

SB 417-FN - AS AMENDED BY THE SENATE

03/21/2024 1111s

04/11/2024 1421s

2024 SESSION

24-2976

05/08

SENATE BILL ***417-FN***

AN ACT relative to out-of-home placements for children.

SPONSORS: Sen. Whitley, Dist 15; Sen. D'Allesandro, Dist 20; Sen. Rosenwald, Dist 13; Sen. Altschiller, Dist 24; Sen. Prentiss, Dist 5; Sen. Perkins Kwoka, Dist 21; Sen. Soucy, Dist 18; Sen. Carson, Dist 14; Sen. Watters, Dist 4; Sen. Chandley, Dist 11; Rep. Grossman, Rock. 11; Rep. Long, Hills. 23; Rep. M. Pearson, Rock. 34; Rep. Wallner, Merr. 19

COMMITTEE: Judiciary

AMENDED ANALYSIS

This bill revises criteria for out-of-home placement of children under the child protection act and other juvenile statutes and establishes an order of preference based on placement with the child's siblings, when possible, and proximity to the child's community of origin. The bill also makes appropriations to the department of health and human services and the judicial branch to support implementation of the act.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

SB 417-FN - AS AMENDED BY THE SENATE

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Four

AN ACT relative to out-of-home placements for children.

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

1 1 Child Protection Act; Presumption in Favor of In-State Placements. Amend RSA 169-C:19-b to
2 read as follows:

3 169-C:19-b Presumption in Favor of In-State Placements. There shall be a presumption that an
4 in-state placement is the ~~[least restrictive]~~ **less restrictive** and most appropriate placement. The
5 court may order an out-of-state placement only upon an express written finding that ~~[there is no~~
6 ~~appropriate in-state placement available.]~~ **the out-of-state placement offers specialized**
7 **programming or services that are unable to be provided within New Hampshire, and the**
8 **placement is contracted with the state. Preference shall be given to out-of-state placements**
9 **that are in proximity to the child's family and/or kin, who are able to participate in family**
10 **and/or reunification services. Any out-of-state placements shall be limited in time, and**
11 **require increased judicial oversight.**

12 2 Child Protection Act; Siblings. RSA 169-C:19-d is repealed and reenacted to read as follows:

13 169-C:19-d Siblings.

14 I. The department shall place a child with the child's siblings unless doing so would be
15 contrary to the safety or well-being of the child or siblings, or otherwise not in the child's best
16 interest.

17 II. If siblings are not placed together, reasonable efforts shall be made to provide for
18 visitation with siblings, unless such visitation would be harmful to the child or sibling.

19 3 Child Protection Act; Custody Hearing for Parent Not Charged with Abuse or Neglect. Amend
20 RSA 169-C:19-e, I to read as follows:

21 I. A parent who has not been charged with abuse or neglect shall be afforded, upon request,
22 a full hearing in the district or family court regarding his or her ability to obtain custody. At the
23 hearing, the parent shall be provided the opportunity to present evidence pertaining to his or her
24 ability to provide care for the child and shall be awarded custody unless the state demonstrates, by a
25 preponderance of the evidence, that he or she ~~[has abused or neglected the child or is otherwise]~~ **is**
26 unfit to perform his or her parental duties. The court shall make written findings of fact supporting
27 its decision.

28 **I-a. The welfare of the child is the primary factor to be weighed when determining**
29 **if a parent is fit to parent that child. In determining whether a parent is fit to perform his**

1 *or her parental duties, the court may consider the following factors, in addition to any*
2 *other relevant evidence presented:*

3 *(a) The unique needs of the child, and whether or not the parent is adequately*
4 *prepared to address those needs;*

5 *(b) The parent's existing and historical relationship with that child;*

6 *(c) The parent's untreated mental health or substance use issues;*

7 *(d) The parent's provision of care to other children in their household,*
8 *including addressing education needs, medical care, and mental and behavioral health*
9 *care;*

10 *(e) The condition of the parent's home;*

11 *(f) Any prior allegations of child abuse or neglect; and*

12 *(g) The results of the department's evidence-based safety assessment of that*
13 *parent, their home, and any other adults in the home. A parent's failure to cooperate with*
14 *the department's assessment, or to provide any records necessary to such a determination,*
15 *shall be weighed as a factor in the fitness of that parent.*

16 4 New Sections; Placement for Evaluation; Order of Preference of Out-of-Home Placement.
17 Amend RSA 169-C by inserting after section 19-f the following new sections:

18 169-C:19-g Placement for Evaluation. Any psychological evaluations, including measures of
19 personality functioning, shall be conducted by, or supervised by, a licensed psychologist with
20 specialized training in the evidence-based treatment of childhood trauma.

