

February 22, 2024
No. 09A

STATE OF NEW HAMPSHIRE

Website Address: <http://gencourt.state.nh.us>

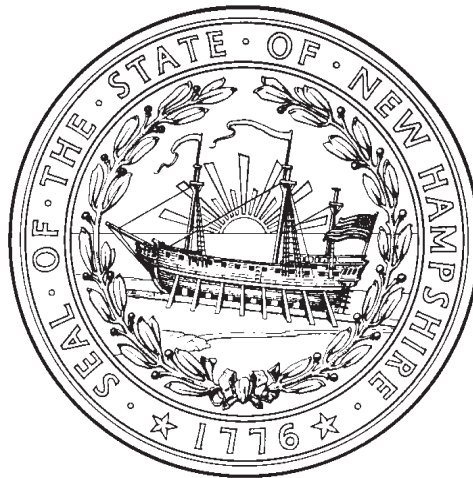
Senate Meeting Schedule Website Address:

<http://gencourt.state.nh.us/senate/schedule/dailyschedule.aspx>

All Standing Committee hearings will be livestreamed on the NH Senate's YouTube channel:

<https://www.youtube.com/NewHampshireSenateLivestream>

Links are also available on the Senate Meeting Schedule.



Second Year of the 168th Session of the
New Hampshire General Court

SENATE CALENDAR ADDENDUM

THE SENATE WILL MEET IN SESSION ON THURSDAY, MARCH 7, 2024 AT 10:00 A.M.

The Senate Session on Thursday, March 7, 2024, in the Senate Chamber
will be live streamed at the following link:

https://youtube.com/live/9KWzw_cHjOE?feature=share

Please note, this link will not be live until the Senate Session on
Thursday, March 7, 2024 at 10:00 A.M.

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CONSENT CALENDAR REPORTS

JUDICIARY

SB 359, raising the age of marriage to 18 years of age.

Ought to Pass with Amendment, Vote 5-0.

Senator Whitley for the committee.

Senate Bill 359 would change the minimum age for marriage from 16 to 18 years of age. The Committee Amendment would amend and repeal certain statutes that dealt with the marriage age being 16 years of age. The United States State Department labels marriage before the age of 18 as a human rights abuse. This bill will move New Hampshire in the right direction, while stopping the tragedy that is child marriage.

SB 464-FN, to prohibiting the nonconsensual dissemination of synthetic sexual images.

Ought to Pass, Vote 5-0.

Senator Carson for the committee.

Senate Bill 464-FN expands the prohibition on the nonconsensual dissemination of private sexual images to include synthetic images that are digitally created and altered to falsely depict the sexual conduct of targeted victims. With advancements in technology developing at a rapid pace, this bill would be a proactive step the state can take to ensure perpetrators are held accountable for these atrocious crimes.

SB 506-FN, relative to aligning statutes with the age of a delinquent established under the juvenile delinquency statute.

Ought to Pass with Amendment, Vote 5-0.

Senator Carson for the committee.

Senate Bill 506-FN aligns other statutes with the juvenile delinquency statute, RSA 169-B, which provides that a delinquent includes anyone under 18 years of age. The Committee Amendment seeks to change two places in the original language that were ambiguous. When the state raised the age of a juvenile from 17 to 18, there were a few spots in the statute that were missed and this legislation cleans up those remaining references to 17.

SB 507-FN, extending the time to petition for a new trial in certain cases.

Ought to Pass with Amendment, Vote 5-0.

Senator Whitley for the committee.

Senate Bill 507-FN would extend the time to petition a court for a new trial in certain cases with new evidence. The Committee Amendment seeks to clarify the language even further as it would only allow extension of the time to petition for a new trial in any criminal conviction for a felony offense or a Class A misdemeanor that avers newly discovered evidence. The post-conviction process is in place to protect innocent and guilty individuals from inherent human error in the criminal justice system. New Hampshire is one of only a few states that have an absolute time limit for the post-conviction process, and this bill would offer a meaningful pathway to correct wrongful convictions for those in this state.

SB 564-FN, relative to crimes involving child sexual abuse images.

Ought to Pass, Vote 5-0.

