LEGISLATIVE COMMITTEE MINUTES

HB408

Bill as Introduced

HB 408 - AS AMENDED BY THE HOUSE

6Jan2022... 2177h

2021 SESSION

21-0004
04/05

HOUSE BILL ***408***

AN ACT relative to employment restrictions for registered sex offenders.

SPONSORS: Rep. Verville, Rock. 2; Rep. Baldasaro, Rock. 5; Sen. Reagan, Dist 17

COMMITTEE: Criminal Justice and Public Safety

AMENDED ANALYSIS

This bill prohibits a person convicted of certain sexual assault offenses from hiring or otherwise engaging in any employment or volunteer service which provides direct services to a minor, or supervision or oversight of a minor.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.
6Jan2022... 2177h 21-0004
04/05

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty One

AN ACT relative to employment restrictions for registered sex offenders.

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

1 Sexual Assault and Related Offenses; Prohibition From Contact With a Minor. Amend RSA 632-A:10 to read as follows:

632-A:10 Prohibition From [~~Child Care Service of Persons Convicted of Certain Offenses~~] ***Employment in Businesses Providing Direct Services to Minors or Direct Supervision or Oversight of Minors.***

I. A person is guilty of a class A felony if, having been convicted in this or any other jurisdiction of any felonious offense involving child sexual abuse images, or of a felonious physical assault on a minor, or of any sexual assault, he or she knowingly [~~undertakes~~] ***engages in any*** employment or volunteer service [~~involving the care, instruction or guidance of minor children, including, but not limited to, service as a teacher, a coach, or worker of any type in child athletics, a day care worker, a boy or girl scout master or leader or worker, a summer camp counselor or worker of any type, a guidance counselor, or a school administrator of any type~~] ***that provides direct services to minors, or supervision or oversight of minors.***

II.***(a)*** A person is guilty of a class B felony if, having been convicted in this or any other jurisdiction of any of the offenses specified in paragraph I of this section, he ***or she*** knowingly fails to provide information of such conviction when applying or volunteering for [~~service or~~] ***any*** employment [~~of any type involving the care, instruction, or guidance of minor children, including, but not limited to, the types of services set forth in paragraph I~~] ***or volunteer activity that provides direct services to minors, or supervision or oversight of minors.***

(b) A public or private employer or organization, whose primary intent is to provide direct services to minors, or whose employees provide supervision or oversight of minors, shall conduct a criminal background check of any prospective employee or volunteer.

III. A person is guilty of a class B felony if, having been convicted in this or any other jurisdiction of any of the offenses specified in paragraph I of this section, he ***or she*** knowingly fails to provide information of such conviction when making application for initial teacher certification in this state.

2 Effective Date. This act shall take effect January 1, 2023.

Committee Minutes

SENATE CALENDAR NOTICE
Judiciary

Sen Sharon Carson, Chair
Sen Bill Gannon, Vice Chair
Sen Harold French, Member
Sen Rebecca Whitley, Member
Sen Jay Kahn, Member

Date: April 13, 2022

HEARINGS

Tuesday	04/19/2022	
(Day)	(Date)	
Judiciary	State House 100	1:00 p.m.
(Name of Committee)	(Place)	(Time)

1:00 p.m.	**HB 408**	relative to employment restrictions for registered sex offenders.
1:15 p.m.	**HB 1101**	relative to a forfeiture of personal property.
1:30 p.m.	**HB 1493**	relative to the drug forfeiture fund.
1:45 p.m.	**HB 1103**	relative to certain assets in a divorce proceeding.
2:00 p.m.	**HB 1266**	relative to restrictions on enforcement of federal immigration laws.
2:15 p.m.	**HB 1178**	prohibiting the state from enforcing any federal statute, regulation, or Presidential Executive Order that restricts or regulates the right of the people to keep and bear arms.
2:30 p.m.	**HB 1625**	repealing the prohibition on entering or remaining on a public way or sidewalk adjacent to a reproductive health care facility.

EXECUTIVE SESSION MAY FOLLOW

Sponsors:

HB 408			
Rep. Verville	Rep. Baldasaro	Sen. Reagan	
HB 1101			
Rep. Sylvia	Rep. Bernardy	Rep. Spillane	Rep. J. Smith
Rep. Silber	Rep. T. Lekas	Rep. Post	
HB 1493			
Rep. Sylvia			
HB 1103			
Rep. Spillane	Rep. DiLorenzo	Rep. Bershtein	Sen. Reagan
HB 1266			
Rep. Piemonte	Rep. Torosian	Rep. Potucek	
HB 1178			
Rep. Burt	Rep. Stapleton	Rep. Hopper	Rep. Silber
Rep. Nunez	Rep. True	Rep. Hill	Rep. Kelsey
Rep. Folsom	Rep. Kofalt	Sen. Avard	Sen. Ricciardi
HB 1625			
Rep. Kelsey	Rep. Nunez	Rep. Baxter	Rep. Gould

Rep. Stapleton
Rep. Sheehan

Rep. Mooney
Sen. Ricciardi

Rep. Notter
Sen. Daniels

Rep. M. Pearson
Sen. Avard

Jennifer Horgan 271-7875

Sharon M Carson
Chairman

Senate Judiciary Committee

Jennifer Horgan 271-7875

HB 408, relative to employment restrictions for registered sex offenders.

