

SB 459-FN - AS INTRODUCED

2024 SESSION

24-3005

05/08

SENATE BILL ***459-FN***

AN ACT relative to the presumption of harm under the child protection act.

SPONSORS: Sen. Carson, Dist 14; Sen. Whitley, Dist 15; Rep. M. Pearson, Rock. 34; Rep. Cordelli, Carr. 7

COMMITTEE: Judiciary

ANALYSIS

This bill revises certain definitions under the child protection act, including the definitions of abused child, neglected child, and imminent harm. The bill also revises circumstances creating a rebuttable presumption of harm and removes the prospective repeal of the section. Finally, the bill expands the child abuse reporting requirement to include health care providers who treat a child under 13 years of age for a sexually transmitted disease.

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 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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

AN ACT relative to the presumption of harm under the child protection act.

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

1 1 Child Protection Act; Purpose. RSA 169-C:2 is repealed and reenacted to read as follows:
2 169-C:2 Purpose.

3 I. It is the sole purpose of this chapter, through the mandatory reporting of suspected
4 instances of child abuse or neglect, to provide protection to children whose life, health or physical,
5 emotional, or psychological welfare is endangered. The best interest of the child shall be the primary
6 consideration of the court in all proceedings under this chapter.

7 II. It is a further purpose of this chapter to establish a judicial framework to protect the
8 rights of all parties involved in the adjudication of child abuse or neglect cases, secondary to the
9 protection of the physical, emotional, and psychological welfare of the child. Each child coming
10 within the provisions of this chapter shall receive, preferably in the child's own home and within the
11 child's own community, the care, emotional security, guidance, and control that will promote the
12 child's best interest. If the child should be removed from the control of his or her parents, guardian,
13 or custodian, adequate care shall be secured for the child, preferably in the child's own community.

14 III. This chapter seeks to coordinate efforts by parents and state and local authorities, in
15 cooperation with private agencies and organizations, citizens' groups, and concerned individuals, to:

16 (a) Protect the physical, emotional and psychological welfare of the child, acknowledging
17 the trauma caused to the child by abuse and neglect.

18 (b) Take such action as may be necessary to prevent the abuse or neglect of children.

19 (c) Presume that family unity is in the best interest of the child; but, if it is determined
20 to not be in the child's best interest, to secure placement within the child's own community, with kin,
21 fictive kin or in foster care. Only if the needs of the child cannot be met by kin, fictive kin, or foster
22 care, and the lack of community-based resources/placements is not the primary reason for
23 placement, may the child be placed in a group home or childcare institution; and, for the primary
24 purpose of providing short-term episodic mental or behavioral health treatment that is not available
25 in that child's own community. There shall be frequent review of each child removed from the home
26 with the goal to return the child home or to the child's own community as quickly as possible.

27 (d) Provide protection, treatment, and rehabilitation, as needed, to children under the
28 care and custody or legal supervision of the division, whether placed in the home or in out-of-home
29 care.

30 (e) Provide assistance to parents, guardians or custodians to deal with and correct
31 problems in order to prevent removal of children from their home.

IV. This chapter shall be liberally construed to the end that its purpose may be carried out, to wit:

(a) To encourage the mental, emotional, and physical development of each child coming within the provisions of this chapter, by providing the child with the protection, care, treatment, counseling, supervision, and rehabilitative resources which the child needs and has a right to receive.

(b) To achieve the foregoing purposes and policies by keeping a child in their home, and preserving the unity of the family; and, separating the child from their parents only when the physical, emotional or psychological welfare of the child is at risk, or when it is clearly necessary for the child's welfare or the interests of the public safety, and when it can be clearly shown that a change in custody will be in the best interest of the child;

(c) To ensure that if a child must be removed from their home, the child shall be placed with kin or fictive kin if such a placement is safe and available, otherwise in a licensed foster home, ensuring contact with their home community and in a family environment; and, only as a last resort and if necessary for the emotional, mental health, behavioral health or psychological needs of the child, be placed in group home or child care institution licensed by and contracted with the state; and,

(d) To provide effective judicial procedures through which the provisions of this chapter are executed and enforced and which recognizes as the primary determinant, the safety, welfare and best interest of the child; and, protects the constitutional and other rights of all parties, and assures them a fair hearing.

2 Child Protection Act; Definitions. Amend RSA 169-C:3, I and II to read as follows:

I. "Abandoned" means the child has been left by ~~his~~ **their** parent, guardian or custodian, without provision for ~~his~~ **their physical, emotional or psychological** care, supervision or financial support although financially able ~~to provide such support~~ **or assisted to do so**.

II. "Abused child" means any child who has been:

(a) Sexually abused; or

(b) Intentionally **or recklessly** physically injured; or

(c) Psychologically injured so that said child exhibits symptoms of emotional problems generally recognized to result from ~~consistent~~ mistreatment or neglect; or

(d) Physically injured by other than accidental means, **or indeterminant means if the parents are the primary or sole caregivers and have offered no reasonable alternative explanation for said injuries**; or

(e) Subjected, by any person, to human trafficking as defined in RSA 633:7; or

(f) Subjected to an act prohibited by RSA 632-A:10-d.

