

CHAPTER 207
SB 143-FN - FINAL VERSION

03/18/2021 0776s
3Jun2021... 1431h
06/24/2021 1958CofC
06/24/2021 2069EBA

2021 SESSION

21-0943
04/10

SENATE BILL ***143-FN***

AN ACT adopting omnibus legislation relative to certain agency requests.

SPONSORS: Sen. Carson, Dist 14

COMMITTEE: Executive Departments and Administration

AMENDED ANALYSIS

This bill adopts legislation relative to:

- I. Appointment of counsel for a minor in a juvenile delinquency proceeding.
- II. Alternative dispute resolution.
- III. Allowing judicial referees to issue orders in non-contested probate matters.
- IV. Permitting a supreme court justice to sit as a circuit court judge.
- V. Payment of costs for services other than counsel for indigent parties.
- VI. Insurance company licenses.
- VII. The New Hampshire National Guard enlistment incentive program.

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 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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III. *Upon receipt of the petition, the court shall appoint counsel for the minor. Such appointment shall occur promptly, and in no event later than the time when the summons is issued. Notice of the appointment shall be transmitted to counsel and to the petitioner by electronic mail and by first class mail on the day of the appointment.* The summons shall contain a notice of the right to representation by counsel and ~~[the available procedures for obtaining counsel]~~ *the name, address, telephone number, and electronic mail address of the attorney who has been appointed by the court.* The summons shall also state as follows: "With limited

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exception, the department of health and human services shall be responsible for the cost of services provided under this chapter. RSA 186-C regarding children with disabilities grants minors and their parents certain rights to services from school districts at public expense and to appeal school district decisions regarding services to be provided."

2 Appointment of Counsel; Waiver of Counsel. Amend 169-B:12, I to read as follows:

I. Absent a valid waiver, the court shall appoint counsel ~~[at the time of arraignment of an indigent minor, provided that an indigent minor detained pursuant to RSA 169-B:11, III, shall have counsel appointed upon the issuance of the detention order]~~ **for an indigent minor pursuant to RSA 169-B:7, III.** For purposes of ~~[the appointment of counsel under]~~ this section, an indigent minor shall be a minor who satisfies the court, after appropriate inquiry, that the minor is financially unable to independently obtain counsel. If the court has received information indicating that the minor ~~[has]~~ **may have** an intellectual, cognitive, emotional, learning, or sensory disability, the court shall ~~[require the minor to consult with]~~ **not permit the minor to waive the right to** counsel.

3 Waiver of Counsel. Amend RSA 169-B:12, II-a to read as follows:

II-a. If the minor and the parent, guardian, or custodian have not consulted with counsel about the possible consequences of the proposed waiver of the right to counsel, the court ~~[may only]~~ **shall not** accept a waiver pursuant to paragraph II ~~[after making case-specific written findings with regard to each of the required conditions for waiver].~~

4 Contract Attorneys. Amend RSA 604-A:2-b to read as follows:

604-A:2-b Contract Attorneys. The state of New Hampshire, by the judicial council and with the approval of governor and council, may, within the limits of available appropriations, contract with any qualified attorney in the state to provide for the representation of indigents in circumstances where, pursuant to RSA 604-B, the public defender program is unavailable to provide such representation. **No contract providing for the representation of children in proceedings arising under RSA 169-B shall be based on payment of a predetermined fee per case or other payment structure which creates a financial disincentive for attorneys to provide effective representation in such cases.** The executive director of the judicial council shall authorize payments to contract attorneys provided for under this section.

5 Development of Performance Standards. Amend RSA 604-A:10, V to read as follows:

V. The judicial council shall adopt standards relative to appointment for juvenile counsel. Such standards shall establish training, experience, and other qualifications for attorneys to represent minors in such proceedings, and shall be developed with consideration of relevant national standards including, but not limited to, the Juvenile Justice Standards of the Institute of Judicial Administration and American Bar Association. **The council shall develop the standards required by this section in consultation with the judicial branch, the New Hampshire Bar Association, New Hampshire Legal Assistance, the New Hampshire Public Defender, the**

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Disability Rights Center of New Hampshire, and the American Civil Liberties Union of New Hampshire, and shall adopt them no later than July 1, 2022.