21 169-C:19-h Order of Preference of Out-of-Home Placement. If the court finds that a child is
22 abused or neglected or if the court issues a consent order pursuant to RSA 170-E:25, the court shall
23 enter an order regarding the placement of the child, in the following order of preference:

24 I. Presume that remaining in the family home is in the best interest of the child, but if it is
25 determined to not be in the child's best interest, to secure placement:

26 (a) With a kin or fictive kin; or

27 (b) Within the child's community of origin, with fictive kin or in a licensed foster home
28 setting, with preference given to a licensed foster home with whom the child has a pre-existing
29 relationship; or

30 (c) In a licensed foster home outside of the child's community of origin, with preference
31 given to a licensed foster home with whom the child has a pre-existing relationship, and/or in a
32 foster home that can provide intensive (ISO) services designed to meet the specific needs of the child;
33 and

34 (1) The department of health and human services and the department of education
35 shall make every attempt to arrange for the child to continue to attend their school of origin, making
36 special transportation arrangements when necessary; and

(2) The department of health and human services shall ensure that the child is able to maintain their connections with their community of origin, including important relationships and activities; and

II. Only if placements described under paragraph I are not appropriate for the child due to an inability to maintain safety in the community, may alternative placements be considered, such as group or residential care as defined in RSA 170-E:25 and certified by the department for the care of children placed pursuant to 169-C, or in any state-operated treatment program, that meet the specific needs of that child, and that are not available in that child's community of origin; and

(a) If the child is placed in a group or residential facility, such placement shall be for a limited time and with frequent review, pursuant to RSA 169-F:8, with the goal to return the child home or to a family setting in the community of origin as quickly as possible; and

(b) The court determines that the needs of the child cannot be met by kin, fictive kin, or in a foster family home. Neither the shortage or lack of foster family homes nor the lack of community-based resources shall be acceptable reasons for determining that the needs of the child cannot be met in a family setting.

5 Standard for Return of Child in Placement. Amend RSA 169-C:23 to read as follows:

169-C:23 Standard for Return of Child in Placement. In the absence of a guardianship of the person of the minor, governed by the terms of RSA 463, before a child in out-of-home placement is returned to the custody of his or her parents, the parent or parents shall demonstrate to the court that:

I. They are in compliance with the outstanding dispositional court order;

II. The child will not be endangered [~~in the manner adjudicated on the initial petition,~~] if returned home; and

III. Return of custody is in the best interests of the child, [~~Upon showing the~~] **and with a showing that the parent has an** ability to provide proper parental care[~~, it shall be presumed that a return of custody is in the child's best interests~~].

6 New Sections; Court Ordered Placements; Presumption in Favor of In-State Placements; Order of Preference of Out-of-Home Placement. Amend RSA 169-F by inserting after section 4 the following new sections:

169-F:5 Presumption in Favor of In-State Placements. There shall be a presumption that an in-state placement is the less restrictive and most appropriate placement. The court may order an out-of-state placement only upon an express written finding that the out-of-state placement offers specialized programming or services that are unable to be provided within New Hampshire, and the placement is contracted with the state. Preference shall be given to out-of-state placements that are in proximity to the child's family and/or kin, who are able to participate in family and/or reunification services. Any out-of-state placements shall be limited in time, and require increased judicial oversight.

1 169-F:6 Order of Preference of Out-of-Home Placement. For any out-of-home placements made
2 under this chapter, the court shall enter an order regarding the placement of the child, in the
3 following order of preference:

4 I. Presume that remaining in the family home is in the best interest of the child, but if it is
5 determined to not be in the child's best interest, to secure placement:

6 (a) With a kin or fictive kin; or

7 (b) Within the child's community of origin, with fictive kin or in a licensed foster home
8 setting, with preference given to a licensed foster home with whom the child has a pre-existing
9 relationship; or

10 (c) In a licensed foster home outside of the child's community of origin, with preference
11 given to a licensed foster home with whom the child has a pre-existing relationship, and/or in a
12 foster home that can provide intensive (ISO) services designed to meet the specific needs of the child;
13 and

14 (1) The department of health and human services and the department of education
15 shall make every attempt to arrange for the child to continue to attend their school of origin, making
16 special transportation arrangements when necessary; and

17 (2) The department of health and human services shall ensure that the child is able
18 to maintain their connections with their community of origin, including important relationships and
19 activities; and

20 II. Only if placements described under paragraph I are not appropriate for the child due to
21 an inability to maintain safety in the community, may alternative placements be considered, such as
22 group or residential care as defined in RSA 170-E:25 or certified by the department for the care of
23 children placed pursuant to 169-C, or in any state-operated treatment program, that meet the
24 specific needs of that child, and that are not available in that child's community of origin; and

25 (a) If the child is placed in a group or residential facility, such placement shall be for a
26 limited time and with frequent review, pursuant to RSA 169-F:8 with the goal to return the child
27 home or to a family setting in the community of origin as quickly as possible.

