

HB 1609-FN - AS AMENDED BY THE HOUSE

31Mar2022... 1209h

2022 SESSION

22-2099

05/10

HOUSE BILL

***1609-FN***

AN ACT                    relative to certain provisions of the fetal life protection act requiring an ultrasound examination.

SPONSORS:            Rep. Wolf, Merr. 5; Rep. Deshaies, Carr. 6; Rep. Allard, Merr. 21; Rep. Graham, Hills. 7; Rep. Ham, Graf. 5; Rep. Depalma IV, Graf. 1

COMMITTEE:        Health, Human Services and Elderly Affairs

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AMENDED ANALYSIS

This bill provides an exception from the prohibition on abortion after 24 weeks in cases of fetal abnormalities incompatible with life and construes the ultrasound requirement for purposes of determining the gestational age of the fetus.

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                         Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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

AN ACT                    relative to certain provisions of the fetal life protection act requiring an ultrasound examination.

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

1            1 Fetal Life Protection Act; Prohibitions; Ultrasound Examination Requirement. Amend RSA  
2            329:44, I and II to read as follows:

3            I. Except in the case of a medical emergency as specifically defined in paragraph III, no  
4            abortion shall be performed, induced, or attempted by any health care provider unless a health care  
5            provider has first made a determination of the probable gestational age of the fetus. In making such  
6            a determination, the health care provider shall make such inquiries of the pregnant woman and  
7            perform or cause to be performed all such medical examinations, imaging studies, and tests as a  
8            reasonably prudent health care provider in the community, knowledgeable about the medical facts  
9            and conditions of both the woman and the fetus involved, would consider necessary to perform and  
10           consider in making an accurate diagnosis with respect to gestational age, provided, however, that  
11           the health care provider shall conduct an obstetric ultrasound examination of the patient for the  
12           purpose of making the determination. ***This paragraph shall be construed to require the***  
13           ***performance of an ultrasound only if the provider either knows that the fetus has a***  
14           ***gestational age of at least 24 weeks or is conscious of a substantial risk that the fetus has a***  
15           ***gestational age of at least 24 weeks.***

16           II. Except in ***the case of fetal abnormalities incompatible with life, or*** a medical  
17           emergency as specifically defined in paragraph III, no health care provider shall knowingly perform,  
18           induce, or attempt to perform an abortion upon a pregnant woman when the probable gestational  
19           age of her fetus has been determined to be at least 24 weeks or in the absence of a determination by  
20           a health care provider pursuant to paragraph I as to the fetus' probable gestational age.

21           2 Effective Date. This act shall take effect upon its passage.

**HB 1609-FN- FISCAL NOTE  
AS INTRODUCED**

AN ACT relative to the scope of the fetal protection act.

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

STATE:	Estimated Increase / (Decrease)			
	FY 2022	FY 2023	FY 2024	FY 2025
<b>Appropriation</b>	\$0	\$0	\$0	\$0
<b>Revenue</b>	\$0	\$0	\$0	\$0
<b>Expenditures</b>	DHHS: \$41,400; Judicial & Correctional Systems: Indeterminable decrease	DHHS: \$18,200; Judicial & Correctional Systems: Indeterminable decrease	DHHS: \$18,600; Judicial & Correctional Systems: Indeterminable decrease	DHHS: \$19,000; Judicial & Correctional Systems: Indeterminable decrease
<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>	Indeterminable decrease	Indeterminable decrease	Indeterminable decrease	Indeterminable decrease

**METHODOLOGY:**

This bill provides exceptions to the Fetal Life Protection Act by amending RSA 329:44 and adding exceptions for abortions in the cases of felonious sexual assault, incest, or fetal anomalies incompatible with life or a medical emergency. In addition, the bill requires the Department of Health and Human Services to compile and publish an annual report of statistics relative to termination of pregnancy after 24 weeks. The Department states that data analysis and reporting will be conducted through a contract with the University of New Hampshire. The Department estimates that a contracted position equal to 0.1 full-time equivalent position will be needed to complete the work, at a cost shown below. Also shown below are the estimated costs for development of a database system that is compliant with federal Health Insurance Portability and Accountability Act (HIPAA) standards for the collection of health data.

	FY 2022 (6 months)	FY 2023	FY 2024	FY 2025
Salary (3% increase yearly)	\$4,500	\$9,300	\$9,600	\$9,900

Fringe (3% increase yearly)	\$1,900	\$3,900	\$4,000	\$4,100
Training	\$10,000			
Data System	\$25,000	\$5,000	\$5,000	\$5,000
<b>Total</b>	<b>\$41,400</b>	<b>\$18,200</b>	<b>\$18,600</b>	<b>\$19,000</b>

As the bill is effective upon passage, the Department assumes there may be some cost in the remainder of FY22. Accordingly, the salary and fringe benefits in the table above have been adjusted to reflect six months rather than a complete fiscal year.

To the extent that the added exceptions in the bill result in fewer felony cases, the bill may reduce costs to the state judicial and corrections systems. There is no method to determine the decrease in the number of charges that may be brought. However, the entities impacted have provided the costs associated with felony cases below.

Judicial Council	FY 2022	FY 2023
Public Defender Program	Has contract with State to provide services.	Has contract with State to provide services.
Contract Attorney – Felony	\$825/Case	\$825/Case
Assigned Counsel – Felony. Homicide (Including capital cases)	\$100/Hour up to \$20,000	\$100/Hour up to \$20,000
Assigned Counsel – Felony	\$60/Hour up to \$4,100	\$60/Hour up to \$4,100
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 to 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 2022	FY 2023
FY 2021 Average Cost of Incarcerating an Individual	\$54,386	\$54,386
FY 2021 Annual Marginal Cost of a General Population Inmate	\$5,715	\$5,715
FY 2021 Average Cost of Supervising an Individual on Parole/Probation	\$603	\$603
NH Association of Counties	FY 2022	FY 2023
County Prosecution Costs	Indeterminable	Indeterminable
Estimated Average Daily Cost of Incarcerating an Individual	\$105 to \$125	\$105 to \$125

With respect to the Judicial Branch, the potential impact is indeterminable. In the past the Judicial Branch has used averaged caseload data based on time studies to estimate the fiscal impact of proposed legislation. The per case data on costs for routine criminal cases currently available to the Judicial Branch are based on studies of judicial and clerical weighted caseload times for processing average routine criminal cases that are more than fifteen years old so the data does not have current validity. A new case study is being conducted and updated estimates will be available in the future.

**AGENCIES CONTACTED:**

Department of Health and Human Services, Judicial Branch, Judicial Council, Department of Corrections, and New Hampshire Association of Counties