6 Repeal. RSA 169-B:12, II-b, relative to appointment of counsel, is repealed.

7 Effective Date. Part I of this act shall take effect January 1, 2022.

PART II

Relative to alternative dispute resolution.

1 New Section; Office of Mediation and Arbitration; Quality Assurance Program. Amend RSA 490-E by inserting after section 5 the following new section:

490-E:6 Quality Assurance Program.

I. The office of mediation and arbitration may establish a quality assurance program to support the administration of alternative dispute resolution programs in all courts. The program may include, but is not limited to:

(a) Investigating and resolving complaints about alternative dispute resolution programs in all courts, including services or assistance provided by the office or a neutral party approved by the judicial branch; and

(b) Monitoring and evaluating the appropriateness of alternative dispute resolution services provided by the office or a neutral party approved by the judicial branch so that problems or trends in the delivery of services are identified and steps to correct problems can be taken.

II. The office of mediation and arbitration may request information about an alternative dispute resolution program in the courts. Any information received by the office may be shared only within the judicial branch and such information shall otherwise be confidential and privileged as provided by law, rule, or order.

III. Records of the office's quality assurance program, including records of interviews, internal reviews or investigations, reports, statements, minutes, and other documentation, shall be confidential and shall be protected from direct or indirect discovery, subpoena, or admission into evidence in any judicial or administrative proceeding.

IV. No person who provides information as part of the quality assurance program shall be held liable in any action for damages or other relief arising from such provision of information.

2 Effective Date. Part II of this act shall take effect 60 days after its passage.

PART III

Allowing judicial referees to issue orders in non-contested probate matters.

1 New Paragraph; Judges of Probate; Jurisdiction. Amend RSA 547:3 by inserting after paragraph IV the following new paragraph:

V. The administrative judge of the circuit court may appoint one or more referees to any matter which is not contested and to which no objection has been filed, or to which all parties have assented, for any cases arising under subparagraphs I(a), (b), and (g). Any referee so assigned shall act under the direction of a judge of probate as defined in RSA 490-F:6, III. Any party aggrieved by a

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1 decision made by a referee pursuant to this paragraph may file a request for reconsideration within
2 10 days of the clerk's notice of decision, and if such request is filed, the matter shall be reviewed by a
3 judge of probate.

4 2 Repeal. RSA 547:3, I(h), relative to the jurisdiction of the probate court over cases involving
5 termination of parental rights, is repealed.

6 3 Effective Date. Part III of this act shall take effect 60 days after its passage.

7 **PART IV**

8 Permitting a supreme court justice to sit as a circuit court judge.

9 1 Superior Court; Assignment From Supreme Court. Amend RSA 491:3 and 3-a to read as
10 follows:

11 491:3 Assignment From Supreme Court. When the business of the superior court **or circuit**
12 **court** requires it, and upon request of the ~~[chief or senior associate justice]~~ **chief justice of the**
13 **superior court or the administrative judge** of ~~[that]~~ **the circuit** court, the chief or senior
14 associate justice of the supreme court may, if not inconsistent with the proper advancement of the
15 business of the supreme court, assign himself **or herself** or some other justice of the supreme court
16 to preside and serve in the superior court **or circuit court**. While thus presiding and serving, such
17 supreme court justice shall have all the authority of a superior court justice **or circuit court judge**.

18 491:3-a Assignment of Judges. After assessing caseload needs and requirements and consulting
19 with the **chief justice of the superior court or** administrative ~~[judges]~~ **judge of the circuit**
20 **court**, the chief justice of the supreme court may assign any superior court ~~[judge]~~ **justice** to hear
21 cases in the ~~[district]~~ **circuit** court.