Senator Chandley for the committee.

Senate Bill 564-FN expands the definition of “child” under the child sexual abuse images statute to include those images that are portrayed to be a person under the age of 18 and are thus indistinguishable from a child. People creating computer-generated child sexual abuse material can avoid the legal system because the depicted children are not “actual people” as defined by the state’s criminal code. Currently, the definitions in RSA 649-A:2 leaves New Hampshire citizens vulnerable. This bill seeks to close the loophole and keep the children of this state safe.

SB 572, relative to establishing a commission to study the sharing of confidential records among members of a multidisciplinary child protection team.

Ought to Pass, Vote 5-0.

Senator Whitley for the committee.

Senate Bill 572 would establish a commission to study the sharing of confidential records among members of a multidisciplinary child protection team. This commission stems from an incident the Office of the Child Advocate brought forth where a number of infants were not adequately protected in the child welfare system, due in part to the inability of DCYF, medical providers, and law enforcement to timely and effectively share information. The goal of this commission is to study relevant laws and barriers to information sharing among multidisciplinary teams who investigate and prevent child abuse.

SB 579-FN, relative to court ordered batterers intervention programs.

Interim Study, Vote 5-0.

Senator Carson for the committee.

Senate Bill 579-FN would have directed the circuit court to study and report on the domestic violence protocol requiring offenders to attend a batterers intervention program. The Committee felt as though this topic could be better studied by the Governor’s Commission on Domestic Violence, Sexual Assault, and Stalking, and this bill did not need to be brought forward at this time.

SB 591-FN-A, modifying definitions, claims procedures, and funding relating to the youth development center settlement fund and claims administration.

Ought to Pass, Vote 5-0.

Senator Abbas for the committee.

Senate Bill 591-FN-A significantly modifies definitions, claims procedures, and funding relating to the Youth Development Center settlement fund and claims administration. Through these changes, a more victim-informed settlement will meet the needs of the claimants in these cases. Children at the former YDC had to endure years of emotional, sexual, and mental abuse. This piece of legislation seeks to meaningfully compensate the victims who were abused at the YDC, as well as show the state is acknowledging wrongdoing that occurred at this facility.

REGULAR CALENDAR REPORTS

JUDICIARY

SB 314-FN, relative to pre-trial competency evaluations.

Ought to Pass with Amendment, Vote 5-0.

Senator Chandley for the committee.

SB 321-FN, relative to the release of a defendant pending trial.

Ought to Pass with Amendment, Vote 3-2.

Senator Abbas for the committee.

SB 361-FN, relative to legal services by paraprofessionals.

Ought to Pass, Vote 4-1.

Senator Carson for the committee.

SB 418-FN, relative to THC concentrations for driving offenses.

Ought to Pass with Amendment, Vote 3-2.

Senator Gannon for the committee.

SB 508-FN, relative to the duties of the superintendent of the county department of corrections concerning mental health and substance use disorder screening of inmates and coordination for services upon reentry into the community.

Ought to Pass, Vote 5-0.

Senator Gannon for the committee.

SB 533, relative to physical quorums at public meetings.

Inexpedient to Legislate, Vote 3-2.

Senator Abbas for the committee.

SB 565-FN, relative to discrimination in education and employment based on hairstyles historically associated with race.

Ought to Pass with Amendment, Vote 5-0.

Senator Carson for the committee.

SB 566, relative to establishing a committee to study foster care families and the foster care system.

Ought to Pass, Vote 5-0.

Senator Chandley for the committee.

SB 570-FN, establishing a misdemeanor for first-offense controlled drug possession.

Inexpedient to Legislate, Vote 3-2.

Senator Abbas for the committee.

