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Rep. Wallner, Merr. 19
Rep. Erf, Hills. 28
Rep. Hoell, Merr. 27
March 6, 2023
2023-0767h
07/10

Amendment to HB 49-FN-A

1 Amend the bill by replacing all after the enacting clause with the following:

2

3 1 Statement of Findings. The general court finds that:

4 I. Placement in corrections settings can be harmful to children and lead to increased
5 delinquency and adult criminal behavior. It should therefore be reserved for those circumstances in
6 which the safety of a child or of the community requires such confinement.

7 II. Placement of children who are not serious violent offenders in settings other than the
8 Sununu youth services center (SYSC) complies with The Families First Act, P.L. 115-123, and the
9 New Hampshire system of care established pursuant to 2019; 44 (SB 14), which prioritize
10 community-based treatment of children.

11 III. Placement of children in corrections settings outside the state of New Hampshire
12 undermines effective treatment. This act is in furtherance of these goals.

13 2 Department of Health and Human Services; Sununu Youth Services Center; Construction and
14 Operation of a Replacement Secure Facility.

15 I. The department of health and human services shall be responsible to construct a secured
16 treatment facility to replace the current Sununu youth services center (SYSC). The capacity of the
17 facility shall be determined using data-driven analysis of SYSC residential trends, state
18 demographics trends and regional trends in juvenile involvement in violent crime and organized
19 crime. In no case shall the facility exceed a physical capacity of 18 beds with a plan to operate 12
20 beds. The department shall consult with the community selected for the location and operation of
21 any new facility, as well as any municipality bordering the selected community. The department
22 shall, to the extent practicable, implement any reasonable requests by the communities to ensure
23 the safe operation of the facility, implement a payment in lieu of taxes arrangement to prevent the
24 shifting of costs to local taxpayers, and ensure co-operation with the prospective community.

25 II. The facility shall not be administered by any non-governmental entity. The facility shall
26 be owned, administered and operated by the department of health and human services with support
27 and shared services contracts as appropriate. The facility shall be designed to meet the unique
28 needs of youth who are at the facility pursuant to RSA 169-B:14, detention; RSA 169-B:19,
29 commitment; RSA 169-B:24, transfer to superior court; RSA 169-B:32 or RSA 651:17-a, service of
30 adult sentence of incarceration at the youth development center; and RSA 169-A, the interstate

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1 compact on juveniles. Upon opening, the facility shall be referred to as the juvenile treatment center
2 (JTC) as identified in RSA 169-B and RSA 621. The facility shall have the capability for alternative
3 flexible use when the census so permits. The facility shall not admit children other than those
4 specified in this section.

5 III. The facility and program shall be designed to include:

6 (a) A physical design that complements therapeutic and trauma-informed care of
7 children, including a home-like interior and exterior to the maximum extent practicable.

8 (b) Staff visibility and proximity to children, including administrative offices built within
9 the secured facility in proximity to children and staff, to the maximum extent practicable.

10 (c) Capacity to provide services to meet the medical, physical, and behavioral health
11 needs of all potentially eligible residents if appropriate for the child.

12 (d) Space for no more than 18 beds, including space with flexibility to meet the need for
13 safety and security, crisis stabilization, admissions, and discharges for all children. The operational
14 support plan shall be funded for 12 residents.

15 (e) Adequate space to meet the educational needs of all children including children with
16 special education needs, while using virtual educational support services if appropriate for the child.

17 (f) Adequate space for indoor and outdoor recreation.

18 (g) Capacity to meet the nutritional needs of all children.

19 (h) Necessary elements to be architecturally secure and equipped with video surveillance
20 in compliance with RSA 169-B:15-c.

21 (i) Operations may utilize virtual and shared services when consistent with the child's
22 education or treatment plan and appropriate to effectively meet the needs of a particular child or
23 children.

24 (j) Staffing ratios which shall not exceed those supported by national accrediting bodies.

25 (k) Strategic downsizing considerations as published in the Council of Juvenile
26 Correctional Administrators Toolkit: Facility Closure and Strategic Downsizing of Juvenile Justice
27 Systems by the Council of Juvenile Justice Administrators (2018).

28 IV. The facility programming and operations shall include:

29 (a) The development of staff qualifications and standard job descriptions comprising
30 required licensing or skill attainment. Staff qualifications shall be designed to ensure the provision
31 of treatment to children with behavioral health challenges through the implementation of trauma
32 informed care. Job description requirements, where appropriate shall include self and group
33 protection, training in trauma informed care to address challenging behaviors, including the use of
34 de-escalation techniques.

35 (b) Use of evidence-based practices, as defined in RSA 170-G:1, V-a, selected to match
36 the needs of the population served at the facility.

