

SB 129-FN –AS AMENDED BY THE HOUSE

03/14/13 0743s
8May2013... 1378h
5June2013... 1905h

2013 SESSION

13-0845
05/04

SENATE BILL **129-FN**

AN ACT relative to court-ordered placements in shelter care facilities and at the Sununu Youth Services Center and making a supplemental appropriation to the insurance department.

SPONSORS: Sen. Odell, Dist 8; Sen. Kelly, Dist 10; Rep. Harding, Graf 13

COMMITTEE: Judiciary

AMENDED ANALYSIS

This bill:

I. Limits the commitment of children to the youth development center to cases where a court is presented with evidence that a juvenile is dangerous.

II. Provides a definition for shelter care facility in cases involving juvenile delinquency and children in need of services.

III. Requires that the department make treatment available in both non-secure and secure settings.

IV. Creates a presumption of parole after 6 months for children at the youth development center for non-violent offenses.

V. Provides for a right to counsel for children facing revocation of their parole from the youth development center, which cannot be waived if the child has a disability.

VI. Provides for periodic court review of cases where a juvenile is held at the youth development center for more than 6 months.

VII. Makes a supplemental appropriation to the insurance department for consumer assistance grants.

Explanation: Matter added to current law appears in **bold italics**.
Matter removed from current law appears [~~in brackets and struck through~~].
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

SB 129-FN –AS AMENDED BY THE HOUSE

03/14/13 0743s
8May2013... 1378h
5June2013... 1905h

13-0845
05/04

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Thirteen

AN ACT relative to court-ordered placements in shelter care facilities and at the Sununu Youth Services Center and making a supplemental appropriation to the insurance department.

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

1 1 Delinquent Children; Dispositional Hearing; Commitment. Amend RSA 169-B:19, I(j) to read
2 as follows:

3 (j) Commit the minor to the custody of the department of health and human services for
4 the remainder of minority. ***Commitment under this subparagraph may only be made***
5 ***following written findings of fact by the court, supported by clear and convincing evidence,***
6 ***that commitment is necessary to protect the safety of the minor or of the community.***

7 Commitment may include, but is not limited to, placement by the department of health and human
8 services at a facility certified for the commitment of minors pursuant to RSA 169-B:19, VI,
9 administrative release to parole pursuant to RSA 621:19, or administrative release consistent with
10 the cap on youth development center population under RSA 621:10, provided that the appropriate
11 juvenile probation and parole officer is notified.

12 2 New Paragraph; Delinquent Children; Definition of Shelter Care Facility. Amend RSA 169-
13 B:2 by inserting after paragraph XIII the following new paragraph:

14 XIV. "Shelter care facility" means a non-secure or staff-secure facility for the temporary care
15 of children no less than 11 nor more than 17 years of age. Shelter care facilities may be utilized for
16 children prior to or following adjudication or disposition. A shelter care facility may not be operated
17 in the same building as a facility for architecturally secure confinement of children or adults.

18 3 New Paragraph; Children in Need of Services; Definition of Shelter Care Facility. Amend
19 RSA 169-D:2 by inserting after paragraph XIII by following new paragraph:

20 XIV. "Shelter care facility" means a non-secure or staff-secure facility for the temporary care of
21 children no less than 11 nor more than 17 years of age. Shelter care facilities may be utilized for children
22 prior to or following adjudication or disposition. A shelter care facility may not be operated in the same
23 building as a facility for architecturally secure confinement of children or adults.

24 4 New Paragraph; New Hampshire Youth Development Center; Treatment Services in Least
25 Restrictive Environment. Amend RSA 621:1 by inserting after paragraph II the following new
26 paragraph:

27 III. To ensure that juveniles are placed in the least restrictive environment consistent with

SB 129-FN –AS AMENDED BY THE HOUSE

- Page 2 -

1 their treatment needs, their safety, and the safety of the community, the department shall not
2 establish treatment services at the youth development center or other architecturally secure facility
3 which are not also available to children living in the community or in settings other than
4 architecturally secure settings.