AMENDMENTS

Senate Judiciary

February 27, 2024

2024-0867s

09/05

Amendment to SB 314-FN

Amend the bill by replacing section 1 with the following:

1 Commitment to Hospitals; Competency; Commitment for Evaluation. Amend RSA 135:17, I to read as follows:

I.(a) When a person is charged or indicted for any offense, or is awaiting the action of the grand jury on any felony, the circuit or superior court before which he or she is to be tried, if a plea of insanity is made in court, or said court is notified by either party that there is a question as to the competency or sanity of the person, may make such order for a pre-trial examination of such person by a qualified psychiatrist or psychologist on the staff of any public institution or by a private qualified psychiatrist or psychologist as the circumstances of the case may require, which order may include, though without limitation, examination at ***any suitable location*** ~~[the secure psychiatric unit on an out-patient basis, the utilization of local mental health clinics on an in- or out-patient basis, or the examination of such person]~~, should he or she be incarcerated for any reason, at his or her place of detention by qualified psychiatrists or psychologists assigned to a state or local mental health facility, ***whether in-person or via appropriate electronic means. If, within 10 days of the scheduling of the examination, the prosecutor or defense counsel objects to the examination's being conducted by electronic means, the electronic evaluation shall be canceled, and an in-person examination shall be scheduled. The court may determine that such pre-trial examination is unnecessary and proceed according to RSA 135:17-a, I. In all other cases,*** such pre-trial examination shall be completed within 45 days in the case of a person being held at a county correctional facility, otherwise 90 days after the date of the order for such examination, unless either party requests an extension of this period. For the purposes of this paragraph and RSA 135:17-a, III, "qualified" means board-eligible or board-certified in forensic psychiatry or psychology, or demonstrated competence and experience in completing court-ordered forensic criminal evaluations. A licensed out-of-state psychiatrist or psychologist who meets the definition of qualified may also conduct evaluations under this paragraph and RSA 135:17-a, III.

(b) In cases where the person is being held at a county correctional facility or the New Hampshire state prison, the facility may request a pre-trial examination of such person for the purpose of determining if the person is competent to stand trial. Such request shall be reviewed, and a decision rendered by the district or superior court before which he or she is to be tried.

(c) In cases where the person is incarcerated and a pre-trial examination has not been performed within 45 days of the court's order, ***or when the person is not incarcerated, performed within 90 days,*** the court shall, upon request of the person, order an evaluation by a qualified psychiatrist or psychologist. The court shall favorably consider a request that the psychiatrist or psychologist be treated as a defense expert who shall be compensated pursuant to RSA 604-A:6.

(d) In cases where the person is incarcerated and an examination has not been performed, the court before which he or she is to be tried shall review the person's bail status on a monthly basis. ***In cases where the person is not incarcerated, and the evaluation has not been completed within 90 days, the court shall schedule a status conference, and every 30 days thereafter.***

(e) ***The court shall order that all medical, mental health, and educational records from the last 3 years be provided to the forensic examiner. Records dating further back in time shall be ordered to be provided as necessary. Records used by the forensic examiners will not be released to any parties in the matter without a judicial order. The court shall consider the person's privacy interest in the content of the records used to produce the forensic evaluation and the access-seeking party's need to review the records received to facilitate the forensic evaluation.***

(f) ***Failure of the defendant to appear for and participate in the forensic evaluation, as ordered, or to provide records, as ordered, may constitute good cause for an extension of the time frames herein and may subject the defendant to contempt of court.***

(g) ***In cases where a forensic evaluation as ordered pursuant to RSA 135:17, I (a) is unavailable, the court may inquire of the parties if a hearing pursuant to RSA 135:17-a, I is required either due to the issue of competency being contested, or the issue of restorability being contested. If the issues of competency and restorability are not contested due to agreement that the defendant is not competent and not restorable, the court may dismiss the charges without prejudice under RSA 135:17-a, I and shall proceed as provided in RSA 135:17-a, V.***

Senate Judiciary
February 27, 2024
2024-0866s
09/05

Amendment to SB 321-FN

Amend the bill by replacing section 1 with the following:

1 Bail and Recognizances; General Provisions; Release of a Defendant Pending Trial. Amend RSA 597:2, III(b)(2) to read as follows:

(2)(A) If the court determines by a preponderance of the evidence that a person has failed to appear on any previous matter charged as a felony, class A misdemeanor, or driving or operating while impaired, or a reasonably equivalent offense in an out-of-state jurisdiction, 3 or more times within the past [5] **3** years, or twice on the present case, there shall be a rebuttable presumption that release will not reasonably assure the appearance of the person as required ***and the person shall be detained.***

(B) A person detained pursuant to subsection (A) shall be provided an opportunity for a bail hearing at which he or she may present evidence and the court shall decide whether such person has rebutted the presumption that release will not reasonably assure the appearance of the person as required.