Hearing Date: April 19, 2022

Time Opened: 1:03 p.m. **Time Closed:** 1:24 p.m.

Members of the Committee Present: Senators Carson, Gannon, French, Whitley and Kahn

Members of the Committee Absent : None

Bill Analysis: This bill prohibits a person convicted of certain sexual assault offenses from hiring or otherwise engaging in any employment or volunteer service which provides direct services to a minor, or supervision or oversight of a minor.

Sponsors:
Rep. Verville Rep. Baldasaro Sen. Reagan

Who supports the bill: Representative Verville; Senator Reagan; Abbey Simon, DOC; John Facin

Who opposes the bill: Representative Lynn

Summary of testimony presented in support:
Representative Verville (provided written testimony)

- This is to close a loophole in the existing law.
- The original intent of the law was to prevent registered sex offenders from directly supervising or employing minors in order to protect the minor from the registered sex offender and to prevent the registered sex offender from being in a position where recidivism may be high.
- A group of stakeholders, including legislators, the Department Corrections, State Police, and advocates for registered sex offenders worked on this language.
- An example of this issue was a gentleman who owned a landscaping company, and he was a registered sex offender. This man was hiring and directly supervising minors; he was in a position of power over them. This went to Court, and the Court ruled the language of the law was not clear and that that man was not violating the law.
- Another example is, a rides operator, who was an employee of the ride's operation manager and a registered sex offender, was working a ride at the Deerfield Fair. While working the ride, this man was having direct repeat

contact with minor children, helping kids to load on and off these rides and check restraints.

- The intent of the law was to prohibit those kinds of things, and this bill will close that loophole.
- Senator Kahn asked if this would impact a person who is a registered sex offender that is a restaurant staffer where minors are patrons.
    - There was extensive discussion about that kind of thing in the subcommittee. The scenarios the subcommittee imagined was a grocery store bagger or a convenience store clerk. A registered sex offender could work those jobs. This is to prevent direct employment or supervision of a minor. As long as that person is not a direct supervisor or the employer that job would be allowed to be held by those individuals. The intent is not to prevent a registered sex offender from working at any place a minor might be.
- Senator Kahn asked about the definition of 'supervision'.
    - A person is not a direct supervisor of someone if that person is just a co-worker or a patron.
- Senator Kahn proposed a scenario where a registered sex offender is the wait staff at a restaurant and a minor is busing the tables; the wait staff receives the tips and hands them out to the busing staff. Asked if that would qualify as a supervision position.
    - There is a requirement that the registered sex offender notify the employer of their status. In that scenario, it does not seem like it would be overly burdensome for the owner to ensure the tips are disbursed through some easy mechanism to ensure everyone gets their fair share. Everyone on that staff has someone they are a direct or indirect report to. If at a restaurant the wait staff oversees the bus staff, the registered offender would not be allowed to have that job. The intent of the bill is not to further punish people, but to have a degree of separation between minors and registered sex offenders. This bill will preclude registered sex offenders from working some positions. For example, if you are a registered sex offender, you would not be able to operate carnival rides because you are in direct supervision of those children.

Summary of testimony presented in opposition:
Representative Lynn (provided written testimony)

- Supports a version of this bill but thinks the language needs work.
- Currently, RSA 632-A:10 prohibits convicted sex offenders from obtaining employment or providing volunteer service in specific kinds of fields that are directed at providing services to children: teacher, day care worker, coach, etc.
- In 2019 the Supreme Court decided State v. Proctor, which involved a convicted sex offender who had opened landscaping business and hired a minor to work for

him. He was charged with violating the statute, but his counsel made two arguments:
    - 1) the statute only applies to a person who works as an employee or volunteer, not to a sex offender who offers employment,
    - and 2) that landscaping was not the kind of work that fell under the statute because it was unlike teaching or coaching, etc.
- The Court overturned the defendant's conviction on the second grounds and therefore never reached the first part.
- This bill is designed to overrule Proctor by prohibiting a sex offender from 'any employment or volunteer activity that provides direct services to minors, or supervision or oversight of minors.'
- The question becomes, would a person who works at Market Basket who is a sex offender providing direct services to a minor who comes through the checkout line? Or is a sex offender that works at a restaurant and they serve a table of minors, is that sex offender providing direct services to those minors?
- Agrees that is not the intent, but the Court is going to construe the statute based on what it says, not what the intent was.
- This bill as written would prevent people who are convicted sex offenders from working at Market Basket, 7-Eleven, etc.
- Do you want to make a statute that is so restrictive that sex offenders will be unable to get the kinds of job they would typically be able to get?
- This bill would be guaranteeing that those individuals will be on welfare the rest of their lives.
- Proposed an amendment to narrow the statute so that it retains the listing of the specific types of employment and volunteering that is prohibited as it is in the current law, but also adds language prohibiting "any employment or volunteer activity that provides services exclusively or predominantly to minors."
- This proposed language would allow someone to work at a grocery store because the work provides services to people of all ages.
- The proposed amendment covers obtaining services as an employee and providing services as an employer.
- A place that would cater predominately to minors would be somewhere like Chuck E Cheese.
- Thinks the bill goes too far and the proposed amendment is more narrowly tailored.
- Senator Kahn noted that III is already in current law for certification of teachers and asked if it was necessary to repeat it here.
    - Tried to have the amendment change the existing bill as little as possible. His work was focused I of the bill.
- Senator Kahn asked what a place that serves "predominately minors" would be.