28 (b) The court determines that the needs of the child cannot be met by kin, fictive kin, or
29 in a foster family home. Neither the shortage or lack of foster family homes nor the lack of
30 community-based resources shall be acceptable reasons for determining that the needs of the child
31 cannot be met in a family setting.

32 169-F:7 Oversight of Children in Care; Department Responsibilities.

33 I. Any child in a court-ordered placement pursuant to RSA 169-B, RSA 169-C, or RSA 169-D
34 shall be seen in-person on at least a monthly basis, by their assigned case worker. In the event the
35 assigned case worker is not available, another case worker or supervisor familiar with the child
36 and/or case may perform the visit. The visit to the child shall include a private meeting with the
37 child, in a safe place as determined by the case worker and child, to inquire about care received, as

1 well as an in-person tour of the child's living quarters. The monthly contact shall also include
2 contact with the child's placement provider, therapeutic providers, and educational providers,
3 preferably in real-time, but at least by written correspondence. In addition, for any child placed in a
4 residential placement by the department, these visits shall include a tour of the facility where the
5 child may have access to; a check-in with appropriate leadership about program culture and
6 therapeutic programming; a check-in with program direct care staff about the child's progress in the
7 program; and a check-in with the clinical director and/or the child's therapeutic provider about the
8 program culture, therapeutic programming, and the child's individual progress, strengths, and
9 challenges in the program, which may occur outside of the in-person visit in virtual real-time if
10 circumstances require.

11 II. The department shall develop, in consultation with the office of child advocate, a
12 standard operating procedure and form for monthly visits with children conducted by the
13 department, pursuant to RSA 169-F:5, I, to be completed during each monthly in-person visit.

14 169-F:8 Court Oversight of Children in Residential Programs.

15 I. Except in cases of emergency placement, prior to placing a child in residential treatment
16 programs or psychiatric residential treatment programs, except in emergency situations, the court
17 shall:

18 (a) Consider all assessments and plans for the child, including assessment of whether a
19 residential treatment program is the most effective and appropriate level of care, in the least
20 restrictive environment for the child, and any child-specific, short- and long-term goals for the child
21 and the family. The assessment shall specify, in writing:

22 (1) Whether the child's needs can be met in a kin, fictive kin or foster family home,
23 not primarily dependent upon availability of community resources.

24 (2) If the assessment recommends a residential treatment program:

25 (A) The specific reasons why the child's needs cannot be met in a kin, fictive kin
26 or foster family home, not primarily dependent upon availability of community resources; and

27 (B) Why recommended placement in a residential treatment program is the
28 setting that will provide the child with the most effective and appropriate level of care, in the least
29 restrictive environment.

30 (3) How the placement is consistent with the short- and long-term goals for the child,
31 as specified in the case plan or permanency plan for the child.

32 (b) Confirm that the school district has complied with its legal obligations to assess the
33 educational impact of the placement, and consider the school district's input on that impact.

34 (c) Determine that the needs of the child cannot be met through placement with a
35 parent, legal guardian, legal custodian, kin or fictive kin caregiver, or in a foster family home; and
36 that placement of the child in a residential treatment program provides the most effective and
37 appropriate level of care for the child in the least restrictive environment; and that placement is

1 consistent with the short- and long-term goals, including mental, behavioral, and physical health
2 goals, for the child as specified in the permanency plan for the child, or as outlined in the family
3 services plan. A shortage or lack of foster family homes shall not be an acceptable primary reason
4 for determining that the needs of the child cannot be met in a foster family home.

5 (d) Review information relating to the facility, which may include staff-to-child ratio;
6 staff training; program culture; therapeutic, clinical and milieu programming; educational
7 programming; recreational programming; and, family connections, in order to ensure that the
8 program is the most effective and appropriate level of care, in the least restrictive environment for
9 the child, and meets the child-specific short- and long-term goals for the child and the family.

10 (e) Approve or disapprove of the placement, in a written order, containing all of the
11 necessary findings laid out in this section.

12 II. In the case of an emergency necessitating immediate placement of a child in a residential
13 treatment program, the department shall notify the court within 2 business days of such placement,
14 in order for the court to make the required findings of paragraph I.