Senate Judiciary
February 27, 2024
2024-0863s
05/08

Amendment to SB 359

Amend the bill by replacing all after section 1 with the following:

2 Age of Consent for Marriage. Amend RSA 457:5 to read as follows:

457:5 Of Consent. The age of consent shall be in the male and in the female, 18 years. ~~[Any marriage contracted by a person below the age of consent, except as hereinafter provided, may in the discretion of the superior court be annulled at the suit of the party who at the time of contracting such marriage was below the age of consent, or at the suit of his or her parent or guardian, unless such party after arriving at such age shall have confirmed the marriage.]~~

3 Prohibitions. Amend RSA 457:8 to read as follows:

457:8 Prohibitions. No town clerk shall issue any certificate for the marriage of any person below the age of ~~[consent]~~ **18**, and no magistrate or minister of religion shall solemnize the marriage of any such person, if such clerk, magistrate, or minister knows or has reasonable cause to believe that such person is below such age~~[-, unless permission for such marriage has been given under this subdivision]~~. No magistrate or minister of religion shall solemnize any marriage by proxy.

4 Powers and Duties of Guardians of the Person of the Minor. Amend RSA 463:12, III(e) to read as follows:

(e) Consent to the~~[-marriage or]~~ adoption of the minor as provided in RSA 170-B:5 ~~[and RSA 457:6]~~.

5 Repeal. The following are repealed:

- I. RSA 457:5-a, relative to petition for annulment.
- II. RSA 457:6, relative to a marriage petition by a party under age.
- III. RSA 457:7, relative to grounds for granting a marriage petition by a party under age.
- IV. RSA 457:28, relative to marriage applications for a party under age.
- V. RSA 457:28-b, relative to destruction of petitions by parties under age.
- VI. RSA 547:3, II(c), relative to waivers for marriage of minors.
- VII. RSA 5-C:45, relative to the marriage license of a party under age.
- VIII. RSA 5-C:41, XIV, relative to marriage registration forms.

6 Effective Date. This act shall take effect January 1, 2025.

Senate Judiciary
February 27, 2024
2024-0865s
09/08

Amendment to SB 418-FN

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

AN ACT relative to refusal of consent to testing to determine alcohol concentration and penalties for aggravated driving while intoxicated.

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

1 Driving or Operating Under the Influence of Drugs or Liquor; Refusal of Consent. Amend RSA 265-A:14, I-II to read as follows:

I. If a person under arrest for any violation or misdemeanor under RSA 265 or RSA 215-A refuses upon the request of a law enforcement officer, authorized agent, or peace officer to submit to physical tests or to a test of blood, urine, or breath designated by the law enforcement officer, authorized agent, or peace officer to as provided in RSA 265-A:4, none shall be given, but:

(a) If this is the first refusal with no prior driving or operating while intoxicated or aggravated driving or operating while intoxicated convictions:

(1) The director shall suspend his or her license to drive or nonresident driving privilege for a period of ~~[180 days]~~ **one year**; or

(2) If the person is a resident without a license or permit to drive a motor vehicle in this state, the director shall deny to the person the privilege to drive and the issuance of a license for a period of ~~[180 days]~~ **one year** after the date of the alleged violation.

(b) If the person has **one or more prior convictions under RSA 265-A:2, I, RSA 265-A:3, RSA 630:3, II, or under a reasonably equivalent offense in an out-of-state jurisdiction as defined in RSA 265-A:18, VI(b)** ~~[a prior driving or operating while intoxicated or aggravated driving or operating while intoxicated conviction]~~ or a prior refusal of consent under this section **or under a reasonably equivalent law in an out-of-state jurisdiction as defined in RSA 265-A:18, VI(b):**

(1) The director shall suspend his or her license to drive or nonresident driving privilege for a period of ~~[2]~~ **3** years; or

(2) If the person is a resident without a license or permit to drive a motor vehicle in this state, the director shall deny to the person the privilege to drive and the issuance of a license for a period of [2] **3** years after the date of the alleged violation.