- Chuck E Cheese would be an example. Most of the people that go there go with children. If it is mostly catered to children, that is what this language is designed to capture.

jch
Date Hearing Report completed: April 22, 2022

Speakers

Senate Judiciary Committee
SIGN-IN SHEET

Date: 04/19/2022 **Time:** 1:00 p.m.

HB 408 AN ACT relative to employment restrictions for registered sex offenders

Name/Representing ***(please print neatly)***

	Support	Oppose	Speaking?	Yes	No
Kevin Verville	☑	☐		☑	☐
Abbey Simon DOC	☑	☐		☐	☑
Rep. Bob Lynn	☐	☒		☒	☐
Sen John Reagan	☒	☐		☐	☒
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	☐	☐		☐	☐
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Senate Remote Testify

Judiciary Committee Testify List for Bill HB408 on 2022-04-19

Support: 1 Oppose: 0

Name	Title	Representing	Position
facin, john	A Member of the Public	Myself	Support

Testimony

PROPOSED AMENDMENT TO RSA 632-A:10

1.Sexual Assault and Related Offenses; Prohibition From Certain Contact With a Minor. Amend HB408 and Amendment 2021—2177h and replace with the following:

Amend RSA 632-A:10 read as follows:

I.632-A:10 Prohibition on Employment or Volunteer Activities of Persons Convicted of Certain Offenses. A person is guilty of a class A felony if, having been convicted in this or any other jurisdiction of any felonious offense involving child sexual abuse images, or of a felonious physical assault on a minor, or of any sexual assault, he or she knowingly engages in employment or volunteer service, either as the employer or provider of such service or as an employee or volunteer, that consists of acting as a public or private school teacher, school administrator, guidance counselor, coach, a worker of any kind in child athletics, a day care worker, a boy or girl scout master or leader or worker, a camp counselor, or any employment or volunteer activity that provides services exclusively or predominantly to minors.

II(a). A person is guilty of a class B felony if, having been convicted in this or any other jurisdiction of any offenses specified in paragraph I of this section, he or she knowingly fails to provide information about such conviction when offering employment or volunteer service opportunities or applying for or engaging in employment or volunteer service of the kind specified in paragraph I.

(b). A public or private employer or organization that provides employment or volunteer services of the kind specified in paragraph I of this section shall conduct a criminal background check of any prospective employee or volunteer.

III. A person is guilty of a class B felony if, having been convicted in this or any other jurisdiction of any of the offenses specified in paragraph I of this section, he or she knowingly fails to provide information of such conviction when making application for initial teacher certification in this state.

2. Effective Date. This act shall take effect on January 1, 2023.

https://www.unionleader.com/news/crime/lawyer-sex-offender-didnt-break-law-when-he-operated-ride-at-deerfield-fair/article_26a60054-5373-52fd-92b3-8385f137273f.html

Lawyer: Sex offender didn't break law when he operated ride at Deerfield Fair

By Jason Schreiber Union Leader Correspondent
Feb 23, 2020

BRENTWOOD — The defense lawyer for a convicted sex offender accused of breaking the law when he operated a children's ride at the Deerfield Fair last fall wants the charges thrown out, arguing that he wasn't prohibited from taking such a job.

Convicted sex offender accused of operating children's ride at Deerfield Fair

In a recent motion filed in Rockingham County Superior Court, public defender Matthew McNicoll asked the court to dismiss the felony charges against David J. Getchell, 43, of 8 Hoyt Lane in Hillsborough.

Getchell was indicted in December on two counts of prohibition from child care service of persons convicted of certain offenses.

One of the charges alleges Getchell was operating the ride for Miller Amusements and knowingly failed to inform the company about the past sexual assault conviction when he applied for the work involving "the care, instruction, or guidance of minor children."

Another charge accuses him of knowingly taking the job despite the conviction.

Getchell was convicted of felonious sexual assault in 2000 in a case in Grafton County.

He was most recently charged after police discovered him operating a motorcycle ride at the fair on Sept. 27. When questioned by police, Getchell told them that more than 30 children had used the ride during his two days operating it and that the average age of each rider was about 11.

Getchell was charged under state law RSA 632-A:10, which McNicoll argues does not criminalize his actions and prohibit him from working as a ride operator at a fair.

According to that law, a convicted sex offender is prohibited from accepting employment or volunteer service involving the "care, instruction, or guidance of minor children, including, but not limited to, service as a teacher, a coach, or worker of any type in child athletics, a day care worker, a boy or girl scout master or leader or worker, a summer camp counselor or worker of any type, a guidance counselor, or a school administrator of any type."

In his motion, McNicoll wrote, "Undertaking employment as a fair ride operator does not share the important characteristics that bind the statute's prohibited services: a ride operator is never alone with children and has nothing more than incidental contact with minors. A ride operator does not have any conceivable opportunity to exploit this incidental contact into sexual abuse. A ride operator does not instruct children, build relationships with them, or gain their parents' trust. A ride operator has no chance to prey on a minor's vulnerabilities, even in the unlikely circumstance that a minor is not accompanied by an adult while at a fair. A ride operator merely herds children onto a ride, turns a switch or presses a button to run the ride, then stops the ride. Any interaction he has with the children is necessarily brief and extremely limited in scope. He does not have the opportunity to meet children in private or develop relationships with them."

