

CHAPTER 220
SB 94 - FINAL VERSION

04/01/2021 1001s

2021 SESSION

21-0942
05/04

SENATE BILL **94**

AN ACT relative to juvenile diversion programs.

SPONSORS: Sen. Carson, Dist 14; Rep. Belanger, Rock. 9

COMMITTEE: Judiciary

ANALYSIS

This bill clarifies the procedure for obtaining a needs assessment through juvenile diversion prior to proceeding with a delinquency petition under RSA 169-B.

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 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty One

AN ACT relative to juvenile diversion programs.

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

220:1 Statement of Purpose and Findings.

I. In furtherance of the objectives stated in RSA 169-B:1, the general court finds that promoting the earlier engagement in the community based services and minimizing the involvement of youth in the formal legal system will promote the goal of positive youth development.

II. The general court finds that authorizing pre-petition engagement by the department for the purpose of completing assessments and making referrals to the children's behavior health system or other appropriate services and supports will increase the use of diversion and decrease the need for future judicial involvement.

III. It is the intent of this act to provide the department with the authority to assess all youth as early as possible in the process and the ability to share that information with law enforcement, prior to formal involvement with the court, in order to minimize the need for court involvement when the minor's needs can be met with services.

IV. Further, the general court finds that when court involvement is required, dispositions should be tailored to address the individual needs of youth and, therefore, the court should utilize needs assessments for the purpose of determining appropriate services and supports when making dispositional decisions.

220:2 Juvenile Delinquency; Arrest or Taking Minor Into Custody; Juvenile Diversion Alternative. Amend RSA 169-B:9 to read as follows:

169-B:9 Arrest or Taking Minor Into Custody.

I. A police officer or juvenile probation and parole officer may, without taking a minor into custody, refer the minor to the department for a needs assessment. Upon receiving such referral, the department shall conduct the needs assessment using the same process for obtaining consent as required in RSA 169-B:10, I-a for cases referred to the department after a minor is taken into custody.

I-a. Nothing in this chapter shall be construed as forbidding any juvenile probation and parole officer from immediately arresting or taking into custody any minor who is found violating any law, or who is reasonably believed to be a fugitive from justice, or whose circumstances are such as to endanger such minor's person or welfare, unless immediate action is taken.

II. Nothing in this chapter shall be construed as forbidding any police officer from immediately taking into custody any minor who is found violating any law, or whose arrest would be

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permissible under RSA 594:10, or who is reasonably believed to be a fugitive from justice, or whose circumstances are such as to endanger such minor's person or welfare, unless immediate action is taken.

220:3 Juvenile Delinquency; Juvenile Diversion. Amend RSA 169-B:10, I and I-a to read as follows:

I. An officer authorized under RSA 169-B:9 to take a minor into custody may dispose of the case without court referral by releasing the minor to a parent, guardian, or custodian. The officer shall make a written report to the officer's department identifying the minor, specifying the grounds for taking the minor into custody and indicating the basis for the ~~[disposition]~~ **disposal** of the case. *The officer may refer the minor to the department of health and human services for the needs assessment described in paragraph I-a.*

I-a. *If the arresting agency contemplates the initiation of court proceedings*, prior to filing a delinquency petition with the court, the arresting agency or prosecutor shall ~~[screen the petition for participation in diversion.]~~ **refer the minor to the department of health and human services for a voluntary needs assessment within 2 business days of arrest, to be completed as follows:**

(a) *The department shall obtain the consent of the minor and the minor's parent or guardian, prior to conducting the needs assessment.*

(b) *If the minor or the minor's parent or guardian does not consent, the department shall report to the prosecutor that the voluntary needs assessment was declined and the prosecutor may proceed with a petition and inform the court that the needs assessment was declined.*

(c) *The department shall complete the voluntary needs assessment within 30 days from referral or, if an assessment has been completed within the prior 6 months, the department shall provide the referring entity with the report and recommendations from any prior assessments.*

(d) *If a needs assessment conducted pursuant to this paragraph or RSA 169-B:9 reveals that the child has complex behavioral health needs and is at risk of residential, hospital, or secure placement, or is already involved in multiple service systems, the department shall refer the child and family to the FAST Forward program to determine eligibility for FAST Forward and referral to a care management entity.*

(e) *A report and recommendations shall be provided to the minor, the minor's parent or guardian, the minor's attorney, and the referring entity and shall include the department's specific recommendation regarding whether a petition should be filed and any recommendations for supports and services.*

(f) *Absent the consent of the minor following consultation with counsel, the report and recommendations, any additional documents and records, and any statements*

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1 *made by the minor or others providing information for the purpose of the needs assessment*
2 *shall not be used in any way by law enforcement during any portion of its investigation,*
3 *nor shall they be admissible at an adjudicatory hearing held pursuant to RSA 169-B:16,*
4 *proceedings pursuant to RSA 169-B:24, or adult criminal proceedings.*

5 (g) *If a finding is made at the adjudicatory hearing, the needs assessment,*
6 *report, and recommendations shall, with the consent of the minor following consultation*
7 *with counsel, be admissible at the dispositional hearing, and subsequent hearings*
8 *pursuant to RSA 169-B:31 and RSA 169-B:31-a, for the purpose of determining appropriate*
9 *services and supports.*

10 (h) *Prior to filing a delinquency petition with the court, the arresting agency or*
11 *prosecutor shall review the department's report and recommendations to screen the*
12 *petition for participation in other voluntary services or diversion.*

13 (i) *A petition may be filed prior to the completion of the referral and needs*
14 *assessment if:*

15 (1) *The prosecutor or arresting officer determines there is a need to request*
16 *an order from the court for immediate detention or non-secure placement to protect the*
17 *minor or the community; or*

18 (2) *The minor or the minor's parent or guardian does not consent to the*
19 *voluntary assessment.*

20 (j) *The petitioner shall identify why diversion was not an appropriate disposition prior*
21 *to seeking court involvement.*

22 (k) *If the petition is filed prior to the referral and assessment, and the minor*
23 *has not had an assessment in the prior 6 months, the department shall make the*
24 *assessment available to the minor after the petition is filed and the confidentiality and*
25 *admissibility of the report and recommendations and related statements shall be treated*
26 *the same as assessments completed prior to the petition.*

27 I-b. *The department of health and human services shall produce informational*
28 *materials regarding the process for making referrals to the department pursuant to RSA*
29 *169-B:9 in lieu of making formal arrests and shall make such materials available to all*
30 *New Hampshire law enforcement agencies.*

31 220:4 Applicability. This act shall apply to the circuit courts as follows:

32 I. Beginning January 1, 2022, in the following circuit court locations: Lebanon of circuit 2,
33 Claremont and Newport of circuit 5, Dover and Rochester of circuit 7, Keene and Jaffrey of circuit 8,
34 and Nashua, Milford and Merrimack of circuit 9.

35 II. Beginning July 1, 2022, in the following circuit court locations: Concord, Hillsborough
36 and Hooksett of circuit 6 and Portsmouth, Hampton, Brentwood, Derry, Salem and Candia of circuit
37 10.

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1 III. Beginning October 1, 2022, in the following circuit court locations: Berlin, Colebrook and
2 Lancaster of circuit 1, Plymouth, Littleton and Haverhill of circuit 2, Conway and Ossipee of circuit
3 3, Laconia of circuit 4, Franklin of circuit 6, Manchester and Goffstown of circuit 9.

4 IV. In all circuit court locations as of October 1, 2022.

220:5 Effective Date. This act shall take effect January 1, 2022.

Approved: August 23, 2021

Effective Date: January 01, 2022