II. Except as provided in paragraph VI, the [180-day] **one-year** or [2-year] **3-year** suspension period or denial of issuance period imposed pursuant to this section shall not run concurrently with any other penalty imposed under the provision of this title. Any such suspension or denial of a license or privilege to drive shall be imposed in addition to any other penalty provided by law, subject to review as provided in RSA 265-A:31.

2 New Paragraph; Driving or Operating Under the Influence of Drugs or Liquor; Refusal of Consent. Amend RSA 265-A:14 by inserting after paragraph VI the following new paragraph:

VII. In conjunction with a plea of guilty or nolo contendere to an offense resulting in a conviction under RSA 265-A:2 or RSA 265-A:3, the court may suspend up to 180 days of the license suspension imposed pursuant to this section.

3 Driving or Operating Under the Influence of Drugs or Liquor; Penalties for Intoxication or Under Influence of Drugs Offenses. Amend the introductory paragraph in RSA 265-A:18, I(b) to read as follows:

(b) Any person who is convicted of any aggravated DWI offense under RSA 265-A:3, except as provided in subparagraph (c) **or (d)**, shall be:

4 New Subparagraph; Driving or Operating Under the Influence of Drugs or Liquor; Penalties for Intoxication or Under Influence of Drugs Offenses. Amend RSA 265-A:18, I by inserting after subparagraph (c) the following new subparagraph:

(d) Any person who is convicted of aggravated DWI under RSA 265-A:3, III shall be:

(1) Guilty of a class A misdemeanor;

(2) Fined not less than \$750;

(3) Sentenced to a mandatory sentence of not less than 17 consecutive days in the county correctional facility, all of which may be suspended. The court shall refer the person to an IDCMP to schedule a full substance use disorder evaluation. A condition of the suspension shall be that upon release from serving any sentence in the county correctional facility, the person shall schedule a substance use disorder evaluation within 30 days of release, complete the required substance use disorder evaluation within 60 days of release, and comply with the service plan developed. The IDCMP shall administer the substance use disorder evaluation and shall develop the service plan from that substance use disorder evaluation. Any portion of the suspended sentence to the county correctional facility may be imposed if the defendant does not comply with all of the requirements of this subparagraph or becomes non-compliant with the service plan during the suspension period;

(4) Ordered to install an interlock device in accordance with RSA 265-A:36; and

(5) Subject to the following:

(A) The person's driver's license or privilege to drive shall be revoked for not less than 18 months and, at the discretion of the court, such revocation may be extended for a period not to exceed 2 years. Upon confirmation from the IDCMP that the person is in full compliance with the service plan, the court may suspend up to 6 months of this sentence, with the condition that an interlock device be installed for the period of the suspended sentence in addition to any period required in accordance with RSA 265-A:36 and provided that all fees have been paid; and

(B) The sentencing court may require the person to submit to random urinalysis or such other tests as the court may deem appropriate.

5 Effective Date. This act shall take effect January 1, 2025.

2024-0865s

AMENDED ANALYSIS

This bill modifies periods of suspension under different circumstances stemming from a refusal of consent to testing to determine alcohol concentration. This bill further modifies the penalties for aggravated driving while intoxicated.

Senate Judiciary
February 27, 2024
2024-0864s
05/08

Amendment to SB 506-FN

Amend the bill by replacing sections 6 and 7 with the following:

6 Delinquent Children; Shelter Care. Amend RSA 169-B:2, XV to read as follows:

XV. "Shelter care facility" means a non-secure or staff-secure facility for the temporary care of children ~~[no less than 11 nor more than 17]~~ **who are at least 11 and under 18** years of age. Shelter care facilities may be utilized for children prior to or following adjudication or disposition. A shelter care facility may not be operated in the same building as a facility for architecturally secure confinement of children or adults.

7 Children in Need of Services; Shelter Care. Amend RSA 169-D:2, XIV to read as follows:

XIV. "Shelter care facility" means a non-secure or staff-secure facility for the temporary care of children ~~[no less than 11 nor more than 17]~~ **who are at least 11 and under 18** years of age. Shelter care facilities may be utilized for children prior to or following adjudication or disposition. A shelter care facility may not be operated in the same building as a facility for architecturally secure confinement of children or adults.

