

CHAPTER 260  
HB 305 – FINAL VERSION

11March2015... 0693h  
05/28/2015 1875s  
24June2015... 2235CofC

2015 SESSION

15-0717  
05/04

HOUSE BILL           **305**

AN ACT               relative to assessment of and discharge planning for minors in the juvenile court system.

SPONSORS:           Rep. P. Long, Hills 10

COMMITTEE:         Children and Family Law

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AMENDED ANALYSIS

This bill:

I. Requires the court to find by clear and convincing evidence that each of the required conditions for waiver of counsel by a minor have been met, and requires the court to record proceedings in which a waiver of counsel has been accepted.

II. Requires the department of health and human services to develop discharge plans for minors at the youth services center.

III. Provides for annulment of a criminal conviction if the criminal offense was based on conduct that occurred between May 14, 2014 and July 1, 2015, while the person was 17 years of age.

IV. Clarifies the juvenile court's jurisdiction over minors.

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                          Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Fifteen*

AN ACT                   relative to assessment of and discharge planning for minors in the juvenile court system.

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

1           260:1 Delinquent Children; Appointment and Waiver of Counsel. Amend RSA 169-B:12 to read  
2 as follows:

3           169-B:12 Appointment of Counsel; Waiver of Counsel.

4           I. Absent a valid waiver, the court shall appoint counsel at the time of arraignment of an  
5 indigent minor, provided that an indigent minor detained pursuant to RSA 169-B:11, III, shall have  
6 counsel appointed upon the issuance of the detention order. For purposes of the appointment of  
7 counsel under this section, an indigent minor shall be a minor who satisfies the court, after  
8 appropriate inquiry, that the minor is financially unable to independently obtain counsel. If the  
9 court has received information indicating that the minor has [a] ***an intellectual***, cognitive,  
10 emotional, learning, or sensory disability, the court shall require the minor to consult with counsel.

11           I-a. When an attorney is appointed as counsel for a child, representation shall include  
12 counsel and investigative, expert, and other services, including process to compel the attendance of  
13 witnesses, as may be necessary to protect the rights of the child.

14           II. The court may accept a waiver of counsel in a delinquency proceeding only when:

15                   (a) The minor is represented by a non-hostile parent, guardian, or custodian;

16                   (b) Both the minor and parent, guardian, or custodian agree to waive counsel;

17                   (c) In the court's opinion the waiver is made competently, voluntarily, and with full  
18 understanding of the consequences;

19                   (d) The petition does not allege a violation of RSA 631:1, RSA 631:2, RSA 635:1, or any  
20 violation of RSA 630, RSA 632-A, RSA 633, or RSA 636; and

21                   (e) The prosecution has informed the court that it does not intend to seek certification  
22 pursuant to RSA 169-B:24, RSA 169-B:25, or any other provision of law permitting adult prosecution  
23 of the minor.

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

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1           ***II-b. The court may appoint counsel for an indigent minor for the purpose of***  
2 ***consultation about the decision to request or waive counsel, and shall advise the minor***  
3 ***and the parent, guardian, or custodian that they may request such appointment and that***  
4 ***the appointment of counsel for such purpose will not be subject to a repayment***  
5 ***requirement. Counsel appointed for such purposes shall be compensated by the judicial***  
6 ***council pursuant to RSA 604-A, but the cost of such counsel shall not be subject to the***  
7 ***repayment provisions of RSA 604-A:9.***

8           ***II-c. A verbatim record shall be made of all proceedings conducted pursuant to this***  
9 ***section and of all subsequent proceedings in any case in which a court has accepted a***  
10 ***waiver of counsel under this section.***

11           III. Whenever a court appoints counsel pursuant to the provisions of paragraph I, the court  
12 shall conduct an appropriate inquiry as to whether any person who pursuant to RSA 546-A:2 is  
13 liable for the support of the minor for whom counsel was appointed is financially able to pay for such  
14 minor's counsel. If the court determines that the person liable for support is financially able to pay  
15 for said counsel, in whole or in part, the court shall enter an appropriate order requiring said person  
16 to reimburse the state for the representation provided. For the purposes of this paragraph, the  
17 inquiry conducted by the court shall include notice and hearing to the person liable for support.