22 2 Effective Date. Part IV of this act shall take effect 60 days after its passage.

23 **PART V**

24 Relative to the payment of costs for services other than counsel for indigent parties.

25 1 Termination of Parental Rights; Fees and Court Costs. Amend RSA 170-C:13 to read as
26 follows:

27 170-C:13 Fees and Court Costs.

28 I. The petitioner shall pay all entry fees and court costs including costs of giving notice, costs
29 of advertising, and court-appointed guardian ad litem fees. The court, however, may waive entry
30 fees and court costs where payment would work a hardship on the petitioner. Where the court
31 waives payment by the petitioner, the state, through the court system, shall pay court costs. The
32 judicial council shall pay the cost of a CASA guardian ad litem appointed for the child or other
33 guardian ad litem in cases arising from an underlying abuse and neglect proceeding when the state
34 is the moving party or in cases where payment would work a hardship on the petitioner. **The cost**
35 **of such appointment, including counsel and investigative, expert, or other services and**
36 **expenses necessary to provide adequate representation, shall be paid from funds**
37 **appropriated for indigent defense pursuant to RSA 604-A.**

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1 II. The department of health and human services is exempted from paying any entry fees
2 and court costs.

3 III. When appointment of counsel is made by the court pursuant to RSA 170-C:10 for a
4 parent determined to be financially unable to employ counsel, the court shall use a financial
5 eligibility guideline established by the office of cost containment to determine if the party is indigent.
6 Upon determination that the party is indigent, the court may appoint counsel, subject to an order of
7 repayment through the office of cost containment. The judicial council shall bear the financial
8 responsibility for the payment of costs for attorneys appointed pursuant to RSA 170-C:10 in
9 accordance with the financial eligibility guideline established by the office of cost containment. ***The***
10 ***cost of such appointment, including counsel and investigative, expert, or other services and***
11 ***expenses necessary to provide adequate representation, shall be paid from funds***
12 ***appropriated for indigent defense pursuant to RSA 604-A. Counsel shall petition the court***
13 ***for investigative, expert, or other services necessary to provide adequate representation. If***
14 ***the court finds that such services are necessary and that the parent is financially unable to***
15 ***obtain them, the court shall authorize counsel to obtain the necessary services on behalf of***
16 ***the parent. Services authorized under this section shall not include the payment of***
17 ***expenses that are the responsibility of any other agency pursuant to RSA 169-C or this***
18 ***chapter.***

19 2 Guardians and Conservators; Right to Counsel. Amend RSA 464-A:6, I to read as follows:

20 I. The right to legal counsel for any person for whom a temporary guardian or guardianship
21 of the person and estate, or person, or estate, is sought shall be absolute and unconditional. If the
22 proposed ward does not have his or her own counsel, the court shall appoint counsel for the proposed
23 ward immediately upon the filing of a petition for guardianship of the person and estate, or the
24 person, or estate. ***The judicial council shall pay the cost of such appointment, including***
25 ***counsel and investigative, expert, or other services and expenses necessary to provide***
26 ***adequate representation, from funds appropriated for indigent defense pursuant to RSA***
27 ***604-A. Prior to obtaining investigative, expert, and other services necessary to provide***
28 ***adequate representation, counsel shall apply to the court and, upon finding that such***
29 ***services are necessary and that the person is financially unable to obtain them, the court***
30 ***shall authorize counsel to obtain the necessary services on behalf of the person for whom***
31 ***temporary guardian or guardianship of the person and estate, or person or estate, is***
32 ***sought.***

33 3 Adequate Representation for Indigent Defendants in Criminal Cases; Neglected or Abused
34 Children. RSA 604-A:1-a is repealed and reenacted to read as follows:

35 604-A:1-a Neglected or Abused Children. In cases involving a neglected or abused child, when a
36 guardian ad litem is appointed for the child as provided in RSA 169-C:10, the cost of such
37 appointment shall be paid from funds appropriated for indigent defense pursuant to this chapter. In