Senate Judiciary
February 27, 2024
2024-0862s
09/08

Amendment to SB 507-FN

Amend the bill by replacing section 1 with the following:

1 Proceedings in Court; New Trials; Time. Amend RSA 526:4 to read as follows:

526:4 Time.

I. A new trial shall not be granted unless the petition is filed within ~~[three]~~ **3** years after the rendition of the judgment complained of, or the failure of the suit.

II. This time limit shall not apply to a motion for new trial in any criminal conviction for a felony offense or a class A misdemeanor that avers newly discovered evidence, new or additional forensic testing, or new scientific understanding that would have been material for the fact finder.

Senate Judiciary
February 27, 2024
2024-0861s
09/05

Amendment to SB 565-FN

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

1 Education; Pupils; Discrimination in Public Schools. Amend RSA 193:38 to read as follows:

193:38 Discrimination in Public Schools. No person shall be excluded from participation in, denied the benefits of, or be subjected to discrimination in public schools because of their age, sex, gender identity, sexual orientation, race, color, marital status, familial status, disability, religion, or national origin, all as defined in RSA 354-A. Any person claiming to be aggrieved by a discriminatory practice prohibited under this section, including the attorney general, may initiate a civil action against a school or school district in superior court for legal or equitable relief, or with the New Hampshire commission for human rights, as provided in RSA 354-A:27-28. ***In this section, "race" includes traits historically associated with race, yet applicable to all races and ethnicities, including hair texture and protective hairstyles; and "protective hairstyles," includes but is not limited to, such hairstyles as braids, locs, tight coils, curls, cornrows, Bantu knots, Afros, and twists.***

2 New Section; Discrimination in the Workplace; Discrimination Based on Protective Hairstyles Historically Associated with Race. Amend RSA 275 by inserting after section 37-d the following new section:

275:37-e Discrimination Based on Protective Hairstyles Historically Associated with Race. No person shall be subjected to discrimination in employment based on wearing a protective hairstyle. In this section, “race” includes traits historically associated with race, yet applicable to all races and ethnicities, including hair texture and protective hairstyles; and “protective hairstyles,” includes but is not limited to, such hairstyles as braids, locs, tight coils, curls, cornrows, Bantu knots, Afros, and twists. A person subjected to discrimination based on wearing a protective hairstyle may initiate a civil action in a court of competent jurisdiction for legal or equitable relief, or with the New Hampshire commission for human rights, as provided in RSA 354-A:6-7. This section shall not apply to those employed by the department of corrections.

3 Effective Date. This act shall take effect January 1, 2025.

2024-0861s

AMENDED ANALYSIS

This bill clarifies in the context of education discrimination that “race” includes traits historically associated with race, yet applicable to all races and ethnicities, including hair texture and certain hairstyles. This bill creates a private right of action for individuals, other than department of corrections employees, who face discrimination in employment based on the wearing of certain hairstyles.

HEARINGS

All Standing Committee hearings will be live streamed on the NH Senate’s YouTube channel:

<https://www.youtube.com/NewHampshireSenatelivestream>

Links are also available on the Senate Meeting Schedule.



TUESDAY, MARCH 12, 2024

FINANCE, Room 103, SH

Sen. Gray (C), Sen. Innis (VC), Sen. Bradley, Sen. Birdsell, Sen. Pearl, Sen. D’Allesandro, Sen. Rosenwald

1:30 p.m.

HB 468-FN-A, making an appropriation to the department of education for an attorney to recodify education laws.

1:40 p.m.

HB 436-FN-L, making an appropriation to the New Hampshire retirement system to pay down the unfunded accrued liability.

EXECUTIVE SESSION ON PENDING LEGISLATION

NOTICES

NOTICE

LEGISLATIVE ETHICS COMMITTEE

The Legislative Ethics Committee has voted to issue the following advisory opinion, which is printed below in its entirety.

