

Amendment to SB 122-FN

1 Amend the title of the bill by replacing it with the following:

2
3 AN ACT relative to exemptions from prosecution for victims of human trafficking,
4 guardianship by grandparents, and making changes to the membership of the council
5 on autism spectrum disorders.
6

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

8
9 1 New Paragraph; Trafficking in Persons; Definitions. Amend RSA 633:6 by inserting after
10 paragraph VI the following new paragraph:

11 VII. "Victim of human trafficking" means:

12 (a) An individual who, at any point in time, was the victim of a trafficking in persons
13 offense under RSA 633:7, I-III, whether or not the offense was prosecuted; or

14 (b) An individual who at any point in time was the victim of a severe form of trafficking
15 in persons offense under 22 U.S.C. section 7102(11)(A), whether or not the offense was prosecuted.

16 2 Trafficking in Persons. RSA 633:7, VI is repealed and reenacted to read as follows:

17 VI. No victim of human trafficking shall be prosecuted for any offense, where the otherwise
18 chargeable conduct was committed as a direct result of being trafficked, provided that the conduct
19 chargeable did not involve an act of violence or a threat of violence as defined in RSA 625:9, VII.

20 VII. A victim of human trafficking who was under 18 years of age at the time of the offense
21 shall not be subject to juvenile delinquency proceedings under RSA 169-B for any otherwise
22 chargeable offense, where the conduct was committed as a direct result of being trafficked, provided
23 that the conduct chargeable did not involve an act of violence or a threat of violence as defined in
24 RSA 625:9, VII.

25 VIII.(a) This paragraph shall apply to:

26 (1) An individual convicted for an offense which was committed as a direct result of
27 being trafficked;

28 (2) An individual who was under 18 years of age at the time of the offense, who was
29 adjudicated as delinquent for an offense which was committed as a direct result of being trafficked;
30 or

31 (3) An individual who entered into a diversion agreement in lieu of further criminal
32 proceedings for an offense which was committed as a direct result of being trafficked.

Amendment to SB 122-FN
- Page 2 -

1 (b) A victim of human trafficking who was subject to adjudication as specified in VIII (a)
2 above, may, at any time, file a motion with the circuit court, district division or superior court to
3 vacate a conviction, adjudication of delinquency, or diversion agreement, and the related court
4 records and arrest records, for any offense. A copy of the motion to vacate shall be provided to the
5 agency that prosecuted the offense.

6 (c) After a hearing, the court shall grant the motion to vacate the conviction,
7 adjudication of delinquency, or diversion agreement upon a finding by a preponderance of the
8 evidence that the petitioner's participation in the offense underlying the conviction, delinquency
9 adjudication, or diversion agreement was the direct result of being trafficked. A finding by the court
10 that the petitioner was a victim of human trafficking at the time of the offense shall be a prima facie
11 evidence that the petitioner's participation in the offense was a direct result of being trafficked.

12 (d) The petitioner shall not be required to provide any official documentation indicating
13 that he or she was a victim of human trafficking at the time of the offense. However, if such
14 documentation is provided, it shall be prima facie evidence that the petitioner's participation in the
15 offense was a direct result of being trafficked. In this subparagraph, "official documentation" means:

16 (1) A copy of an official record, certification, or eligibility letter from a federal, state,
17 tribal, or local proceeding, including an approval notice or an enforcement certification generated
18 from a federal immigration proceeding, that shows the petitioner was a victim of human trafficking;
19 or

20 (2) An affidavit or sworn testimony from a member of the clergy, a medical
21 professional, a trained professional staff member of a victim services organization, or other
22 professional from whom the petitioner has sought legal counselor other assistance in addressing the
23 trauma and other challenges associated with being a victim of human trafficking.

24 (e) In determining whether the petitioner was a victim of human trafficking at the time
25 of the offense, the court may consider any other evidence the court finds has sufficient credibility and
26 probative value. Such evidence may include, but is not limited to:

27 (1) The affidavit or sworn testimony of the petitioner;

28 (2) Branding or other tattoos on the body of the petitioner that identify the petitioner
29 as having had a trafficker;

30 (3) Photographic evidence of branding or other tattoos on the body of the petitioner
31 that identify the petitioner as having or having had a trafficker;

32 (4) Affidavits or sworn testimony of police, police interview notes, or police reports;

33 (5) Affidavits or sworn testimony from any person with firsthand knowledge of the
34 petitioner's involvement in the trafficking or any person who indicates that he or she was trafficked
35 or exploited by the same individual or group of individuals who trafficked the petitioner;

36 (6) Financial records showing revenues or expenses from the trafficking;

Amendment to SB 122-FN
- Page 3 -

1 (7) Internet listings, print advertisements, or business cards used to promote the
2 petitioner for services; or

3 (8) Email, text messages, or voicemail records between the petitioner, the trafficker,
4 or solicitors of sex that reveal aspects of the trafficking, such as examples of trafficker exerting
5 control over the petitioner, evidence of behavior patterns of the trafficker or the petitioner, or
6 discussion of meeting times or payments.

7 (f) Upon request of the petitioner and in lieu of the personal appearance of the petitioner
8 in the courtroom, a hearing shall be conducted by 2-way electronic audio-video communication,
9 between the petitioner, the judge, and any other present in the courtroom for the hearing, if the
10 petitioner is represented by counsel and upon request of the petitioner, the petitioner's personal
11 appearance shall be waived and counsel for petitioner shall be permitted to appear on the
12 petitioner's behalf.