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cases involving a neglected or abused child, when an expressed interest attorney is appointed for the child as provided in RSA 169-C:10, the cost of such appointment shall be paid from funds appropriated for indigent defense in this chapter. In cases involving a neglected or abused child, when an attorney is appointed to represent a parent determined to be indigent pursuant to RSA 169-C:10, II, at the preliminary hearing or a hearing pursuant to RSA 169-C:6-a, III, whichever occurs earlier, the cost of such appointment, including counsel and investigative, expert, or other services and expenses, shall be paid from funds appropriated for indigent defense pursuant to this chapter. Counsel shall petition the court for investigative, expert, or other services necessary to provide adequate representation. If the court finds that such services are necessary and that the parent is financially unable to obtain them, the court shall authorize counsel to obtain the necessary services on behalf of the parent. Services authorized under this section shall be in addition to payment for expenses provided under RSA 169-C or RSA 170-C.

4 Effective Date. Part V of this act shall take effect 60 days after its passage.

PART VI

Relative to insurance company licenses.

1 Insurance Company Licenses. Amend RSA 402:12, I to read as follows:

I. On compliance with the foregoing conditions and if the company is found upon examination made by or under the direction of the commissioner to **(a)** have complied with the laws of the state applicable to it; **(b) have been consistent with the NAIC's Uniform Certificate of Authority Application process and standards; and (c) have complied with any other terms or documentation the commissioner may require**, a license to transact the kind of business specified in the license shall be issued until June 14 thereafter. Annually thereafter, on June 14, such license may be renewed so long as the company shall comply with the requirements of the law and the commissioner shall regard it as safe, reliable, and entitled to confidence, **so long as its application is consistent with the standards set forth by state law and NAIC guidelines** and so long as the company continues to conduct a meaningful insurance business, as determined by the commissioner, within New Hampshire.

2 Insurance Company Licenses; Foreign Insurance Companies and Agents. Amend RSA 405:12, I to read as follows:

I. If the foregoing provisions are complied with and the commissioner is satisfied that the company **(a)** has the requisite capital and assets ~~[and]~~; **(b)** is a safe, reliable company, entitled to confidence; **and (c) is consistent with the NAIC's Uniform Certificate of Authority Application process and standards**, ~~[he]~~ **the commissioner** shall grant a license to it to do insurance business by authorized agents within the state, subject to the laws of the state, until June 14 thereafter. Annually thereafter, on June 14, such license may be renewed so long as the company shall comply with the requirements of the law, **NAIC guidelines**, and the commissioner shall

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1 regard it as safe, reliable and entitled to confidence, and so long as the company continues to conduct
2 a meaningful insurance business, as determined by the commissioner, within New Hampshire.

3 3 New Subparagraph; Department of Revenue Administration; Confidentiality of Department
4 Records. Amend RSA 21-J:14, V(d) by inserting after subparagraph (9) the following new
5 subparagraph:

6 (10) An officer or employee of the insurance department, pursuant to an agreement
7 for exchange of information between the department and the insurance department, for the purposes
8 of sharing information received by the department from insurance companies that claim a business
9 enterprise tax credit, pursuant to RSA 400-A:34-a, and only to the extent necessary, for the
10 administration and collection of tax premiums by the insurance department. The information
11 disclosed pursuant to such exchange agreement shall not include records, files, returns, or
12 information disclosed to officers or employees of the department by any other state, pursuant to a
13 compact for the exchange of information between the department and any other state, unless
14 permitted by such state or compact. Officers or employees of the insurance department, having in
15 their custody or control any confidential taxpayer information obtained from the department
16 pursuant to the exchange agreement authorized under this subparagraph, shall be subject to the
17 provisions of RSA 21-J:14.

18 4 Effective Date. Part VI of this act shall take effect 60 days after its passage.