3 Child Protection Act; Definitions. Amend RSA 169-C:3, V to read as follows:

V. "Child" means any person who has not reached ~~his~~ **their** eighteenth birthday.

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4 Child Protection Act; Definitions. Amend RSA 169-C:3, XV and XVI to read as follows:

XV. "Imminent danger" means circumstances or surroundings causing immediate peril or risk to a child's ***psychological or emotional well-being, physical or mental*** health, or life.

XVI. "Institutional child abuse or neglect" means situations of known or suspected child abuse or neglect wherein the person responsible for the child's welfare is a foster parent or is an employee of a public or private residential home, institution or agency. ***This includes, but is not limited to:***

(a) ***Use of restraint or seclusion under circumstances which do not indicate that restraint or seclusion is needed to ensure the immediate physical safety of a person due to substantial and imminent risk of serious bodily harm to the child or others;***

(b) ***Continued placement of a child in an institution, as defined in RSA 170-E:25, III, or any state operated institution for childcare or juvenile detention established by law, or a hospital beyond medically necessity, such that the placement has resulted or may result in harm to the child's mental, emotional, psychological, or physical well-being; or***

(c) ***Continued placement of a child who has been willfully isolated from ordinary social contact under circumstances which indicate emotional or social deprivation.***

5 Child Protection Act; Definitions. Amend RSA 169-C:3, XIX to read as follows:

XIX. "Neglected child" means a child:

(a) Who has been abandoned by his or her parents, guardian, or custodian; or

(b) Who is without proper parental care or ~~[control]~~ ***attention***, subsistence, ***and/or*** education as required by law, or other care or ~~[control]~~ ***attention*** necessary for the child's physical, mental, ***psychological***, or emotional ~~[health]~~ ***wellbeing***, when it is established that the child's ~~[health]~~ ***physical, emotional, or psychological wellbeing*** has suffered or is likely to suffer serious impairment; ~~[and the deprivation is not due primarily to the lack of financial means of the parents, guardian, or custodian]~~ ***although financially able to do so, or able to do so with assistance; or***

(c) Whose parents, guardian or custodian are unable to discharge their responsibilities to and for the child because of incarceration, hospitalization or other physical or mental incapacity; ***or***

(d) ***Parentification of a child, which occurs when a child is regularly expected to provide emotional or practical support for a parent, instead of receiving that support themselves; or***

(e) ***Voluntarily and knowingly entrusting the care of a child to an individual who may not provide safe care; or***

(f) The child is born affected by alcohol or substance exposure, except when taken as prescribed or recommended and monitored by a licensed health care provider, and the newborn child's health or welfare is threatened by substance use; or

(g) The continued placement of a child in an institution, as defined in RSA 170-E:25, III, or any state operated institution for childcare or juvenile detention established by law, or a hospital beyond medically necessity, such that the placement has resulted or may result in harm to the child's mental, emotional, psychological, or physical wellbeing.

Provided, that no child who is, in good faith, under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner thereof shall, for that reason alone, be considered to be a neglected child under this chapter.

6 Child Protection Act; Definitions. RSA 169-C:3, XXV-a is repealed and reenacted to read as follows:

XXV-a. "Psychological maltreatment" means a persistent pattern of threatening, demeaning or humiliating behavior directed at child by a caregiver, which may include, but is not limited to: rejecting such as constant criticism or belittling; terrorizing, such as threatening abandonment or harm; corrupting such as child involvement in or exposure to criminal activities; coercing, such as to compel to action using threat or force; or, exploiting, such as the act of using someone unfairly for your own advantage; and, which may adversely affect the child cognitively, emotionally, and socially.

7 Child Protection Act; Definitions. RSA 169-C:3, XXVII-a is repealed and reenacted to read as follows:

XXVII-a. "Serious impairment" means an adverse impact on a child's emotional, physical, psychological, or mental wellbeing and/or safety, and which may result from a single event and/or from a consistent pattern of behavior, and may be currently observed, and/or predicted. The following circumstances shall be considered in determining the likelihood that a child may suffer serious impairment:

(a) The age and developmental level of the child; although the child's age or ability to care for themselves is not dispositive of the potential harm caused by other factors.

(b) Any social, emotional, learning, mental health, behavioral health, or physical conditions.

(c) Ability to attend and fully engage in school.

(d) The child's exposure to persons involved in the illegal use, sale, manufacture or trafficking of controlled substances; the misuse, sale, manufacture or trafficking of legal or illegal substances; or, the abuse of alcohol.

(e) Exposure to incidents of domestic or sexual violence.

(f) Any documented failure to thrive.

(g) Any history of frequent illness or injury.

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- (h) Findings in other proceedings.
- (i) The condition of the child's place of residence.
- (j) Assessments or evaluations of the child conducted by qualified professionals.
- (k) Such other factors that may be determined to be appropriate or relevant.
- (l) Any single incident or occurrence of serious injury or illness.