Advisory Opinion 2024-1
Response to a Request for an Advisory Opinion
from Representative Judy Aron
(January 29, 2024)

Representative Judy Aron has submitted a request for an Advisory Opinion about whether, consistent with applicable statutes and the Ethics Guidelines, it would be “reasonable” for her, as chair of the House Committee on Environment and Agriculture, to ask her committee members if they were solicited by or accepted campaign donations from the Humane Society Legislative Fund (HSLF) and, if so, suggest that they should recuse themselves from voting on bills that are supported by the Humane Society.

Background

In completing its consideration of Representative Aron’s request, the Committee reviewed the facts set forth in the written request. In addition, at the Committee’s invitation, Representative Aron appeared before the Committee and provided direct testimony.

In her email, dated January 11, 2024, Representative Aron stated that in late November 2023, she received a \$500 donation in the form of a check from the Humane Society Legislative Fund. According to her email submission, the check was included with a letter from Kurt Ehrenberg, the NH State Director of HSLF. The letter stated:

“Dear Candidate, Please find the enclosed contribution from the Humane Society Legislative Fund of New Hampshire PAC. HSLF works to pass animal protection laws at the state and federal levels, to educate the public about animal protection issues, and to support humane candidates for office. Thank you for all you do to protect animals in your community.”

Representative Aron expressed concern that accepting a donation from HSLF and voting in favor of legislation promoted by HSLF could appear as a “quid pro quo situation” and said she “would not want any of my committee members to be accused of quid pro quo actions or to seem that such a contribution ‘bought their vote.’” She asked, “Since quid pro quo is outlined as a prohibited activity in item number 3 of the ethics guidelines should my committee members be alerted to the possibility of an ethics violation and therefore protect themselves by recusal when exec’ing these bills? With regard to the possibility of ethics violations, what is your recommendation here?”

Relevant Statutory Provisions

Ethics Guidelines Section 3 -- Prohibited Activities.

II. Legislators shall not solicit, accept, or agree to accept anything of value from another for themselves or other persons, if the legislator receives such thing of value:

(a) Knowing or believing the other’s purpose to be the influencing of an action, decision, opinion, recommendation, or other official activity.

(b) Knowing or believing that the giver is or is likely to become subject to or interested in any matter or action pending before or contemplated by the legislator or the General Court.

(d) In return for introducing legislation, testifying before any legislative committee or state agency, voting in committee or in House or Senate session, or otherwise participating in, influencing, or attempting to influence any decision of the legislature, county delegation, or any state agency.

Ethics Guidelines Section 4 -- Permitted Activities; Permitted Gifts.

I. Nothing in section 3, Prohibited Activities, shall be construed to prohibit the following:

(a) Giving or receiving campaign contributions made for the purpose of defraying the costs of a political campaign in compliance with RSA 664 or the Federal Election Campaign Act of 1971, as amended.

II. The following shall not be considered gifts for the purposes of these Guidelines:

A political contribution as defined in RSA 664.

RSA14-C:2 Definitions.

IV.(b) Notwithstanding subparagraph (a), “gift” shall not include:

(1) A political contribution as defined in RSA 664.

Committee Analysis

The Committee acknowledges that campaign contributions are sometimes made by individuals or organizations with the hope that the legislator receiving the contribution will look favorably upon legislation the donor supports or opposes. The Committee is sympathetic with Representative Aron's concern that such situations can create at least the appearance of impropriety. However, the Legislature, in adopting the Ethics Guidelines and RSA 14-C, specifically exempted political contributions from the definition of a gift and permitted the giving or receiving of such contributions. There is an expectation that legislators will carry out their responsibilities as legislators regardless of who has provided political support. Individual legislators may decide not to accept political donations if they disagree with the donor's positions or are concerned about the donor's intent.

Conclusion

As the Ethics Guidelines are currently established, it is not an ethical violation to accept a campaign contribution. We advise Representative Aron that it is the responsibility of her committee members to decide for themselves whether they should accept legal campaign contributions from individuals or organizations who may support or oppose legislation that could come before them. The members of her committee would not be required to recuse from voting or otherwise participating in official activities relating to legislation HSLF has supported or opposed solely on the basis of having received a campaign contribution from HSLF.

We appreciate the opportunity to be of assistance.

