

HB 224-FN - AS INTRODUCED

2023 SESSION

23-0365

05/04

HOUSE BILL **224-FN**

AN ACT repealing the criminal and civil penalties from the fetal life protection act.

SPONSORS: Rep. Wolf, Merr. 7; Rep. Merchant, Sull. 6; Rep. M. Smith, Straf. 10; Rep. Nagel,
Belk. 6; Sen. Prentiss, Dist 5

COMMITTEE: Judiciary

ANALYSIS

This bill repeals the criminal and civil penalties for violation of the fetal life protection act, which restricts access to abortion procedures after 24 weeks.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Three

AN ACT repealing the criminal and civil penalties from the fetal life protection act.

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

- 1 1 Repeal. RSA 329:46-329:48, relative to civil and criminal penalties against health care
- 2 providers for violation of the fetal life protection act, are repealed.
- 3 2 Effective Date. This act shall take effect 60 days after its passage.

LBA
23-0365
12/8/22

**HB 224-FN- FISCAL NOTE
AS INTRODUCED**

AN ACT repealing the criminal and civil penalties from the fetal life protection act.

FISCAL IMPACT: ☒ **State** ☒ **County** ☐ **Local** ☐ **None**

STATE:	Estimated Increase / (Decrease)			
	FY 2023	FY 2024	FY 2025	FY 2026
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	Indeterminable Decrease	Indeterminable Decrease	Indeterminable Decrease
Funding Source:	<input checked="" type="checkbox"/> General	<input type="checkbox"/> Education	<input type="checkbox"/> Highway	<input type="checkbox"/> Other

COUNTY:

Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	Indeterminable Decrease	Indeterminable Decrease	Indeterminable Decrease

METHODOLOGY:

This bill repeals the civil and criminal penalties associated with violations of the fetal life protection act. With respect to criminal penalties specifically, the bill repeals RSA 329:46, which currently makes it a class B felony for any health care provider to perform or induce an abortion if the fetus has a gestational age of at least 24 weeks. There is no method to determine how many fewer charges will be brought as a result of the bill; accordingly, the total fiscal impact cannot be predicted. However, the entities impacted have provided the potential costs associated with these penalties below.

Judicial Branch	FY 2023	FY 2024 through 12/31/23	FY 2024 (Starting 1/1/24 with repeal of Felonies First)
Complex Felony Case	\$3,195	\$3,244	\$3,366
Appeals	Varies	Varies	Varies
Judicial Council	FY 2023		FY 2024
Public Defender Program	Has contract with State to provide services.		Has contract with State to provide services.
Contract Attorney - Felony	\$825/Case \$105 administrative fee \$200 incarceration fee		\$825/Case \$105 administrative fee \$200 incarceration fee

	(If applicable)	(If applicable)
Assigned Counsel - Felony. Homicide including capital cases. Travel time to court does not count toward the cap.	\$125/Hour up to \$20,000	\$125/Hour up to \$20,000
Assigned Counsel - Felony. Travel time to court does not count toward the cap.	\$90/Hour up to \$5,500	\$90/Hour up to \$5,500
Assigned Counsel - Supreme Court Appeal	\$125/Hour up to \$10,000	\$125/Hour up to \$10,000
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. Historically, approximately 85% of the indigent defense caseload has been handled by the public defender program, with the remaining cases going to contract attorneys (14%) or assigned counsel (1%). Beginning in March of 2021, the public defender program has had to close intake of new cases due to excessive caseloads. Due to these closures, the contract and assigned counsel program have had to absorb significantly more cases. The system is experiencing significant delays in appointing counsel and the costs of representation have increased due to travel time and multiple appointments.		
Department of Corrections	FY 2023	FY 2024
FY 2022 Average Cost of Incarcerating an Individual	\$64,223	\$64,223
FY 2022 Annual Marginal Cost of a General Population Inmate	\$6,123	\$6,123
FY 2022 Average Cost of Supervising an Individual on Parole/Probation	\$688	\$688
The Department notes any increase in the incarcerated population will have a direct impact on overtime costs given the Department's history of challenges associated with recruitment. In addition, the NH State Prison for Men has a degrading infrastructure which will only be exacerbated if an increase in the incarcerated population were to occur.		
NH Association of Counties	FY 2023	FY 2024
County Prosecution Costs	Indeterminable	Indeterminable
Estimated Average Daily Cost of Incarcerating an Individual	\$105 to \$125	\$105 to \$125

Many offenses are prosecuted by local and county prosecutors. When the Department of Justice has investigative and prosecutorial responsibility or is involved in an appeal, the Department may be able to absorb the cost within its existing budget. Repeal of the civil and criminal penalties associated with violations of the fetal life protection act may result in fewer prosecutions and reduced expenditures for the Department and county and local prosecutors.

AGENCIES CONTACTED:

Judicial Branch, Judicial Council, Department of Corrections, Department of Justice, New
Hampshire Association of Counties