18           IV. A juvenile shall not be subject to detention unless:

19           (a) The juvenile is represented by counsel at the hearing where detention is ordered; or

20           (b) Detention is ordered on an emergency basis and a detention hearing is scheduled  
21 within 24 hours of the emergency detention, Saturdays, Sundays, and holidays excepted, at which  
22 hearing the juvenile shall be represented by counsel.

23           260:2 New Paragraph; Youth Development Center; Discharge Planning. Amend RSA 621:19 by  
24 inserting after paragraph II the following new paragraph:

25           III. To facilitate the implementation of this section, discharge plans from the center shall be  
26 developed as early in the commitment as practicable, and in the case of children to which paragraph  
27 I-a applies, shall be designed to prepare those children for release no later than 6 months from the  
28 date of their commitments. Discharge plans shall be updated throughout the commitment as  
29 needed.

30           260:3 Annulment of Criminal Record Based on Conduct Occurring Between May 14, 2014 and  
31 July 1, 2015. Notwithstanding any provision of RSA 651:5 to the contrary, any person convicted of a  
32 criminal offense which occurred between May 14, 2014 and July 1, 2015, and while the person was  
33 17 years of age, shall be entitled to an annulment of such conviction upon application to the court.  
34 This section shall not apply to any offenses which may continue to be prosecuted as an adult criminal  
35 offense after July 1, 2015 against persons who have not yet reached 18 years of age. Annulment  
36 requests brought under this section shall not be subject to any filing fee, and may only be brought

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1 following the expiration of any sentence imposed by the court. The only permitted basis for denial of  
2 an annulment request brought under this section is a written finding by the court, based on clear  
3 and convincing evidence, that the subject offense would have qualified for transfer to the superior  
4 court pursuant to RSA 169-B:24 and that the prosecution would have pursued such transfer.

5 260:4 Delinquent Children; Jurisdiction of Court. Amend RSA 169-B:4, III to read as follows:

6 III. At the request of the prosecutor or the department, the court may retain jurisdiction  
7 over the minor for a period of up to 2 years following the completion of any appeal if the petition was  
8 filed after the minor had attained the age of [~~16~~] **17** years. Notwithstanding the provisions of  
9 RSA 169-B:19, III, when jurisdiction is retained pursuant to this section, the court may sentence a  
10 person to the county correctional facility for a term that may extend beyond the person's eighteenth  
11 birthday.

12 260:5 Delinquent Children; Jurisdiction of Court. Amend RSA 169-B:4, V(c) to read as follows:

13 (c) Who is subject to the jurisdiction of the court prior to the minor's [~~seventeenth~~]  
14 **eighteenth** birthday and for whom the department has filed a motion with the court requesting that  
15 the court retain jurisdiction under this subparagraph; provided that the department's motion is filed  
16 within the 90 days prior to the minor's [~~seventeenth~~] **eighteenth** birthday and provided further that  
17 the court's jurisdiction pursuant to this subparagraph shall continue until the minor's [~~eighteenth~~]  
18 **nineteenth** birthday.

19 260:6 Delinquent Children; Dispositional Hearing. Amend RSA 169-B:19, I(k) to read as  
20 follows:

21 (k) Order the minor to register as a sexual offender or offender against children  
22 pursuant to RSA 651-B until the juvenile reaches the age of [~~17~~] **18** if the court finds that the minor  
23 presents a risk to public safety.

24 260:7 Effective Date.

25 I. Sections 1, 4, 5, and 6 of this act shall take effect July 1, 2015, at 12:01 a.m.

26 II. The remainder of this act shall take effect 60 days after its passage.

27  
28 Approved: July 20, 2015

29 Effective Date: I. Sections 1, 4, 5 and 6 shall take effect July 1, 2015 at 12:01 a.m.

30 II. Remainder shall take effect September 18, 2015