McNicoll argues that if the court agrees that the law applies to jobs that have "nothing beyond incidental contact with minors" then "countless positions become unavailable" to sex offenders like Getchell who struggle to find work and face homelessness and limited job prospects, even when the conviction is 20 years old.

RockinghamNews@unionleader.com

Jason Schreiber

https://www.unionleader.com/news/crime/judge-refuses-to-toss-charges-against-sex-offender-who-operated-ride-at-deerfield-fair/article_abf675a7-3cb2-5d92-8ea3-3e500eaeb080.html

Judge refuses to toss charges against sex offender who operated ride at Deerfield Fair

By Jason Schreiber Union Leader Correspondent
Apr 10, 2020

A judge has denied a motion to dismiss charges against a registered sex offender accused of illegally operating a children's ride at last year's Deerfield Fair.

David J. Getchell, 43, of Hillsborough, will now stand trial on two counts of prohibition from child care service of persons convicted of certain offenses.

Jury selection was expected to begin Monday, but trials in Rockingham County Superior Court and other courts around the state have been put on hold because of the coronavirus pandemic.

Judge Marguerite Wageling recently denied a motion filed by Getchell's public defender who argued that an amusement ride operator is not the type of job that would be prohibited under state law RSA 632-A:10, which bars convicted sex offenders from working or volunteering in positions that involve the "care, instruction or guidance of minor children."

Some of the positions listed under the law include teacher, coach, daycare worker, scout master, and summer camp counselor.

Getchell, who was convicted of felonious sexual assault in 2000 in a case in Grafton County, was arrested after he was found operating a children's motorcycle ride during the fair on Sept. 27.

At the time, Getchell was employed by Miller Amusements.

One of the charges alleges Getchell knowingly failed to inform the company about the past sexual assault conviction when he applied for the work involving "the care, instruction, or guidance of minor children."

Another charge alleges he knowingly took the job despite the conviction.

According to court documents filed by Assistant County Attorney Audriana Mekula-Hanson, Miller Amusements' owner Scott Miller told Deerfield police that Getchell didn't disclose the fact that he was a registered sex offender before or after he was hired. As a ride operator, Getchell was required to help children on and off the ride, check seatbelts, and stop the ride during an emergency.

Miller also told police that he didn't conduct a background check before hiring Getchell, Mekula-Hanson wrote.

"In the court's experience — and as the state explains — ride operators do in fact have special access to children by virtue of the services inherent in their employment. ... Specifically, ride operators are tasked with ensuring that safety restraints are properly utilized by all riders," Wageling wrote, noting that Getchell would have to check the buckles on the motorcycle ride, which are located near a child's genitals.

Among other things, public defender Matthew McNicoll had argued that a ride operator doesn't have "any conceivable opportunity to exploit this incidental contact into sexual abuse. A ride operator does not instruct children, build relationships with them, or gain their parents' trust. A ride operator has no chance to prey on a minor's vulnerabilities, even in the unlikely circumstance that a minor is not accompanied by an adult while at a fair."

RockinghamNews@unionleader.com

Jason Schreiber

https://www.unionleader.com/news/courts/nh-supreme-court-rules-sex-offender-can-work-as-landscaper-hire-minor/article_bc05625a-c7e4-5d7b-b3e9-e11dcb03349b.html

NH Supreme Court rules sex offender can work as landscaper, hire minor

By TODD FEATHERS New Hampshire Union Leader
Feb 9, 2019

CONCORD — A sex offender who hired a 16-year-old to work for his landscaping business did not violate a state law that prohibits registered offenders from engaging in work that would likely put them in contact with children, the state Supreme Court has ruled.

Edward Proctor of Deerfield was previously convicted of a sexual assault and, at the time of his arrest in 2016, was listed on the state's sex offender registry. However, he no longer appears on the list.

State law prohibits registered offenders from "undertak(ing) employment or volunteer service involving the care, instruction or guidance of minor children." It references positions like teaching, school counseling or coaching as prohibited work.

Proctor argued that "undertaking employment ... is universally understood to mean accepting employment, not providing it," according to court records. The court did not rule on that aspect of the appeal.

But the majority did agree with Proctor's argument that landscaping, unlike teaching or childcare, does not inherently involve close contact with minors.

"We conclude that the statute does not preclude a person with a qualifying conviction from knowingly undertaking employment as a landscaper because landscaping is not a service that 'by (its) nature provide(s) access to children,'" Justice Gary Hicks wrote in the unanimous opinion.

Proctor first hired the 16-year-old in February 2016 to clear the driveway of a neighbor's house. In May, he hired the boy for other jobs, picking him up at home and driving him to work sites in

Deerfield and Newfield.

When the boy's mother learned that Proctor was a sex offender at the end of May, she ordered her son to stop working for him. Deerfield police arrested Proctor on June 16, 2016, and he was later convicted by a Rockingham County jury.

In his decision, Hicks acknowledged that the state's interpretation of the law "arguably advances the goal of the statute — to prevent child exploitation and abuse — to a greater extent than our construction."

But accepting that interpretation would have required the court to ignore the specific language of the law.