19 **PART VII**

20 Relative to the New Hampshire National Guard enlistment incentive program.

21 1 National Guard Enlistment Incentive Program. The subdivision heading before RSA 160-
22 B:60 is repealed and reenacted to read as follows:

23 **National Guard Enlistment Incentive Program**

24 2 National Guard Enlistment Incentive Program. RSA 110-B:60-62 are repealed and
25 reenacted to read as follows:

26 110-B:60 New Hampshire National Guard Enlistment Incentive Program Established. For the
27 purpose of encouraging enlistment in the national guard there is hereby established a New
28 Hampshire national guard enlistment incentive program. This program authorizes a cash incentive
29 up to \$500 to current members of the New Hampshire national guard in the pay grades of E-1 to O-3
30 or any former member of the New Hampshire national guard for each new or prior service recruit
31 that they bring into the New Hampshire national guard.

32 110-B:61 Revenue for Enlistment Incentive Program.

33 I. There is hereby established a fund to be known as national guard enlistment incentive
34 program fund. Any appropriations received shall be deposited in the fund. Moneys in the fund and
35 any interest earned on the fund shall be used for the purpose of encouraging enlistment in the
36 national guard and shall not be used for any other purpose. The adjutant general shall oversee
37 expenditures from the fund. The moneys in the fund shall be nonlapsing.

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1 II. In addition to any moneys appropriated, the New Hampshire national guard enlistment
2 incentive program fund may consist of an annual appropriation, as determined by the general court,
3 to be awarded in accordance with written policies promulgated by the adjutant general under RSA
4 110-B:62.

5 110-B:62 Oversight and Administration. The adjutant general shall adopt rules pursuant to
6 RSA 541-A relative to the administration of the enlistment incentive program and relative to its
7 execution by the New Hampshire Army and Air National Guard recruiting offices in coordination
8 with the department of military affairs and veterans services.

9 3 New Subparagraph; National Guard Enlistment Incentive Program Fund. Amend RSA
10 6:12, I(b) by inserting after subparagraph (364) the following new subparagraph:

11 (365) Moneys deposited in the national guard enlistment incentive program fund
12 established in RSA 110-B:61.

13 4 Reference to National Guard Scholarship Fund Removed. Amend RSA 110-B:55, I to read
14 as follows:

15 I. Fines may be paid to a military court or to an officer executing its process. The amount of
16 any fine imposed may be noted upon any state roll or account for pay of the delinquent and deducted
17 from any pay or allowance due or thereafter to become due them, until said fine is liquidated; or the
18 same may be collected with lawful costs of collection, as in the case of executions issued in action
19 founded upon torts. ~~[Fines shall be paid over to the state treasurer and credited to the New~~
20 ~~Hampshire national guard recruitment and retention scholarship fund under RSA 110-B:60.]~~

21 5 Reference to National Guard Scholarship Fund Removed. Amend RSA 110-B:29 to read as
22 follows:

23 110-B:29 Use of Armories or Other National Guard Facilities.

24 ~~[I.]~~ All New Hampshire national guard facilities shall be primarily for the military duty,
25 instruction, and training of the national and state guard and for the storage and maintenance of
26 military property. Other use of national guard facilities may be authorized by the adjutant general
27 and shall be governed by rules and regulations promulgated under this section.

28 ~~[II. Rental fees for the use of national guard facilities shall be fixed by the adjutant general~~
29 ~~and shall be declared as revenue and paid to the adjutant general subject to the provisions of RSA~~
30 ~~110-B:61.]~~

31 6 Repeal. RSA 110-B:63, relative to the national guard scholarship program, is repealed.

32 7 Effective Date. Part VII of this act shall take effect July 1, 2021.

Approved: August 10, 2021

Effective Date:

Pt. I eff. January 1, 2022

Pt. II eff. October 9, 2021

Pt. III eff. October 9, 2021

Pt. IV eff. October 9, 2021

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Pt. V eff. October 9, 2021
Pt. VI eff. October 9, 2021
Pt. VII eff: July 1, 2021