5 5 New Paragraph; Release and Discharge from Youth Development Center. Amend RSA 621:19
6 by inserting after paragraph I the following new paragraph:

7 I-a. The board shall release, pursuant to paragraph I, any child committed to its care for a
8 delinquency adjudication based on an offense other than a violent crime as defined in RSA 169-B:35-
9 a no later than 6 months following the child's commitment pursuant to RSA 169:19, I(j). Release is
10 not required under this paragraph during the period that a child is the subject of a delinquency
11 petition which is awaiting adjudication or disposition. The department may seek a waiver of this
12 provision from the court which ordered the commitment of the child, which may be granted by the
13 court following written findings of fact supported by clear and convincing evidence that continued
14 commitment is necessary to protect the safety of the minor or of the community. Such a waiver may
15 be granted for up to 90 days. The number of waivers which may be granted in a particular case is
16 not limited.

17 6 New Section; Parole of Delinquents; Right to Counsel of Children Subject to Parole Revocation.
18 Amend RSA 170-H by inserting after section 10 the following new section:

19 170-H:10-a Right to Counsel of Children Subject to Parole Revocation.

20 I. Every child subject to revocation of parole has the right to the assistance of counsel, which
21 may not be waived except following consultation between the child and a parent or counsel.
22 Consultation between a child and parent is not sufficient to support waiver under this section if the
23 parent was a victim or complainant in the underlying proceeding or is a witness or provided
24 information in support of the basis for revocation in the parole revocation proceeding. Children
25 known to the department or the board to have an emotional disorder, intellectual disability, or any
26 other condition which may be expected to interfere with a child's ability to understand the
27 proceedings, make decisions, or otherwise handle the proceedings without the assistance of counsel
28 may not waive their right to counsel.

29 II. For purposes of this section, a child shall be considered a child who is subject to a parole
30 revocation proceeding if the child has been released pursuant to RSA 170-H:5 or RSA 621:19, I for
31 longer than a total of 30 days during one or more periods of release and is subject to return under
32 RSA 621:25.

33 7 Delinquent Children; Case Closure and Review of Disposition. Amend RSA 169-B:31 to read
34 as follows:

35 169-B:31 Case Closure and Review of Disposition. Upon making a finding that the purposes of
36 this chapter have been met with regard to the minor named in the petition, or for such other reason
37 the court may deem appropriate and consistent with the purposes of this chapter, the court may

1 order a case closed. Any case remaining open for 12 months after the date of the disposition shall be
 2 reviewed by the court annually and closed, unless the court finds by a preponderance of the evidence
 3 that the continued provision of services and court involvement are necessary and shall be fruitful to
 4 rehabilitate the minor or protect the public interest. All such findings shall be in writing and shall
 5 include the basis upon which those findings were made. ***Upon request by the child, the court***
 6 ***shall also review any case in which the child remains at the youth development center more***
 7 ***than 6 months after the order of commitment without having been released on parole or***
 8 ***having been returned to the youth development center following revocation of parole.***
 9 ***Successive requests for review shall be granted upon request by the child but the court may***
 10 ***deny such requests without a hearing if a review was held less than 90 days prior to receipt***
 11 ***of a request for review.***

12 8 Rules Adopted by the Juvenile Parole Board. Amend RSA 170-H:4, III(d) and (e) to read as
 13 follows:

14 (d) Procedures for revocation of parole~~[-and]~~

15 (e) Conditions under which the department may return a parolee to a secure facility
 16 pending action by the board~~[-]~~ ; ***and***

17 ***(f) Procedures for providing effective notice to children subject to parole***
 18 ***revocation proceedings of the right to counsel, for determining if a waiver of the right to***
 19 ***counsel by a child is knowing, voluntary, and intelligent, and for the accurate***
 20 ***determination of the existence of a disability which would interfere with a child's ability to***
 21 ***understand the proceedings, make decisions, or otherwise handle the proceedings without***
 22 ***the assistance of counsel.***

23 9 Appropriation; Insurance Department; Consumer Assistance Grant. In addition to any other
 24 sums appropriated for the fiscal year ending June 30, 2014, the following appropriation is hereby
 25 authorized to the department of insurance:

26	02-24		Department of Insurance		
27	02-24-24-240010-1235		Consumer Assistance Grant		
28	02-24-24-240010-1235	020	Current Expense	Federal Funds	\$15,300
29	02-24-24-240010-1235	030	Equipment	Federal Funds	\$500
30	02-24-24-240010-1235	041	Audit set Aside	Federal Funds	\$5,374
31	02-24-24-240010-1235	046	Consultants	Federal Funds	\$3,164,802
32	02-24-24-240010-1235	050	Personal Services Part Time Temp	Federal Funds	\$18,414
33	02-24-24-240010-1235	060	Benefits	Federal Funds	\$1,408
34	02-24-24-240010-1235	070	In-State Travel	Federal Funds	\$20,688
35	02-24-24-240010-1235	080	Out of State Travel	Federal Funds	\$17,898
36	02-24-24-240010-1235	102	Contracts for Program Services	Federal Funds	<u>\$2,128,298</u>
37				Total:	\$5,372,682

1 10 Effective Date.

2 I. Sections 1-8 of this act shall take effect 60 days after its passage.

3 II. The remainder of this act shall take effect July 1, 2013.

SB 129 FISCAL NOTE

AN ACT relative to court-ordered placements in shelter care facilities and at the Sununu Youth Services Center and making a supplemental appropriation to the insurance department.

FISCAL IMPACT:

The Department of Health and Human Services, Judicial Branch, Judicial Council, and Office of Legislative Budget Assistant state this bill, as amended by the House (Amendment #2013-1905h), will increase state expenditures by indeterminable amount in FY 2014 and each year thereafter. There will be no fiscal impact on state, county, and local revenues, or county and local expenditures.

METHODOLOGY:

The Department of Health and Human Services states this bill, as amended by the House, creates a new definition of shelter care facility for delinquents and CHINS and prohibits the operation of a shelter care facility in the same building as a facility for architecturally secure confinement of children or adults. In addition, the bill requires the parole board to release certain youth within 6 months of committal unless waived by the court. The requirement to release the youth could be further waived by the court at successive three month intervals. The Department assumes these requirements may increase the workload of departmental personnel, but given the limited number of youth committed to the Sununu Youth Services Center (SYSC), the increase should be minimal. The bill also requires the parole board to adopt rules the necessary rules. The Department indicates the new definition of shelter care facility and the requirement for the parole board to adopt rules will have no fiscal impact.

The Judicial Branch states the discharge and waiver provisions will result in a limited number of additional hearings before the family division of the circuit court. The Branch assumes any fiscal impact related to these additional hearings will be small since the number of children committed to the SYSC is small and the hearings are not complex. The Branch states the amendment to RSA 169-B:31 regarding case closure and review could result in a very limited number of additional hearings which are not complex.

The Judicial Council states there currently is no statutory right to the assistance of counsel for a juvenile subject to a revocation of parole from the SYSC and the New Hampshire Public Defender is not notified of allegations of parole violations in juvenile matters and does not

participate in revocation of parole proceedings. The Council states the bill expressly creates a right to the assistance of counsel for juveniles in parole revocation proceedings and a right to review of a juvenile's detention status after 6 months, but the bill does not address which entity would be financially responsible for the cost. The Council assumes, because parallel adult parole proceedings involve the Public Defender Program, a similar procedure would be instituted as a result of this bill to provide for the appointment of counsel for juveniles. The Council assumes the Public Defender Program would work with the Juvenile Parole Board to develop procedures in parole revocation matters whereby the parole board would process a financial affidavit and request appointment of counsel to be submitted to the court that ordered the child placed at SYSC. The Council assumes the courts would be responsible for appointments and the Judicial Council would be responsible for payment. The Council states the cost for a parole board case would be \$206.25 if handled by a public defender and if the case were to go to assigned counsel the cost would be \$60 per hour with a fee cap of \$1,700. The Council is not able to determine how many juvenile parole matters would require the appointment of counsel.

The Office of Legislative Budget Assistance states section 9 of the bill will increase state restricted expenditures (federal funds) by \$5,372,682 in FY 2014, as it adds an appropriation for the Consumer Assistance Grant to the operating budget or the fiscal year ending June 30, 2014.