.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Thirteen*

AN ACT                   relative to the enforcement of false swearing and perjury in official matters.

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

1           1 New Section; Abuse of Prosecutorial Discretion. Amend RSA 641 by inserting after section 8  
2 the following new section:

3           641:9 Abuse of Prosecutorial Discretion. Any attorney in the attorney general's office or any  
4 attorney in the county attorney's office is guilty of a class B felony if, with knowledge that another  
5 person has committed any act prohibited under RSA 641:1 through RSA 641:8, such attorney fails to  
6 prosecute the person for the offense committed.

7           2 Effective Date. This act shall take effect January 1, 2014.

**HB 616-FN – FISCAL NOTE**

AN ACT                    relative to the enforcement of false swearing and perjury in official matters.

**FISCAL IMPACT:**

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

**METHODOLOGY:**

The Department of Justice states this bill makes it a class B felony offense for an attorney in a county attorney's office or in the attorney general's office to fail to prosecute someone if the attorney knows the person has committed an offense related to falsification in official matters under RSA 641. The Department would be responsible for prosecuting any such case committed by a county prosecutor. The Department states it does not know how many complaints of RSA 641 violations county attorneys receive and do not prosecute. The Department states that it receives, on average, at least one such complaint per month, most of which are not prosecuted as there is insufficient proof to support a criminal charge. The Department further states any increased demand for prosecution would have a fiscal impact on the Department, but it is unable to determine the extent of the impact. The Judicial Branch states it has no information on which to estimate how many felonies will be prosecuted as a result of the bill. The Branch can, however, provide information on the projected cost to the Branch of processing each case. The Branch states any felony under the bill would be classified as a routine criminal case, and the average cost of a routine criminal case is projected to be \$405.37 in FY 2014 and \$415.78 in FY 2015. The Branch states the case cost estimates are based on data that is more than seven years old and do 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 Department of Corrections states it is not able to determine the fiscal impact of this bill because it does not have sufficient detail to predict the number of individuals who would be subject to this legislation. 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,

2012 was \$35,071. The cost to supervise an individual by the Department's division of field services for the fiscal year ending June 30, 2012 was \$608.

The New Hampshire Association of Counties states it has no information on which to estimate how many additional charges will be brought as a result of the bill. Consequently, the Association states it is unable determine the cost of prosecuting cases under the bill, or the cost of incarceration for those convicted. The average annual cost to incarcerate an individual in a county correctional facility is approximately \$35,000. There will be no impact on county revenue.

The Judicial Council states that since anyone violating this bill would do so within the context of their employment as a prosecutor and would likely be defended or indemnified by their employer, it is highly unlikely they would seek the assistance of appointed counsel. Additionally, a gainfully employed person would be unlikely to qualify for appointed counsel at state expense. For these reasons, the Judicial Council states the bill will likely have no fiscal impact on the Council.