Complete Document

Can Be Viewed

In Bill Folder

171 N.H. 800
Supreme Court of New Hampshire.

The STATE of New Hampshire
v.
Edward G. PROCTOR

No. 2018-0031
|
Argued: January 17, 2019
|
Opinion Issued: February 8, 2019

Synopsis

Background: Defendant was convicted in the Superior Court, Rockingham County, Delker, J., of violating statute prohibiting persons convicted of certain offenses from knowingly undertaking employment or volunteer service involving the care, instruction or guidance of minor children. He appealed.

The Supreme Court, Hicks, J., held that statute did not preclude defendant from knowingly undertaking employment as a landscaper.

Reversed and remanded.

Procedural Posture(s): Appellate Review; Pre-Trial Hearing Motion; Trial or Guilt Phase Motion or Objection.

****884** Rockingham

Attorneys and Law Firms

Gordon J. MacDonald, attorney general (Elizabeth C. Woodcock, Concord, assistant attorney general, on the brief and orally), for the State.

Thomas Barnard, senior assistant appellate defender, of Concord, on the brief and orally, for the defendant.

Opinion

HICKS, J.

***800** The defendant, Edward G. Proctor, appeals his conviction, following a jury trial in Superior Court (Delker, J.), on one count of ***801** violating RSA 632-A:10, I, which prohibits persons convicted of certain offenses from "knowingly undertak[ing] employment or volunteer service involving the care, instruction or guidance of minor children." RSA 632-A:10, I (2016) (amended 2017). We reverse and remand.

The parties do not substantially dispute the following facts for the purposes of this appeal. The defendant was previously convicted of sexual assault, and at the time of the events leading to his conviction, was on parole. As a result of his conviction, he was required to report quarterly to the local police department so as to initial or sign a sex offender registration form. By initialing or signing the form, the defendant acknowledged that he could not "undertake employment or volunteer service involving the care, instruction or guidance of minor children," including, but not limited to, providing service as a teacher, coach, daycare worker, scout master, summer camp counselor, guidance counselor, or school administrator. RSA 632-A:10, I.

The defendant, who, at the time, lived in Deerfield, operated his own landscaping business that provided services such as snow-blowing and yard work. In February 2016, the defendant provided snow-blowing services for the neighbor of a juvenile in Hooksett. Initially, the defendant hired the juvenile to clear the neighbor's driveway for him.

In May 2016, the defendant hired the juvenile to work for him on other jobs. The defendant would pick up the juvenile at the juvenile's home in Hooksett and drive him to job sites in Deerfield and Northwood. The work involved filling in pot holes, pulling weeds, and laying down bark mulch. The defendant told the juvenile what to do and showed him how to do it. At the end of May, the juvenile's mother learned that the defendant was a registered sex offender and directed her son to cease working for him. A Rockingham County grand jury subsequently indicted the defendant for violating RSA 632-A:10, I.

Before trial, the defendant moved to dismiss the indictment, arguing that the statute is unconstitutional. In its narrative ****885** order denying the motion, the trial court determined that the statute "is intended to penalize those subjected to its terms from consciously entering into labor or service, which involves the defendant having some supervisory or management authority over a minor child." The court explained, "Put another way, the statute penalizes those persons who have a [qualifying] felony conviction ... from

words of the statute, but that we instead focus solely upon the phrase "the care, instruction or guidance of minor children" in isolation. However, we acknowledge the State's point that its reading of the statute arguably advances the goal of the statute — to prevent child exploitation and abuse — to a greater extent than our construction. See State v. Dor, 165 N.H. 198, 205, 75 A.3d 1125 (2013). "But, as the Supreme Court has aptly observed, 'it frustrates rather than effectuates legislative intent simplistically to assume that whatever furthers the statute's primary objective must be the law.' " Id. (quoting Rodriguez v. United States, 480 U.S. 522, 526, 107 S.Ct. 1391, 94 L.Ed.2d 533 (1987) (per curiam)). Of course, if the legislature disagrees with our statutory interpretation, it is free, subject to constitutional limitations, to amend RSA 632-A:10, I, as it sees fit. See id. at 205-06, 75 A.3d 1125.

Reversed and remanded.

LYNN, C.J., and BASSETT, HANTZ MARCONI, and DONOVAN, JJ., concurred.

All Citations

171 N.H. 800, 204 A.3d 883

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Senate Judiciary Committee

Jennifer Horgan 271-7875

HB 254, relative to the placement of minors in secure settings.

Hearing Date: April 7, 2022

Time Opened: 2:19 p.m. **Time Closed:** 3:13 p.m.

Members of the Committee Present: Senators Carson, Gannon, French, Whitley and Kahn

Members of the Committee Absent : None

Bill Analysis: This bill addresses the criteria for secure detention pending adjudication and the circumstances in which a minor may be committed to the department of health and human services for the remainder of his or her minority.

Sponsors:

Rep. Rice	Rep. Long	Rep. Wallner
Rep. M. Smith	Sen. Carson	Sen. Hennessey
Sen. Rosenwald		

Who supports the bill: Senator Rosenwald; Senator Hennessey; Representative Wallner; Representative Long; Representative Belanger; Representative Erf; Keith Kuenning, Waypoint; John DeJoie; Marilyn Mahoney

Who opposes the bill: Representative Lynn

Who is neutral on the bill: Pail Halvorsen, Merrimack County Attorney

Summary of testimony presented in support:

Representative Wallner

- This bill is meant to continue the State's efforts to provide care for the children.
- The language limits the criteria for secure detention at the Sununu Youth Services Center (SYSC).
- Secure detention will only be allowed in circumstances where the safety of the child or the community would require such a requirement.
- The offenses that would require secure detention are listed in the bill.
- Placement of children in correctional facilities can cause lifelong harm.
- The Families First Act and the NH system of care prioritizes community-based treatment

- This is another step to providing care for children in the least restrictive environment.