15 III. Prior to determining that a residential treatment program is the most effective and
16 appropriate level of care, in the least restrictive environment for the child, the court shall consider
17 any available assessments and plans, giving the greatest weight to the most recent assessment and
18 assessments completed by a licensed psychologist or licensed neuropsychologist with specialized
19 training in the evidence-based treatment of childhood trauma. If the court deviates from such
20 recommendation, the court shall make specific findings of fact regarding the most effective and
21 appropriate level of care, in the least restrictive environment for the child, and that the placement is
22 consistent with child-specific short and long-term goals for the child and the family. When making
23 such findings of fact, the court shall consider all relevant information, including but not limited to:

24 (a) Whether the protocol for the residential treatment program assessment was followed;

25 (b) Whether the school district is meeting the child's educational needs, based on their
26 statutory requirements under RSA 169-B:22, RSA 169-D:18, and RSA 169-C:20;

27 (c) The strengths and specific treatment or service needs of the child and the family;

28 (d) The expected length of stay; and

29 (e) The placement preference of the child and the family.

30 IV. When a child is placed in a residential treatment program or psychiatric residential
31 treatment program:

32 (a) The department shall notify the court promptly of such placement.

33 (b)(1) The court shall review the placement of that child within 60 days after placement,
34 and at every subsequent court review hearing; or

35 (2) Upon a motion by the child, the child's representative, or the child's guardian ad
36 litem establishing reason to believe the ordered residential treatment program is not the most

1 effective and appropriate level of care for the child in the least restrictive environment, the court
2 shall review the placement within 30 days, and at every subsequent court review hearing.

3 (c) The court may review the placement at any time sua sponte or in response to a
4 motion for review by any party.

5 V. As long as a child remains in a residential treatment program, the department shall
6 submit evidence to the court and all parties, at least 5 business days prior to every regular review
7 hearing:

8 (a) Demonstrating that:

9 (1) Ongoing assessment of the strengths and needs of the child continues to support
10 the determination that the needs of the child cannot be met through placement with a parent, legal
11 guardian, legal custodian, kin or fictive kin caregiver, or in a foster family home;

12 (2) Any recommended psychological or clinical evaluations or assessments have been
13 completed, and if not, the status of those evaluations or assessments;

14 (3) The department has worked with the school district to assure, consistent with
15 the best interest of the child, the child's educational stability;

16 (4) The placement in a residential treatment program provides the most effective
17 and appropriate level of care for the child in the least restrictive environment; and,

18 (5) The placement is consistent with the short- and long-term goals for the child as
19 specified in the permanency plan for the child, or as outlined in the family services plan.

20 (b) Documenting that:

21 (1) The specific treatment or service needs that will be met for the child in the
22 placement;

23 (2) The length of time the child is expected to need treatment or services, and the
24 treatment basis for the determination of that length of time; and

25 (3) The specific efforts made by the division to prepare the child and prospective
26 placement for the child's return home or to be placed with a fit and willing kin or fictive kin
27 caregiver, a legal guardian, legal custodian, or an adoptive parent, or in a foster family.

28 7 Department of Health and Human Services; Classified Positions Established; Appropriation.

29 I. The following classified positions are established in the department of health and human
30 services to support the placement of youth in residential facilities:

31 (a) Eight child protective service worker IV positions (labor grade 24, step 5).

32 (b) Two juvenile probation and parole officer IV positions (labor grade 24, step 5).

33 II. The sum of \$870,000 for the biennium ending June 30, 2025, is hereby appropriated to
34 the department of health and human services for the purpose of funding the positions established in
35 paragraph I. In addition to the appropriation and notwithstanding RSA 14:30-a, the department
36 may accept and expend matching federal funds without prior approval of the fiscal committee of the

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1 general court. The governor is authorized to draw a warrant for the general fund portion of said sum
2 out of any money in the treasury not otherwise appropriated.

3 8 Department of Health and Human Services; Classified Attorney Positions Established;
4 Appropriation.

5 I. The following classified positions are established in the department of health and human
6 services to support placement of youth in residential facilities: 2 attorney III positions (labor grade
7 30, step 5).

8 II. The sum of \$210,000 for the biennium ending June 30, 2025, is hereby appropriated to
9 the department of health and human services for the purpose of funding the positions established in
10 paragraph I. In addition to the appropriation and notwithstanding RSA 14:30-a, the department
11 may accept and expend matching federal funds without prior approval of the fiscal committee of the
12 general court. The governor is authorized to draw a warrant for the general fund portion of said sum
13 out of any money in the treasury not otherwise appropriated.