13 IX. Upon request of the petitioner, the court shall not disclose or open to public inspection
14 any information identifying the petitioner, including any records of the motion hearing which could
15 provide circumstantial details that may identify the petitioner. Information regarding the petitioner
16 that is sealed pursuant to this paragraph shall be disclosed only to the following:

17 (a) The judge of the circuit court, district division or superior court and members of the
18 staff of the court as designated by the judge;

19 (b) Parties to the proceedings and their attorneys;

20 (c) With the consent of the petitioner, any individual or public or private agency or
21 institution providing educational, medical, or mental health service to the petitioner;

22 (d) When necessary for the discharge of official duties, law enforcement officers,
23 prosecutors, or law enforcement or prosecution staff, or

24 (e) When authorized by court order, any other person, subject to any conditions imposed
25 by the order, consistent with the petitioner's safety and privacy interests.

26 X.(a) An order vacating a conviction, adjudication of delinquency, or diversion agreement
27 shall:

28 (1) Nullify the conviction, delinquency adjudication, or diversion agreement;

29 (2) Vacate the conviction, delinquency adjudication, or diversion agreement due to a
30 substantive defect in the underlying criminal proceedings;

31 (3) Remove all civil disabilities and disqualifications imposed as a result of the
32 conviction, delinquency adjudication, or diversion agreement; and

33 (4) Place the petitioner in the position of never having been investigated, arrested,
34 convicted, deemed delinquent, or diverted for the offense.

35 (b) Upon a finding that the petitioner's participation in the offense underlying the
36 conviction, delinquency adjudication, or diversion agreement was a direct result of being trafficked

Amendment to SB 122-FN
- Page 4 -

1 and an entry of an order vacating the conviction, delinquency's adjudication, or diversion agreement
2 the court shall:

3 (1) Order the conviction, delinquency adjudication, or diversion agreement and any
4 related court records expunged and purged from all applicable state and federal systems. The court
5 shall enter this order regardless of whether the petitioner had any criminal record prior or
6 subsequent to the conviction, delinquency adjudication, or diversion agreement being vacated.

7 (2) Order the division of state police to purge the conviction, delinquency
8 adjudication, or diversion agreement, and any related court records or arrest records from the
9 criminal history record information repository and all applicable state and federal databases. The
10 clerk of the court shall send a certified copy of the order to the division of state police, which shall
11 carry out the order and shall notify the following of the court's order: the Federal Bureau of
12 Investigation, the New Hampshire department of corrections, and any other criminal justice agency
13 that may have a record of the conviction, adjudication of delinquency, or diversion agreement and
14 related court records or arrest records.

15 (c) Upon a finding that the petitioner's participation in the offense underlying the
16 conviction, delinquency adjudication, or diversion agreement was a direct result of being trafficked
17 and an entry of an order vacating the conviction, delinquency adjudication, or diversion agreement,
18 the court may, in its discretion, grant other relief to the petitioning victim in the interests of justice.

19 (d) Vacating a conviction, delinquency adjudication, or diversion agreement shall not
20 affect any right of the person whose offense was vacated to appeal the conviction or sentence.

21 3 New Paragraph; Guardianship of Minors; Definition of Grandparent Added. Amend RSA
22 463:2 by inserting after paragraph III the following new paragraph:

23 III-a. "Grandparent" includes a great-grandparent or great-great grandparent.

24 4 Council on Autism Spectrum Disorders; Membership. RSA 171-A:32, I is repealed and
25 reenacted to read as follows:

26 I. There is established a council on autism spectrum disorders to provide leadership in
27 promoting comprehensive and quality education, health care, and services for individuals with
28 autism spectrum disorders and their families. The members of the council shall be as follows:

29 (a) The governor, or designee.

30 (b) The commissioner of the department of education, or designee.

31 (c) The commissioner of the department of health and human services, or designee.

32 (d) The director of the division of public health services, department of health and
33 human services, or designee.

34 (e) The bureau chief of the bureau of developmental services, department of health and
35 human services, or designee.

36 (f) The bureau chief of the bureau of behavioral health, department of health and human
37 services, or designee.

Amendment to SB 122-FN
- Page 5 -

1 (g) The director of the Institute on Disability, University of New Hampshire, or
2 designee.

3 (h) A special education director, appointed by the New Hampshire Association of Special
4 Education Administrators, Inc.

5 (i) The president of the New Hampshire Medical Society, or designee.

6 (j) A representative of the New Hampshire Developmental Disabilities Council,
7 appointed by the council.

8 (k) An individual who has an autism spectrum disorder, appointed by the governor.

9 (l) A family member of a person who has an autism spectrum disorder, appointed by the
10 governor.

11 (m) A representative of the Community Support Network, Inc., appointed by such
12 organization.

13 (n) A representative of the New Hampshire Psychological Association, appointed by the
14 association.

15 (o) The director of the office of Medicaid business and policy, department of health and
16 human services, or designee.

17 (p) Five additional members, appointed by the council.

18 (q) A person who has an autism spectrum disorder, appointed by the council.

19 (r) A representative of the New Hampshire Nurses' Association, appointed by the
20 association.

21 (s) A licensed speech-language pathologist, appointed by the New Hampshire Speech-
22 Language-Hearing Association, Inc.

23 5 Effective Date. This act shall take effect upon its passage.

Amendment to SB 122-FN
- Page 6 -

2021-1308h

AMENDED ANALYSIS

This bill exempts victims of human trafficking from prosecution, defines "grandparent" for purposes of guardianship of minors, and makes changes to the membership of the council on autism spectrum disorders.