John DeJoie

- The only thing this bill does is take commitment to SYSC off the table.
- RSA169-B:19 covers juvenile dispositions from (a) to (j). This bill removes (j) from the selections for dispositions for certain offenses. All the other offenses are still available to the judges.
- Spoke to the work done to improve the juvenile justice system, and how there was always an outcry that this was going to cause issues for public safety.
- In retrospect, at every step, kids have become more successful, it has not compromised public safety, and it has been less expensive for the State.
- In 2017 the Legislature made significant changes to the conditions of confinement, only permitting felonies to result in commitment to SYSC except for simple assaults.
- This resulted in the SYSC to move from having 65 individuals to 14.
- Spoke to the legislative history of this topic being bicameral and bipartisan.
- 75% of the children at SYSC at any point in time are dealing with behavioral health issues.
- Of the kids discharged from SYSC nearly 2/3 end up returning.
- Kids need behavioral health treatment, and the treatment at SYSC is not having the desired effect because those kids are coming back.
- NH has a long history of over incarcerating low-level offenders, meaning the State puts a lot of kids in jail for low level offenses.
- From 2019-2020 of the kids committed to SYSC 50-60% of them had a highest-level of charge be a misdemeanor.
- We do not send adults to jail for misdemeanors, but we do send kids.
- The system of care is intended to provide a variety of services to treat kids in the least restrictive alternative ideally with their own families when possible, which is where kids do best.
- The current law says kids can only be detained if their offenses would permit them to otherwise be committed post adjudication.
- This bill focuses on serious violent offenses.
- When you change the standard of commitment, you also change the standard of detention.
- The standards of commitment would change on September 1, 2022.
- The detention standards would change January 1, 2023, making detention and commitment the same at that point.
- Does not believe the judicial override is necessary, but Section 5 includes it to ensure that this does not jeopardize public safety or leave a judge to feel like they do not have a choice.
- In 2017 when the law went into effect that changed the conditions of confinement, there were some kids in the process of trials or had convictions and it became very unclear which law should be applied to which kids when.

- That is what the applicability section of the bill addresses.
- There are two major pieces of property crimes: arson and criminal mischief.
- Arson is primarily included in the bill, but criminal mischief is not.
- Whether or not that criminal mischief is a felony seems to be tied to the value of property lost and whether a firearm is discharged.
- Would support an amendment to include criminal mischief in the bill for any offense that could be charged as a felony.
- Senator Gannon asked if a juvenile who destroys hundreds of thousands of dollars of property would not be committed under this bill.
    - Thinks his proposed amendment to add in criminal mischief would take care of that. The argument that we are going to get kids to commit crimes because they can't go to jail was the same argument used in 1995; it did not hold water by in large then and it does not now. The SYSC has 144 beds that we did not end up needing that many. Thinks we can get there in half steps. RSA 639-A covers building a lab or having a lab, thinks that would be reasonable to add as well.
- Senator Whitley stated that NH has two care management entities who are providing services and ensuring kids get what they need. Asked if they have weighed in on this legislation.
    - This bill was originally submitted to the House last year, with the work of the Juvenile Reform Project. The care management entities are not a part of that group. Believes the group did talk to them and make some minor revisions.

Summary of testimony presented in opposition:
Representative Lynn (provided written testimony)

- Did vote in favor of this in House Finance because he is meant to only look at the financial impact when voting in House Finance.
- Thinks this is very bad public policy.
- Under current law, a juvenile cannot be committed to a juvenile detention facility for any theft crime, any false statement crime, or any breach of peace crime. This encompasses any crime that would be a misdemeanor if it was committed by an adult.
- There is a three strikes exemption to this if a minor is found delinquent on three separate charges.
- This bill significantly expands the crimes under which a minor can never be committed to include essentially all nonviolent crimes even if they are felonies.
- This bill prohibits the committal of minors for property offenses, regardless of the amount of property stolen or damaged, unless the minor is armed with a weapon or there is a threat of actual infliction of bodily injury.
- This bill sends the message that property rights are not important.
- We have all seen the consequences of legislation like this in Los Angeles and San Francisco.

- Has any state in the country gone this far in their legislation?
- This bill no longer even has the three strikes provision.
- Completely supports the idea that treatment is very important.
- Committing a juvenile should be the last resort and in the majority of cases it is not appropriate to commit a juvenile for a property only offense.
- Just because it is usually not appropriate though that does not mean it never appropriate.
- Currently, the courts are not allowed to commit a juvenile unless the court finds it is the only proper disposition.
- Under this bill a juvenile can commit perjury resulting in someone being unjustly incarcerated, and the juvenile could not receive a committed sentence for that.
- Removing the possibility of commitment, reduces the incentive for minors to become invested in other dispositional options.
- There are some minors who think they do not need treatment, and the judge can use the threat of commitment to encourage them to complete treatment.
- Knows one of the big purposes of this is to reduce the population of the SYSC.
- Thinks that is the right thing to do and that is a very good thing, but this bill is not going to accomplish that goal.
- The SYSC population has been reduced already way, way down.
- At his last check there were 14 people at the SYSC, seven on pre-trial and seven committed.
- Would be amazed to hear if any of those committed are only there for a property offense.
- If the Committee is not interested in killing the bill, has provided an amendment as an alternative.
- The bill adds subsection (m) to RSA 169:19 to recognize how far this bill went, limiting this to situations where the minor poses risks to cause serious bodily injury.
- The amendment adds in other serious risks like threat to property interests or if the crime is so serious it requires commitment the judge as a last resort impose a commitment.
- If juveniles have a get out of jail free card, will that encourage adult property offenders to use juveniles to commit crimes because they will face less consequences?
- Senator French asked if he prefer an ITL, but the fallback position is the amendment.
    - Correct.