1 (c) Utilization of the uniform assessment, as specified in RSA 170-G:4-e, for all detained
2 and committed youth to understand treatment needs and determine if a different level of care is
3 indicated to meet the youth's needs, and where problem behavior appears patterned, a functional
4 behavior analysis to inform effective behavioral interventions.

5 (d) Provision of care management services by a care management entity, as established
6 in RSA 135-F:4, to begin immediate wraparound support upon admission to plan for discharge.

7 (e) Provision of frequent visitation opportunities with family, opportunities to include
8 family in appropriate activities and daily access to family through telephonic or video conferencing.

9 (f) Provision of educational programing and staffing that meets the individualized
10 educational needs of each child, including children with special education needs, creates meaningful
11 educator-child pairings, maintains connections with sending school districts, and which includes
12 availability of Hi-SET preparation and testing as appropriate. Virtual educational opportunities
13 shall be leveraged appropriately to help meet the residents' needs.

14 (g) Integration of clinical sessions and recreational large muscle movement activities
15 throughout the day.

16 (h) Access by the office of the child advocate, in real-time, as established in RSA 21-V:4,
17 II, to the electronic case management system used by the facility, regular access to youth placed in
18 the facility under RSA 21-V:4, III, and video surveillance and general access to the facility pursuant
19 to RSA 21-V:2, VII.

20 (i) Provision of adequate security to maintain the safety of staff and residents as well as
21 the safety of the surrounding community and the general public.

22 (j) Training that emphasizes the treatment of youth with behavioral health challenges
23 using approaches that include the employment of de-escalation techniques and that recognizes the
24 risk that children may have considerable trauma histories, and that is otherwise applicable to the
25 facility.

26 (k) Procedures for supporting children in the community with flexible assignments
27 based upon census changes.

28 V. The department of health and human services shall begin to implement the programming
29 changes in subparagraphs IV(a) through (k) without regard to whether children are at the SYSC or
30 the new facility as soon as reasonably practicable.

31 VI. The department of health and human services shall submit quarterly progress reports to
32 the joint legislative oversight committee on health and human services, established by RSA 126-
33 A:13, and to the office of the child advocate established under RSA 21-V beginning no later than 60
34 days after the passage of this act, until such time as the facility is operational. Each quarterly
35 report shall include a statement indicating whether the reported progress is sufficient to meet the
36 accepted completion deadline for the opening of the facility. In the event that sufficient progress to
37 meet this deadline has not been made, the progress report shall include the reasons for any projected

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1 delay in meeting the deadline, a description of the efforts being undertaken to minimize any delay in
2 the development and opening of the facility and projected completion date. In addition, the quarterly
3 progress reports shall include the following information:

4 (a) Progress towards retaining an architectural consultant to design the plan for the
5 facility;

6 (b) Progress towards completion of the design for the facility;

7 (c) Progress towards contracting with the company that will construct the replacement
8 facility;

9 (d) The anticipated date construction of the replacement facility will be completed; and

10 (e) The anticipated date by which the replacement facility will be operational.

11 VII. The governor and council, using the final report of the commission established in RSA
12 169-B:48, shall exercise the decision to finalize the capacity and site selection of the replacement
13 center in consultation with the senate president, speaker of the house, and the affected community.

14 VIII. The governor, with the approval of the fiscal committee of the general court, may delay
15 the project completion date for construction delays or other unforeseen circumstances provided any
16 such delay be no more than one year.

17 3 Sununu Youth Services Center; Architect Procurement. Amend 2023, 1:4 to read as follows:

18 1:4 Department of Health and Human Services; Sununu Youth Services Center; Construction
19 and Operation of a Replacement Secure Facility. The department of health and human services, in
20 collaboration with the department of administrative services, shall issue a request to procure a
21 qualified architect [~~on or before March 1, 2023~~] **within 60 days of the effective date of this act**,
22 and shall collaborate to issue a request for proposals for a contractor to build the resulting
23 construction project **on a time line supporting the use of American Rescue Plan Act of 2021,**
24 **Public Law 117-2 funds or any other federal funds.** The SYSC shall immediately be closed for
25 detention or admission of any child when a replacement facility is sufficiently completed that
26 children can be legally and safely housed there.

27 4 Possession and Relinquishment of the Sununu Youth Services Center (SYSC). As of the date
28 of the opening of the youth development center set forth in section 2 of this act, and notwithstanding
29 RSA 4:40, the department of administrative services shall take possession of the entire property
30 currently housing the SYSC on South River Road in Manchester, New Hampshire. The department
31 shall relinquish the property and any revenues received shall be deposited in the general fund. The
32 department shall consult with the city of Manchester, the New Hampshire department of business
33 and economic affairs, and other organizations, as appropriate, prior to any sale of the property. In
34 relinquishing the property, the return of the property to an entity that will enhance the tax and
35 business tax rolls of the city of Manchester and the state of New Hampshire shall be a high priority.
36 Any relinquishment of the SYSC shall be approved by the governor and council.

