

HB 1465-FN - AS AMENDED BY THE HOUSE

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2022 SESSION

22-2489

04/05

HOUSE BILL ***1465-FN***

AN ACT relative to the appointment of counsel for juveniles.

SPONSORS: Rep. Long, Hills. 10

COMMITTEE: Children and Family Law

ANALYSIS

This bill amends the procedure and liability for costs for appointment of counsel for a juvenile. The bill also establishes procedures for the court to use in determining whether to use a statement or a confession from a juvenile.

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 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Two

AN ACT relative to the appointment of counsel for juveniles.

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

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

3 I. Absent a valid waiver, the court shall appoint counsel for an indigent minor pursuant to
4 RSA 169-B:7, III. For purposes of this section, an indigent minor shall be a minor who satisfies the
5 court, after appropriate inquiry, that the minor is financially unable to independently obtain
6 counsel. ***For all minors who are the subject of petitions brought under this chapter, the***
7 ***court shall presume indigency so that counsel can be appointed promptly pursuant to RSA***
8 ***169-B:7, III, subject to the court's reconsideration following the receipt of complete***
9 ***information regarding the minor's financial ability to independently obtain counsel.*** If the
10 court has received information indicating that the minor may have an intellectual, cognitive,
11 emotional, learning, or sensory disability, the court shall not permit the minor to waive the right to
12 counsel.

13 I-a. When an attorney is appointed as counsel for a child, representation shall include
14 counsel and investigative, expert, and other services, including process to compel the attendance of
15 witnesses, as may be necessary to protect the rights of the child. ***Such appointment shall remain***
16 ***in effect until the court no longer has jurisdiction over the child pursuant to this chapter.***
17 ***Representation shall include participation by counsel in other proceedings when such***
18 ***proceedings are substantively related to the child's delinquency proceedings and counsel***
19 ***determines that participation is reasonably necessary to provide effective and competent***
20 ***representation to the child in the delinquency proceeding. Such participation may include***
21 ***attendance by counsel at interviews, meetings and formal proceedings for the purpose of***
22 ***protecting the child's rights through advice to the child, observation of the presentation of***
23 ***evidence, and similar actions which are reasonably necessary to protect the child's rights.***

24 2 New Section; Delinquent Children; Use of Statement or Confession From a Minor. Amend
25 RSA 169-B by inserting after section 12-a the following new section:

26 169-B:12-b Use of Statement or Confession From a Minor.

27 I. A written or oral statement from a person who was a minor at the time the statement was
28 made shall not be used against that person at any judicial proceeding unless the child was
29 represented by counsel at the time the statement was made and had adequate time to consult with
30 such counsel prior to making the statement. The provisions of this section shall apply to statements
31 made to or in the presence of law enforcement officials acting in their official capacity and

statements made to individuals working in conjunction with law enforcement officials, where the minor is in custody or a reasonable person in the position of the minor would believe that he or she was compelled to respond to questioning. For the purpose of this paragraph, a minor is in custody if he or she is under arrest or has had his or her freedom of movement curtailed to the degree associated with formal arrest.

II. In evaluating whether a reasonable person in the position of the minor would believe that he or she was compelled to respond or that he or she was not free to leave, the court shall consider the particular vulnerability of children to the inherently coercive nature of police questioning and make findings evaluating the following factors:

(a) The child's age and maturity.

(b) The duration and location of the contact between the child and law enforcement official.

(c) The existence of an emotional, behavioral, developmental, intellectual, or communication disability.

(d) The presence of the child's parents and the supportive or adversarial nature of the relationship between the child and his or her parents.

III. A law enforcement agency may petition the court to appoint counsel for a minor that the agency intends to question. Upon receipt of such petition, the court shall follow the procedures under RSA 169-B:12, and if appointment is made, promptly notify the minor and appointed counsel.

3 Adequate Representation for Indigent Defendants in Criminal Cases; Appointment of Counsel for a Juvenile. Amend RSA 604-A:9, I(a)-(b) to read as follows:

(a) Any adult defendant ~~[or juvenile respondent]~~ who has been assigned counsel or a public defender shall be subject to an order by the court, pursuant to this section, regarding payment to the state for counsel fees and expenses paid by the state on behalf of the defendant or juvenile, and regarding payment of an administrative service assessment. Any payment obligation shall apply only to a defendant who has been convicted ~~[or a juvenile who has been found delinquent]~~. ***No payment obligation shall accrue to a juvenile, or the person legally liable for support of the juvenile, for the appointment of counsel under this chapter.***

(b) Upon entering a judgment of conviction ~~[or a finding of delinquency]~~, and the issuance of sentence or disposition, the court shall enter a separate written order setting forth the reasons for the court's conclusion regarding the financial ability of the defendant ~~[or the juvenile, including any person liable for the support of the juvenile pursuant to RSA 604-A:2-a,]~~ to make payment of counsel fees and expenses, and administrative service assessment. In its discretion, the court may conduct an ability-to-pay hearing to assist in its determination. If the court finds that there is an ability to pay some or all of the counsel fees and expenses and the assessment, either presently or in the future, it shall order payment in such amounts and upon such terms and conditions it finds equitable; any payment obligation shall not commence until the conviction and

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1 sentence ~~[or the finding of delinquency and disposition]~~ has become final. If the court finds that
2 there is no such ability to pay, it shall so order, and any payment obligation shall terminate.

