

HB 1306-FN – AS INTRODUCED

2014 SESSION

14-2355  
04/08

HOUSE BILL

***1306-FN***

AN ACT prohibiting a law enforcement officer from soliciting another person to participate in criminal activity.

SPONSORS: Rep. O'Flaherty, Hills 12; Rep. Warden, Hills 39; Rep. Michael Garcia, Hills 34

COMMITTEE: Criminal Justice and Public Safety

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ANALYSIS

This bill prohibits a law enforcement officer from soliciting another to engage in undercover investigatory conduct that would be criminal in nature.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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

AN ACT prohibiting a law enforcement officer from soliciting another person to participate in criminal activity.

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

1 1 New Section; General Principals; Solicitation by a Law Enforcement Officer. Amend RSA 626  
2 by inserting after section 8 the following new section:

3 626:9 Solicitation by a Law Enforcement Officer.

4 I. A law enforcement officer shall be criminally liable without criminal intent for soliciting  
5 another person to engage in undercover investigatory conduct that would be criminal in nature or  
6 would result in a violation under a statute or administrative rule despite the existence of an express  
7 or implied offer of immunity, or other express or implied justification or excuse.

8 II. An offer of immunity from prosecution made by the state under this section, whether  
9 express or implied, shall be against public policy and be unenforceable.

10 III. Any person who violates the provisions of this section shall be guilty of a class B  
11 misdemeanor.

12 2 Effective Date. This act shall take effect January 1, 2015.

**HB 1306-FN - FISCAL NOTE**

AN ACT prohibiting a law enforcement officer from soliciting another person to participate in criminal activity.

**FISCAL IMPACT:**

The Judicial Branch and Department of Justice state this bill, **as introduced**, may increase state expenditures by an indeterminable amount in FY 2015 and each year thereafter. There will be no fiscal impact on county and local expenditures, or state, county, and local revenue.

**METHODOLOGY:**

The Judicial Branch states this bill adds RSA 626:9 to prohibit a law enforcement officer from soliciting another to engage in undercover investigatory conduct that would be criminal in nature. Any person who violates this law would be guilty of a class B misdemeanor. The Branch has no information on which to estimate how many additional class B misdemeanor prosecutions might result but is able to provide the cost of processing a class B misdemeanor. The Branch estimates a class B misdemeanor will cost \$46.99 per case in FY 2015, and \$48.02 per case in FY 2016 and each year thereafter. The possibility for a case to be appealed increases the cost. All costs are estimated based on case weight information from the last needs assessment completed in 2005. Since that timeframe there have been various changes that may impact the costs, such as the creation of the circuit court, the increase in self-represented litigants, and the change to presume that an unspecified misdemeanor can be treated as a class B misdemeanor.

The Department of Justice states the Department's public integrity unit investigates and prosecutes criminal conduct engaged by some public officials in their official capacity. The Department assumes the passage of this bill will result in law enforcement officers no longer engaging others to work in an undercover capacity. However, in the event of an alleged violation the Department may conduct an investigation and, if appropriate, prosecute the officer. The Department has no information to predict how many violations might occur that the Department would investigate or prosecute to determine the exact increase in state expenditures.

The New Hampshire Association of Counties states this bill will have no impact on counties since a conviction for a class B misdemeanor will not result in incarceration.