1 5 Appropriation; Construction and Operation of a Replacement Secure Facility. The sum of
2 \$21,600,000 for the fiscal year ending June 30, 2023 is hereby appropriated to the department of
3 health and human services for the design and construction of the new secured youth development
4 facility, as described in section 2 of this act. Such funds shall prioritize use of federal funds, be
5 nonlapsing and continually appropriated to the department for the purposes of this act, and shall not
6 be transferred or used for any other purpose. Of this amount, the governor shall determine if any
7 remaining discretionary funds appropriated in the American Rescue Plan Act of 2021, Public Law
8 117-2 or any other federal funds can be used for this purpose and any remainder shall be general
9 funds. The governor is authorized to draw a warrant for the general fund share of said sum out of
10 any money in the treasury not otherwise appropriated.

11 6 Juvenile Treatment Center; Forecasted Operating Budget of a Replacement Facility.

12 I. The operating budget of the juvenile treatment center shall be designed to be
13 commensurate with the average cost per child to operate a similar juvenile facility in New England.

14 II. On at least a biennial basis, the operating budget of the juvenile treatment center shall
15 be adjusted based on the average census for the previous biennium.

16 7 New Paragraphs; New Hampshire Youth Development Center; Administration. Amend RSA
17 621:1 by inserting after paragraph III the following new paragraph:

18 IV. In furtherance of the creation of a trauma informed care treatment environment, the
19 director of the replacement facility shall possess at least the following qualifications:

20 (a) An advanced degree in clinical practice of psychology, nursing, social work, or
21 medicine;

22 (b) Experience in the implementation of trauma informed care in congregate settings;
23 and

24 (c) Experience in trauma informed care of juveniles.

25 8 Delinquent Children; Dispositional Hearing. Amend RSA 169-B:19, I(j) to read as follows:

26 (j) Commit the minor to the custody of the department of health and human services for
27 the remainder of minority. Commitment under this subparagraph may only be made following
28 written findings of fact by the court, supported by clear and convincing evidence, that commitment is
29 necessary to protect the safety of the minor or of the community, and may only be made if the minor
30 has not waived the right to counsel at any stage of the proceedings. If there is a diagnosis or other
31 evidence that a minor committed under this subparagraph may have a serious emotional
32 disturbance or other behavioral health disorder, the minor shall, with the consent of the minor and
33 the minor's family, be referred to a care management entity pursuant to RSA 135-F:4, III. The care
34 management entity shall develop and oversee the implementation of a care plan for the minor,
35 intended to reduce the period of commitment. Commitment may not be based on a finding of
36 contempt of court if the minor has waived counsel in the contempt proceeding or at any stage of the
37 proceedings from which the contempt arises. Commitment may include, but is not limited to,

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1 placement by the department of health and human services at a facility certified for the commitment
2 of minors pursuant to RSA 169-B:19, VI, or administrative release to parole pursuant to RSA 621:19,
3 **or administrative release consistent with the cap on youth development center population,**
4 provided that the appropriate juvenile probation and parole officer is notified. Commitment under
5 this subparagraph shall ~~[not be ordered as a disposition for a violation of RSA 262 or 637, possession~~
6 ~~of a controlled drug without intent to sell under RSA 318-B, or violations of RSA 634, 635, 641, or~~
7 ~~644, which would be a misdemeanor if committed by an adult. However, commitment may be~~
8 ~~ordered under this subparagraph for any offense which would be a felony or class A misdemeanor if~~
9 ~~committed by an adult if the minor has previously been adjudicated under this chapter for at least 3~~
10 ~~offenses which would be felonies or class A misdemeanors if committed by an adult. A court shall~~
11 ~~only commit a minor based on previous adjudications if it finds by clear and convincing evidence that~~
12 ~~each of the prior offenses relied upon was not part of a common scheme or factual transaction with~~
13 ~~any of the other offenses relied upon, that the adjudications of all of the prior offenses occurred~~
14 ~~before the date of the offense for which the minor is before the court, and that the minor was~~
15 ~~represented by counsel at each stage of the prior proceedings following arraignment.]~~ **only be**
16 **ordered as a disposition for:**

17 (1) **First degree murder, second degree murder, attempted murder,**
18 **manslaughter, negligent homicide under RSA 630:3, II, first degree assault, second degree**
19 **assault, except when the allegation is a violation of RSA 631:2, I(d), felonious sexual**
20 **assault, aggravated felonious sexual assault, kidnapping, criminal restraint, robbery**
21 **punishable as a class A felony, burglary while armed or involving the infliction of bodily**
22 **harm under RSA 635:1, II, or arson punishable as a felony; or**