3 4 Adequate Representation for Indigent Defendants in Criminal Cases; Payment for Counsel for
4 Juveniles. Amend RSA 604-A:9, I(f) to read as follows:

5 (f) The maximum payment amount for counsel fees and expenses shall be according to a
6 schedule established by the administrator of the office of cost containment with the approval of the
7 administrative justices of the courts. Any payment obligation for fees and expenses shall not exceed
8 the amount of the state's flat rate payable to a contract attorney as established pursuant to RSA
9 604-B. The administrative service assessment shall not exceed 10 percent of the counsel fees and
10 expenses. Payment shall be made to the office of cost containment unless the defendant ~~[or juvenile]~~
11 is placed on probation or sentenced to a period of conditional discharge, in which case repayment
12 shall be made to the state through the department of corrections. ~~[Any payment obligation~~
13 ~~attributable to a juvenile shall terminate when the juvenile reaches the age of majority, except when~~
14 ~~the juvenile has been certified and tried as an adult.]~~

15 5 Repeal. RSA 169-B:12, III, relative to financial responsibility for appointment of counsel is
16 repealed.

17 6 Effective Date. This act shall take effect upon its passage.

**HB 1465-FN- FISCAL NOTE
AS INTRODUCED**

AN ACT relative to the appointment of counsel for juveniles.

FISCAL IMPACT: ☒ State ☐ County ☐ Local ☐ None

STATE:	Estimated Increase / (Decrease)			
	FY 2022	FY 2023	FY 2024	FY 2025
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase
Funding Source:	<input checked="" type="checkbox"/> General	<input type="checkbox"/> Education	<input type="checkbox"/> Highway	<input type="checkbox"/> Other

METHODOLOGY:

The Judicial Council states this bill makes several changes to the juvenile justice process, including:

- Earlier appointment of counsel.
- Representation of juveniles at related proceedings.
- Prohibiting use of juvenile's statements to law enforcement unless represented by counsel.
- Appointment of counsel before questioning by law enforcement.
- Appointment of counsel would continue until court no longer has jurisdiction.
- Elimination of legal fees assessed against juveniles.

The bill addresses several findings of the National Juvenile Defender Center's recent assessment of indigent juvenile representation in New Hampshire. The Council provided the following information and assumptions concerning the fiscal impact of this bill:

- The Council would be responsible for the costs of legal representation for indigent juveniles. Earlier appointment of counsel would not impact expenditures, and may allow cases to resolve more expeditiously.
- The legislation would significantly decrease the number of juveniles proceeding without counsel. According to information provided by the court, approximately 89 juveniles waived the right to counsel in 2019. Previously the Public Defender, the State's institutional provider of indigent-defense services, would have had to absorb the increase of additional appointments with no change in the cost of its operations. The indigent defense system is currently in the midst of an unprecedented caseload crisis due to the

pandemic and significant turnover. There are approximately 300 individuals charged with a crime who have not yet been appointed an attorney. The system does not have enough public defenders, contract attorneys or experienced private attorneys to meet the current need and it cannot absorb any additional cases at this time. This bill would require additional attorneys in all programs to meet the increase in appointments and the additional attorney responsibilities.

- It is not clear what representation at related proceedings would involve. Counsel needs to be competent in all areas in which they provide representation. Currently, the indigent defense system does not provide representation to juveniles outside of delinquency proceedings and this requirement would require additional training and attorney time. A reimbursement model for contract attorneys and assigned counsel would need to be developed. While the time commitment and resources necessary to provide representation until the court no longer has jurisdiction would be case specific, keeping cases open will result in more ethical conflicts of interest that prevent the Public Defender from accepting new cases.
- Under the current system, the indigent defense system does not provide representation until a delinquency petition has been filed against a juvenile. This bill would prevent the use of statements to law enforcement unless the juvenile was represented by counsel. It is assumed that law enforcement would request appointment occur as expeditiously as possible. The Council cannot accurately predict the number of appointments that would result from this change, but it would require additional attorney time and resources. It is not possible to predict the additional attorney time that representation at related proceedings and police interrogations will require, but it is assumed that the Public Defender would require more attorneys on staff to meet these obligations. The cost for a new attorney, including benefits, is approximately \$95,000.

The Judicial Branch indicates the requirement in section 1 for the Court to presume all minors who are subject to petitions brought under RSA 169-B are indigent and counsel should be appointed pursuant to RSA 169-B:7 will not substantively impact the current process as minors are generally appointed counsel subject to filing a request for waiver of counsel. From 2017 through 2020, approximately 5-11% of minors filed waiver requests, although not all of them were necessarily granted and counsel may have been appointed later in the case. Section 2 of the bill would prohibit the use of a written or oral statement to law enforcement from a minor unless the child was represented by counsel and had time to consult with counsel prior to making the statement. Law enforcement could petition the court to appoint counsel for the minor that the agency intends to question. The procedures under RSA 169-B:12 would apply for appointment of counsel. The Branch assumes there would be an increase in the number of petitions filed with the Circuit Court under this new process for appointment of counsel, which

would require a change to the Court's filing system, codes and forms. The fiscal impact is indeterminable because the Judicial Branch has no information on the number of such petitions that would be filed.

Sections 3-5 of the bill would provide that counsel fees and expenses would not accrue to a juvenile or the person legally responsible for financial support of the juvenile. The Branch assumes that such counsel fees and expenses would be funded by the Judicial Council.

It is assumed that any fiscal impact would occur after FY 2022.

AGENCIES CONTACTED:

Judicial Branch and Judicial Council