14 9 Department of Health and Human Services; Appropriation; Youth Visit Travel Costs. The
15 sum of \$154,440 for the fiscal year ending June 30, 2025, is hereby appropriated to the department
16 of health and human services for the purpose of paying for travel costs for youth visits in order to
17 support implementing the provisions of this act. This appropriation shall be nonlapsing. The
18 governor is authorized to draw a warrant for said sums out of any money in the treasury not
19 otherwise appropriated.

20 10 Judicial Branch; Appropriation. The sum of \$376,145 for the fiscal year ending June 30,
21 2025, is hereby appropriated to the judicial branch for the purpose of funding new positions required
22 to carry out the duties set out in this act. In addition to the appropriation and notwithstanding RSA
23 14:30-a, the judicial branch may accept and expend matching federal funds without prior approval of
24 the fiscal committee of the general court. The governor is authorized to draw a warrant for the
25 general fund portion of said sum out of any money in the treasury not otherwise appropriated.

26 11 Reallocation of Monies Saved. Any monies saved by the department of health and human
27 services, including the division for children, youth and families and the bureau of children's
28 behavioral health, in preventing the out-of-home placement of children pursuant to this act shall be
29 used by the department to provide services pursuant to RSA 135-F, the system of care for children's
30 mental health, and any other community-based intervention services.

31 12 Effective Date.

32 I. Sections 7-11 of this act shall take effect July 1, 2024.

33 II. The remainder of this act shall take effect January 1, 2025.

SB 417-FN- FISCAL NOTE
AS AMENDED BY THE SENATE (AMENDMENT #2024-1421s)

AN ACT relative to out-of-home placements for children.

FISCAL IMPACT: ☒ State ☐ County ☐ Local ☐ None

Estimated State Impact - Increase / (Decrease)				
	FY 2024	FY 2025	FY 2026	FY 2027
Revenue	\$0	\$0	\$0	\$0
Revenue Fund(s)	None			
Expenditures	\$0	DHHS \$1,234,440/ Judicial Branch \$376,145/ Judicial Council Indeterminable	DHHS \$1,737,235/ Judicial Branch \$376,000+/ Judicial Council Indeterminable	DHHS \$1,800,084/ Judicial Branch \$376,000+/ Judicial Council Indeterminable
Funding Source(s)	General Fund			
Appropriations	\$0	DHHS \$1,234,440/ Judicial Branch \$376,145	\$0	\$0
Funding Source(s)	General Fund			

- Does this bill provide sufficient funding to cover estimated expenditures? ☒ Yes
- Does this bill authorize new positions to implement this bill? ☒ Yes

METHODOLOGY:

This bill provides additional structure to the Department of Health and Human Services’ use and oversight of residential treatment for children and youth. In particular, the bill enhances the scope of in-person visits between Division for Children, Youth, and Families (DCYF) caseworkers and DCYF-involved youth in residential treatment. It also increases the frequency and intensity of court oversight of placements of DCYF-involved youth. In order to accommodate this increased workload for DCYF-involved youth, the Department anticipates a need for eight additional child protective services workers (CPSW); two additional juvenile probation and parole officers (JPPO); and two additional attorneys.

In total, the Department projects the costs shown below. These projections assume the positions will be active beginning October 1, 2024. Accordingly, FY25 reflects 75 percent of a full year’s cost. (FY25 costs also include equipment and other startup costs for the positions.) Relatedly,

travel is assumed to begin on January 1, 2025. FY25 therefore reflects 50 percent of a full year's cost. The Department's travel estimates assume a four percent cost increase each year.

	FY25	FY26	FY27
Youth Visit Staffing			
8 CPSWs	\$696,000	\$912,000	\$944,000
2 JPPOs	\$174,000	\$228,000	\$236,000
2 Attorneys	\$210,000	\$276,000	\$286,000
Youth Visit Travel (Mileage, Flights, Hotel)	\$154,440	\$321,235	\$334,084
Total:	\$1,234,440	\$1,737,235	\$1,800,084

With respect to the impact on the Judicial Branch, the Branch states that additional staffing needs will result in a cost of approximately \$376,000 in FY25.

The Judicial Council states that the bill's impact is indeterminable. The Council notes that depending on the parties present for a given review hearing, the Council would potentially be responsible for funding one or more attorneys or guardians ad litem (GAL) for a given review hearing. Attorneys and non-court appointed special advocate GALS are compensated at \$90/hour, with a current cap under the rules of \$450 per review hearing. The Council also pays for travel time to court.

The bill contains appropriations totaling \$1,234,440 to the Department of Health and Human Services and \$376,145 to the Judicial Branch in FY25 for the purpose of funding the positions and travel costs described above.

AGENCIES CONTACTED:

Department of Health and Human Services, Judicial Branch, and Judicial Council