23 (2) **Pursuant to a plea agreement entered into by a minor with consultation**
24 **of counsel, and the court makes express findings that this disposition is in the best interest**
25 **of the minor.**

26 9 New Subparagraph; Delinquent Children; Dispositional Hearing. Amend RSA 169-B:19, I by
27 inserting after subparagraph (l) the following new subparagraph:

28 (m)(1) Notwithstanding the provisions of RSA 169-B:19, I(j), a court may commit the
29 minor to the custody of the department of health and human services for the remainder of minority if
30 the minor is found delinquent:

31 (A) For an offense which would be a felony if committed by an adult; or

32 (B) For any offense which would be a felony or class A misdemeanor if committed
33 by an adult, if the minor has previously been adjudicated under this chapter for at least 3 offenses
34 within the previous 12 months, which would be felonies or class A misdemeanors if committed by an
35 adult. A court shall only commit a minor based on previous adjudications if it finds by clear and
36 convincing evidence that each of the prior offenses relied upon was not part of a common scheme or

1 factual transaction with any of the other offenses relied upon, that the adjudications of all of the
2 prior offenses occurred before the date of the offense for which the minor is before the court.

3 (2) In utilizing subparagraphs (1)(A) or (B), the court shall first find that there is no
4 placement or set of supervision and treatment services other than secure confinement that will
5 protect the public from a substantial risk of serious bodily injury or substantial risk of felony
6 property crime. A court's finding pursuant to this subparagraph shall only be sufficient to support
7 secure confinement if it is made by clear and convincing evidence following either a stipulation by
8 the parties or an evidentiary hearing wherein the court considers reliable evidence. Further, the
9 court's findings shall include written, case-specific findings which identify the evidence relied upon
10 and the basis for the determination that secure confinement is necessary. Commitment under this
11 subparagraph may only be made if the minor has not waived the right to counsel at any stage of the
12 proceedings. If there is a diagnosis or other evidence that a minor committed under this
13 subparagraph may have a serious emotional disturbance or other behavioral health disorder, the
14 minor shall, with the consent of the minor and the minor's family, be referred to a care management
15 entity pursuant to RSA 135-F:4, III. The care management entity shall develop and oversee the
16 implementation of a care plan for the minor, intended to reduce the period of commitment.
17 Commitment may include, but is not limited to, placement by the department of health and human
18 services at a facility certified for the commitment of minors pursuant to RSA 169-B:19, VI,
19 administrative release to parole pursuant to RSA 621:19, or administrative release consistent with
20 the cap on youth development center population under RSA 621:10, provided that the appropriate
21 juvenile probation and parole officer is notified.

22 10 Youth Development Center; Department's Duties. Amend RSA 621:12, III to read as follows:

23 III. The commissioner shall provide a quarterly report to the fiscal committee of the general
24 court of the average daily census, ~~and~~ the estimated monthly cost per resident at the Sununu youth
25 services center, including those funds used from accounting units not directly associated with the
26 Sununu youth services center, ***highest level of charge for each commitment or detention, and***
27 ***the recidivism rate for the facility.***

28 11 New Paragraph; Delinquent Children; Definitions. Amend RSA 169-B:2 by inserting after
29 paragraph XV the following new paragraph:

30 XVI. "Trauma informed care" means a program, organization, or system that realizes the
31 widespread impact of trauma and understands potential paths for recovery, recognizes the signs and
32 symptoms of trauma in clients, families, staff, and other individuals involved with the system, and
33 responds by fully integrating knowledge about trauma into policies, procedures, and practices and
34 seeks to actively resist retraumatization. Trauma informed care also follows the following
35 principles: safety, trustworthiness and transparency, peer support, collaboration and mutuality,
36 empowerment, voice and choice, and cultural, historical, and gender issues.

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1 12 Applicability. RSA 169-B:19, as amended by sections 7 and 8 of this act, shall apply to cases
2 pending as of the effective date of this act in which a dispositional order has not yet been ordered.

3 13 Effective Date.

4 I. Sections 8 and 9 of this act shall take effect 60 days after its passage.

5 II. The remainder of this act shall take effect upon its passage.

UNAPPROVED

2023-0767h

AMENDED ANALYSIS

This bill sets parameters for the construction and operation of a new youth secure facility to replace the Sununu Youth Services Center (SYSC), makes an appropriation thereof, sets forth requirements around the disposition of the current SYSC property, and amends the law surrounding the dispositional hearings of delinquent children.

UNAPPROVED