8 Child Protection Act; Definitions. Amend RSA 169-C:3, XXVIII to read as follows:

XXVIII. "Unfounded report" means a report made pursuant to this chapter for which the department determines that there is insufficient evidence to establish ~~[to substantiate]~~ **by a preponderance of the evidence** a finding that the child is abused or neglected.

9 Child Protection Act; Rebuttable Presumption of Harm. RSA 169-C:12-f is repealed and reenacted to read as follows:

169-C:12-f Rebuttable Presumption of Harm.

There shall be a rebuttable presumption that a child's emotional, physical, psychological, or mental wellbeing has suffered or is likely to suffer serious impairment by exposure to any of the following conduct:

I. Evidence of a parent's, guardian's, or custodian's substance misuse, or sale, manufacturing, or trafficking of illegal substances, shall create a rebuttable presumption that the child's physical, emotional and/or psychological wellbeing has suffered or is very likely to suffer serious impairment. The presumption may be rebutted by evidence of the parent's compliance with treatment for such use or dependence;

II. Evidence of a parent's, guardian's, or custodian's impaired or reckless driving or operating of a motor vehicle while a child is in the vehicle; or

III. Evidence of a parent's, guardian's, or custodian's exposure of a child to physical violence, verbal abuse or psychological maltreatment directed at the child, a sibling, the other parent or significant other, or another person living in the home.

IV. The rebuttable presumption of harm established in paragraph III shall not apply to victims of domestic violence who are subject to an abuse or neglect petition filed pursuant to this chapter as a result of an incident or incidents in which that parent, guardian, or caregiver was the victim.

V. Evidence of a serious injury, broken bone(s), or unexplained injury to any non-ambulatory child; or, frequent illnesses that are not being adequately addressed and/or controlled.

10 Reporting Law; Persons Required to Report. Amend RSA 169-C:29 to read as follows:

169-C:29 Persons Required to Report.

I. Any physician, surgeon, county medical examiner, psychiatrist, resident, intern, dentist, osteopath, optometrist, chiropractor, psychologist, therapist, registered nurse, hospital personnel (engaged in admission, examination, care and treatment of persons), Christian Science practitioner, teacher, school official, school nurse, school counselor, social worker, day care worker, any other

1 child or foster care worker, law enforcement official, priest, minister, or rabbi or any other person
2 having reason to suspect that a child has been abused or neglected shall report the same in
3 accordance with this chapter.

4 ***II. A health care provider or facility shall make a report in accordance with this***
5 ***chapter upon the consultation, examination, or treatment for a sexually transmitted***
6 ***infection (STI) of any child under 13 years of age.***

7 11 Repeal. 2020, 26:56, relative to the prospective repeal of RSA 169-C:2-f on July 1, 2024, is
8 repealed.

9 12 Effective Date.

10 I. Section 11 of this act shall take effect June 30, 2024.

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

SB 459-FN- FISCAL NOTE
AS INTRODUCED

AN ACT relative to the presumption of harm under the child protection act.

FISCAL IMPACT: ☒ State ☐ County ☐ Local ☐ None

Estimated State Impact - Increase / (Decrease)				
	FY 2024	FY 2025	FY 2026	FY 2027
Revenue	\$0	\$0	\$0	\$0
<i>Revenue Fund(s)</i>	None			
Expenditures	\$0	\$1.9 million - \$3.8 million	\$3.9 million	\$4.1 million
<i>Funding Source(s)</i>	General Fund			
Appropriations	\$0	\$0	\$0	\$0
<i>Funding Source(s)</i>	None			

- Does this bill provide sufficient funding to cover estimated expenditures? ☒ No
- Does this bill authorize new positions to implement this bill? ☒ No

METHODOLOGY:

This bill repeals and reenacts the Child Protection Act by, among other things:

- Revising the definitions of abused child, neglected child, and imminent harm;
- Revising circumstances creating a rebuttable presumption of harm and removing the prospective repeal of that section; and
- Expanding the child abuse reporting requirement to include health care providers who treat a child under the age of 13 for a sexually transmitted disease.

The Department of Health and Human Services states that, as a result of a likely increase in abuse/neglect reports, investigations, and open cases, the bill may result in the need for additional staff to meet the expanded grounds for Division for Children, Youth, and Families (DCYF) involvement. The Department anticipates the need for the following 35 positions: 11 new staff attorney positions, one new central intake child protective service worker (CPSW), one new special investigations CPSW, 11 new assessment CPSWs, and 11 new family service CPSWs. These positions are expected to cost the following for each full fiscal year: \$3.8 million in FY25, \$3.9 million in FY26, and \$4.1 million in FY27. In recognition of the bill's January 1, 2025 effective date (which applies to all of the bill except for section 11), the table above reflects the possibility that FY25 expenditures may be as low as 50 percent of a full year's costs.

In addition to the costs noted above, the changes contained in the bill may impact the judicial and correctional systems, which could affect prosecution, incarceration, probation, and parole costs, for the state, as well as county and local governments. A summary of such costs can be found at:

https://gencourt.state.nh.us/lba/Budget/Fiscal_Notes/JudicialCorrectionalCosts.pdf

AGENCIES CONTACTED:

Department of Health and Human Services