

HB 292-FN - AS INTRODUCED

2023 SESSION

23-0525

08/04

HOUSE BILL                    **292-FN**

AN ACT                    establishing a criminal penalty for theft by a public servant.

SPONSORS:            Rep. Corcoran, Hills. 44

COMMITTEE:          Criminal Justice and Public Safety

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ANALYSIS

This bill establishes a criminal penalty for theft by a public servant who authorizes payment for legal actions against the municipality, and creates a right of action against such public servants.

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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                                Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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                    establishing a criminal penalty for theft by a public servant.

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

1            1 New Section; Theft; Theft by a Public Servant. Amend RSA 637 by inserting after section 8  
2 the following new section:

3            637:8-a Theft by a Public Servant.

4            I. Any public servant who serves on the governing body of a municipality, who authorizes or  
5 attempts to authorize a defense to any legal claim or action against the municipality, except in a  
6 public or nonpublic session, as specified in RSA 91-A:2 and RSA 91-A:3, and who authorizes payment  
7 for such defense, shall be guilty of theft by a public servant and subject to the penalties in RSA  
8 637:11.

9            II. Any citizen of New Hampshire shall have a private right of action to challenge a public  
10 servant who serves on the governing body of a municipality who has authorized payment of  
11 attorney's fees that were not authorized in a public or nonpublic session, as specified in RSA 91-A:2  
12 and RSA 91-A:3. In addition to any actual damages resulting from such action, the municipality  
13 shall be liable for reasonable attorney's fees and court costs.

14           2 Effective Date. This act shall take effect January 1, 2024.

**HB 292-FN- FISCAL NOTE  
AS INTRODUCED**

AN ACT establishing a criminal penalty for theft by a public servant.

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

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

**COUNTY:**

<b>Revenue</b>	\$0	\$0	\$0	\$0
<b>Expenditures</b>	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase

**LOCAL:**

<b>Revenue</b>	\$0	\$0	\$0	\$0
<b>Expenditures</b>	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase

**METHODOLOGY:**

This bill establishes a criminal penalty for theft by a public servant who authorizes payment for legal actions against the municipality, and creates a right of action against such public servants. 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 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)
Violation and Misdemeanor Level Offense	\$119	\$122	\$122
Routine Criminal Case	\$644	\$657	\$779
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 (If applicable)	\$825/Case \$105 administrative fee \$200 incarceration fee (If applicable)
Contract Attorney – Misdemeanor	\$300/Case \$70 administrative fee \$100 incarceration fee (If applicable)	\$300/Case \$70 administrative fee \$100 incarceration fee (If applicable)
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- Misdemeanor. Travel time to court does not count toward the cap.	\$90/Hour up to \$2,000	\$90/Hour up to \$2,000
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. However, if the Department needs to prosecute significantly more cases or handle more appeals, then costs will increase by an indeterminable amount.

The bill provides, in RSA 237:8-a, II, that the municipality shall be liable for certain reasonable attorney's fees and court costs. Any such court challenges or associated costs cannot be determined.

**AGENCIES CONTACTED:**

Judicial Branch, Departments of Corrections and Justice, Judicial Council, and New Hampshire Association of Counties