Honorable Edward M. Gordon, Chairman
 Honorable Donna Sytek, Vice Chairman
 Senator Cindy Rosenwald
 Senator Ruth Ward
 Representative Janet G. Wall
 Representative Bob Lynn
 Honorable David W. Hess

For the Committee,
 Edward M. Gordon
 Chairman

[Vote: 7-0]

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NOTICE

LEGISLATIVE ETHICS COMMITTEE

The Legislative Ethics Committee has voted to issue the following advisory opinion, which is printed below in its entirety.

Advisory Opinion 2024-2

Response to a Request for an Advisory Opinion from Senate Legal Counsel Richard J. Lehmann on Behalf of Senator Sharon M. Carson and Senator Daniel Innis (January 29, 2024)

Senate Legal Counsel Richard J. Lehmann has submitted a request for an Advisory Opinion on behalf of Senator Sharon M. Carson and Senator Daniel Innis about whether, consistent with applicable statutes and the Ethics Guidelines, the Senators are required to recuse themselves from participating on certain bills that are of interest to their employers. In completing its consideration, the Committee reviewed the facts set forth in the written request and received testimony from Attorney Lehmann.

Background

According to the information submitted by Attorney Lehmann in his letter to the Committee dated January 17, 2024, Senator Carson is an adjunct professor who teaches at the Nashua Community College and Senator

Innis is a tenured professor at the University of New Hampshire. The Senators receive their wages from the Community College System of New Hampshire and the University System of New Hampshire, respectively, both of which are public entities.

Attorney Lehmann referenced several decisions and advisory opinions issued by the Committee over the past decade and stated that “a rule has emerged that Section 3, II(b) of the Ethics Guidelines requires legislators to recuse themselves from matters on which their employers lobby, testify, or otherwise attempt to influence the outcome (of) legislation.” He asserted that the Ethics Guidelines and relevant statutes treat employment by state entities differently than employment by private entities, citing Section 4, I(h) of the Ethics Guidelines as providing a “safe-harbor that removes any transactions that are permitted under RSA 14-C from the prohibitions contained in Section 3” of the Ethics Guidelines. He cited RSA 14-C:2, IV(b)(8) as expressly excluding from the gift prohibition, “[w]ages...paid to the person by the state, a county, or the United States of America related to performance of official duties.” He argues that “[m]oney received by Sen. Carson and Sen. Innis is paid to them by the state and is related to the performance of their official duties for their employers. Accordingly, because Sen. Carson and Sen. Innis are not prohibited from accepting their salaries under RSA 14-C, their participation in matters in which their employers lobby, testify, or seek to influence the outcome is not prohibited by Section 3 of the Guidelines.”

Committee Analysis

The Committee engaged in a long discussion of the facts and circumstances presented and the applicable statutory guidelines and standards set by prior precedent. While Senators Carson and Innis are employed by the University System and the Community College System, in their positions as instructors, they clearly are unable to exercise substantial influence over the affairs of those organizations. While that language is not spelled out in statute, the Committee viewed RSA 14-C:2, IV(b)(8), as argued by Attorney Lehmann, and RSA 14-C:2, IV(b)(7) as provisions directed at exempting certain employees from the financial limitations which may otherwise require recusal. The Committee spent a considerable amount of time attempting to understand the intent behind the two provisions and to eliminate the ambiguity in their terms. While the Committee members may have differences over which of the two provisions may apply, all members were in agreement that, by virtue of their employment, one of the provisions exempted Senators Carson and Innis from recusal from matters on which their employer takes legislative positions.

Conclusion

Given the nature of their employment, the Committee found that Senator Carson and Senator Innis may participate in matters in which their employers, the Community College System of NH or the University System of NH, lobby, testify, or seek to influence the outcome of the matter under consideration.

We appreciate the opportunity to be of assistance.

Honorable Edward M. Gordon, Chairman
 Honorable Donna Sytek, Vice Chairman
 Senator Cindy Rosenwald
 Senator Ruth Ward
 Representative Janet G. Wall
 Representative Bob Lynn
 Honorable David H. Hess

For the Committee,
 Edward M. Gordon
 Chairman