

SB 122-FN - AS AMENDED BY THE HOUSE

03/18/2021 0754s  
3Jun2021... 1308h

2021 SESSION

21-0830  
11/04

SENATE BILL

***122-FN***

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

SPONSORS:       Sen. French, Dist 7

COMMITTEE:      Judiciary

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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.

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                  Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Twenty One*

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

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

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

3            VII. "Victim of human trafficking" means:

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

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

8            2 Trafficking in Persons. RSA 633:7, VI is repealed and reenacted to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

22 (1) The affidavit or sworn testimony of the petitioner;  
23 (2) Branding or other tattoos on the body of the petitioner that identify the petitioner  
24 as having had a trafficker;

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

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

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

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

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

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

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

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

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

(b) Parties to the proceedings and their attorneys;

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

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

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

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

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

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

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

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

(b) Upon a finding that the petitioner's participation in the offense underlying the conviction, delinquency adjudication, or diversion agreement was a direct result of being trafficked and an entry of an order vacating the conviction, delinquency's adjudication, or diversion agreement the court shall:

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

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

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

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

15           3 New Paragraph; Guardianship of Minors; Definition of Grandparent Added. Amend RSA  
16 463:2 by inserting after paragraph III the following new paragraph:

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

18           4 Council on Autism Spectrum Disorders; Membership. RSA 171-A:32, I is repealed and  
19 reenacted to read as follows:

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

23           (a) The governor, or designee.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18          5 Effective Date. This act shall take effect upon its passage.

**SB 122-FN- FISCAL NOTE**  
AS AMENDED BY THE HOUSE (AMENDMENT #2021-1308h)

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

**FISCAL IMPACT:**    ☒ State                      ☒ County                      ☐ Local                      ☐ None

STATE:	Estimated Increase / (Decrease)			
	FY 2021	FY 2022	FY 2023	FY 2024
<b>Appropriation</b>	\$0	\$0	\$0	\$0
<b>Revenue</b>	\$0	Indeterminable	Indeterminable	Indeterminable
<b>Expenditures</b>	\$0	Indeterminable	Indeterminable	Indeterminable
<b>Funding Source:</b>	<input type="checkbox"/> General	<input type="checkbox"/> Education	<input type="checkbox"/> Highway	<input type="checkbox"/> Other

**METHODOLOGY:**

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.

The Judicial Branch does not identify in its system whether the defendants charged under these sections are victims of human trafficking. As a result, the Branch is unable to determine how many fewer charges would be filed or what fiscal impact, if any, would occur if victims of human trafficking are exempt from prosecution. The Branch assumes that, some previous convictions under RSA 645:1, 645:2 or 633:7 would now be subject to an exemption from prosecution, and anyone in that situation would file a motion to vacate as authorized by the bill. Each such motion would take judicial and staff resources to process and rule upon. Because the Branch is unable to determine how many cases fall within this category, the impact on expenditures is indeterminable.

The Department of Safety, Division of State Police's Criminal Records Unit indicates the proposed legislation will have no fiscal impact to the Department.

The Judicial Council indicates it is unclear how many future prosecution charges would not be brought as a result of this legislation. It is assumed that there would not be a significant decrease in the number of charged crimes. Therefore, the Council does not expect any reduction due to this legislation would have a meaningful impact on indigent defense expenditures.

Sections 3 and 4 of the bill relative to guardianship by grandparents, and the membership of the council on autism spectrum disorders have no fiscal impact.

It is assumed any fiscal impact will occur after July 1, 2021.

**AGENCIES CONTACTED:**

Judicial Branch, Judicial Council and Department of Safety