Neutral Information Presented:

County Attorney Paul Halvorsen (Merrimack County Attorney)

- Firmly supports revamping the juvenile justice system.
- Supports the bill in part but opposes the bill as written.

- There are a lot of internal inconsistencies in this bill.
- Reads paragraph (B) to mean that any felony can be a detention and subsumes all the prior changes to the RSA.
- It further seems to indicate that detention can be ordered for any misdemeanor case unless it is one of the enumerated ones in the bill.
- The universal charge table used by the courts has about 3,600 potential offenses, and a little over 1,000 of those are misdemeanors and a little over 800 are felonies; many of those are not contained in the criminal statutes.
- The enumerated offenses in paragraph (B) make it seem that even a felony theft could not result in detention.
- The bill also talks about drug possession without an intent to sell, but there is no possession of a controlled drug without intent to sell; it is either straight possession or possession with intent to sell.
- Possession of any controlled substance besides marijuana is a felony.
- Arson, criminal mischief, breaches of the peace and other listed offenses have felony and misdemeanor variants.
- Items not included in the bill are cruelty to animals when the animal is not killed or bestiality.
- Could order detention for issuing a bad check.
- Could not order detention for a false report to law enforcement but could under it under a false report to 911.
- Could not order detention for misdemeanor arson but could for a minor who kindles a wildfire.
- The dispositional hearings in the final section are a catch all override for judges.
- That section states "A court's finding pursuant to this subparagraph is only sufficient to support secure confinement if it is made by clear and convincing evidence following either a stipulation by the parties or an evidentiary hearing at which the rules of evidence have applied."
- If you apply the rules of evidence and look at the applicability statute, it exempts Family Division, which has jurisdiction over juvenile proceedings.
- Assuming the rules of evidence apply, under Rule 1101 the applicability of the rules of evidence are exempt during issues of sentencing or placing an individual on probation, which in the juvenile code it is actually disposition and conditional release.
- Understands the goal in revamping the system, thinks this bill winds up being a very difficult statute to execute.
- Would suggest amending HB1346 to include an analysis of the Family Court System relating to juvenile issues.

Honorable Dan Itse

- Spoke to the initial motivation to for the creation of the SYSC.
- Before the SYSC there was a facility that was very old with a consistent population size.
- The State received a federal grant to revitalize the juvenile detention facility.

Rebecca Ross (Department of Health and Human Services)

- Senator Whitley asked how this bill connects with the System of Care.
    - Children's Behavioral Health and the Division of Children, Youth, and Families worked very closely together with all of the implementation and system changes with juvenile justice transformation. This bill is a solution without a problem. This bill is looking to decrease the census at SYSC, but this has already occurred. There are substantial concerns about the way this is drafted causing confusion. Is this really getting at what it is trying to solve, because it is taking out things like domestic violence, simple assault, and trafficking. The reality of the system is that if a prosecutor and a defense attorney know that a youth can get the treatment that they need at the place they need to be, it is much easier to plead to a simple assault, when it is really a domestic violence, sexual assault scenario. Anything that reduces the ability to get a youth into a safe and secure setting where they can get the assessments and treatment they need would be doing a disservice to those youth. We are talking about a 17-year-old who is trafficking their 12-year-old neighbor or a 17-year-old who is being used by counterparts in MA to traffic drugs through the State. Thinks we are creating situations where we are going to put barriers to serving those kids with the services they need. This is especially true given that the SYSC is averaging 12 individuals for the last couple years, indicating that the State has already overcome the issue having youth committed unnecessarily. The other unintended consequence of this is that it may be pushing some of these kids into the adult systems because the prosecutors have concerns about the safety of the community. Wants to see these children served in the juvenile system and safely transitioned back into the community.

jch
Date Hearing Report completed: April 9, 2022

Voting Sheets

Senate Judiciary Committee
EXECUTIVE SESSION RECORD
2021-2022 Session

Bill # 408

Hearing date: _____

Executive Session date: _____

Motion of: OTP **Vote:** _____

Committee Member	Made by	Second	Yes	No
Sen. Carson, Chair	☐	☐	☐	☐
Sen. Gannon, V-Chair	☐	☐	☐	☐
Sen. French	☐	☐	☐	☐
Sen. Kahn	☒	☐	☐	☐
Sen. Whitley	☐	☐	☐	☐

Motion of: IS **Vote:** 5-0

Committee Member	Made by	Second	Yes	No
Sen. Carson, Chair	☐	☐	☑	☐
Sen. Gannon, V-Chair	☐	☒	☑	☐
Sen. French	☒	☐	☑	☐
Sen. Kahn	☐	☐	☑	☐
Sen. Whitley	☐	☐	☑	☐

Motion of: consent **Vote:** 5-0

Committee Member	Made by	Second	Yes	No
Sen. Carson, Chair	☐	☐	☑	☐
Sen. Gannon, V-Chair	☐	☐	☑	☐
Sen. French	☒	☐	☑	☐
Sen. Kahn	☐	☒	☑	☐
Sen. Whitley	☐	☐	☑	☐

Reported out by: Carson

Notes: worthy of consideration balance

Committee Report

STATE OF NEW HAMPSHIRE

SENATE

REPORT OF THE COMMITTEE
FOR THE CONSENT CALENDAR

Wednesday, April 27, 2022

THE COMMITTEE ON Judiciary

to which was referred **HB 408**

AN ACT relative to employment restrictions for registered sex offenders.

Having considered the same, the committee recommends that the Bill

BE REFERRED TO INTERIM STUDY

BY A VOTE OF: 5-0

Senator Sharon Carson
For the Committee

This bill would prohibit a person convicted of certain sexual assault offenses from hiring or otherwise engaging in any employment or volunteer service which provides direct services to a minor, or supervision or oversight of a minor. Although this issue is worthy of consideration, the language is in need of further review before it can be implemented.

Jennifer Horgan 271-7875

FOR THE CONSENT CALENDAR

JUDICIARY

HB 408, relative to employment restrictions for registered sex offenders.
Interim Study, Vote 5-0.
Senator Sharon Carson for the committee.

This bill would prohibit a person convicted of certain sexual assault offenses from hiring or otherwise engaging in any employment or volunteer service which provides direct services to a minor, or supervision or oversight of a minor. Although this issue is worthy of consideration, the language is in need of further review before it can be implemented.

HB408

Bill Details

Title: relative to employment restrictions for registered sex offenders.

Sponsors: ***(Prime)*** Verville (R), Baldasaro (R), Reagan (R)

LSR Number: **21-0004**
General Status: **SENATE**
House:
Committee: Criminal Justice and Public Safety
Due Out: 4/1/2021
Status: PASSED/ADOPTED WITH AMENDMENT
Senate:
Committee: Judiciary
Floor Date: 5/5/2022
Status: INTERIM STUDY

Bill Docket

Body	Description
H	Introduced (in recess of) 01/06/2021 and referred to Criminal Justice and Public Safety **HJ 2** P. 46
H	Public Hearing: 02/26/2021 11:45 am Members of the public may attend using the following link: To join the webinar: https://www.zoom.us/j/92701022260 / Executive session on pending legislation may be held throughout the day (time permitting) from the time the committee is initially convened.
H	Retained in Committee
H	Subcommittee Work Session: 09/28/2021 10:00 am LOB 205-207
H	Full Committee Work Session: 10/05/2021 11:00 am LOB 201-203
H	Executive Session: 10/20/2021 11:00 am LOB 201-203
H	Committee Report: Ought to Pass with Amendment # 2021-2177h 10/20/2021 (Vote 19-1; CC) **HC 48** P. 6
H	Removed from Consent (Rep. Lynn) 01/05/2022 **HJ 1**
H	Amendment # 2021-2177h: AA VV 01/06/2022 **HJ 1**
H	FLAM # 2021-2294h (Rep. Lynn): AF DV 73-263 01/06/2022 **HJ 1**
H	Ought to Pass with Amendment 2021-2177h: MA VV 01/06/2022 **HJ 1**
S	Introduced 01/05/2022 and Referred to Judiciary; **SJ 2**
S	Hearing: 04/19/2022, Room 100, SH, 01:00 pm; **SC 16**
S	Committee Report: Referred to Interim Study, 05/05/2022; Vote 5-0; CC; **SC 18**
S	Refer to Interim Study, MA, VV; 05/05/2022; **SJ 11**

Other Referrals

Senate Inventory Checklist for Archives

Bill Number: HB 408 **Senate Committee:** Judiciary

Please include all documents in the order listed below and indicate the documents which have been included with an "X" beside

X Final docket found on Bill Status

Bill Hearing Documents: {Legislative Aides}

X Bill version as it came to the committee

X All Calendar Notices

X Hearing Sign-up sheet(s)

X Prepared testimony, presentations, & other submissions handed in at the public hearing

X Hearing Report

___ Revised/Amended Fiscal Notes provided by the Senate Clerk's Office

Committee Action Documents: {Legislative Aides}

All amendments considered in committee (including those not adopted):

___ - amendment # _____ ___ - amendment # _____

___ - amendment # _____ ___ - amendment # _____

X Executive Session Sheet

X Committee Report

Floor Action Documents: {Clerk's Office}

All floor amendments considered by the body during session (only if they are offered to the senate):

___ - amendment # _____ ___ - amendment # _____

___ - amendment # _____ ___ - amendment # _____

Post Floor Action: (if applicable) {Clerk's Office}

___ Committee of Conference Report (if signed off by all members. Include any new language proposed by the committee of conference):

___ Enrolled Bill Amendment(s)

___ Governor's Veto Message

All available versions of the bill: {Clerk's Office}

___ as amended by the senate ___ as amended by the house

___ final version

Completed Committee Report File Delivered to the Senate Clerk's Office By:

Committee Aide — Date: 8/12/22

Senate Clerk's Office AK