

Amendment to HB 2-FN-A-LOCAL

1 Amend the bill by replacing sections 226-231 with the following:

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3 226 Adequate Representation for Indigent Defendants in Criminal Cases; Appointment of  
4 Counsel. Amend RSA 604-A:2, I to read as follows:

5 I. In every criminal case in which the defendant is charged with a felony or a class A  
6 misdemeanor and appears without counsel, the court before which he or she appears shall advise the  
7 defendant that he or she has a right to be represented by counsel and that counsel will be appointed  
8 to represent him or her if he or she is financially unable to obtain counsel. Unless the defendant  
9 waives the appointment of counsel, if the defendant indicates to the court that he or she is  
10 financially unable to obtain counsel, the court shall instruct the defendant to complete a financial  
11 statement under oath [~~in such form as designated by the unit of cost containment~~]. If after review of  
12 the financial statement under oath [~~and application of the rules established pursuant to RSA 604-~~  
13 ~~A:10, IV~~] the court is satisfied that the defendant is financially unable to obtain counsel, the court  
14 shall appoint counsel to represent him or her; provided, however, that in any case in which the  
15 defendant is charged with a capital offense, the court may appoint 2 counsel to represent him or her.  
16 Whenever defendants have such conflicting interests that they cannot be properly represented by the  
17 same counsel, or when other good cause is shown, the court shall appoint separate counsel for each  
18 of them. In a post-conviction proceeding in which a defendant seeks to attack the validity of an  
19 underlying conviction, the court shall appoint counsel or approve a request for services other than  
20 counsel when the interests of justice or judicial economy require.

21 227 Adequate Representation for Indigent Defendants in Criminal Cases; Determining  
22 Financial Ability. Amend RSA 604-A:2-c to read as follows:

23 604-A:2-c Determination of Financial Ability. The determination of a defendant's financial  
24 ability to obtain counsel shall be made by comparing the defendant's assets and incomes with the  
25 minimum cost of obtaining qualified private counsel. The defendant's assets shall include all real  
26 and personal property owned in any manner by the defendant, excluding only those assets which are  
27 exempt from attachment and execution under RSA 511:2. The defendant's income shall include all  
28 income, whether earned or not, from any source, unless exempt from attachment under any state or  
29 federal law, and shall be reduced only by the amount of expenses which are reasonably necessary for  
30 the maintenance of the defendant and his dependents. In determining a defendant's financial ability  
31 to obtain counsel, **the court shall consider** [~~the rules adopted by the commissioner under RSA 604-~~  
32 ~~A:10, IV, shall contain a method for considering~~] the defendant's ability to borrow some or all of the

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1 necessary funds. ~~[The rules shall also consider the possibility of the defendant paying his counsel~~  
2 ~~fees in periodic installments.]~~

3 228 Adequate Representation for Indigent Defendants in Criminal Cases; Repayment. RSA  
4 604-A:9 is repealed and reenacted to read as follows:

5 604-A:9 Repayment. As of the effective date of this section, all collections efforts under this  
6 section or former versions of this chapter shall be terminated. Any person subject to a court order  
7 for reimbursement may petition the court to vacate the reimbursement order.

8 229 Parental Rights and Responsibilities; Repayment. Amend RSA 461-A:18 to read as follows:

9 461-A:18 Repayment.

10 ~~[I.] In any case where a guardian ad litem has been appointed pursuant to RSA 461-A:16~~  
11 ~~and the responsible party's proportional share of the expense was ordered to be paid by the judicial~~  
12 ~~council from the prior special fund established pursuant to RSA 461-A:17, **which resulted in a**~~  
13 ~~**court order for reimbursement, said order may be vacated upon petition to the court.** [the~~  
14 ~~party shall be ordered by the court to repay the state through the unit of cost containment, office of~~  
15 ~~administrative services, the fees and expenses paid on the party's behalf as the court may order~~  
16 ~~consistent with the party's ability to pay, such ability to be determined by the unit of cost~~  
17 ~~containment.~~

18 ~~II. The court's order of appointment of a guardian ad litem under the provisions of~~  
19 ~~paragraph I shall indicate the initial proportional share or shares of fees and expenses and shall~~  
20 ~~contain an order that the party or parties communicate with the unit of cost containment so that it~~  
21 ~~may determine the obligor's ability to reimburse the state and establish the terms and conditions of~~  
22 ~~reimbursement. A copy of each order shall be sent to the unit of cost containment, office of the~~  
23 ~~commissioner of administrative services, at the time it is made.~~

24 ~~III. Any party subject to an order under this section may petition the court having~~  
25 ~~jurisdiction over the case for relief of the obligation imposed by this section, which shall be granted~~  
26 ~~only upon a finding that the party is unable to comply with the terms of the court's order or any~~  
27 ~~modification of the order by the court or the terms of reimbursement established by the unit of cost~~  
28 ~~containment. In any such appeal the burden of persuasion shall be upon the party to show why the~~  
29 ~~determinations of the unit of cost containment should not be enforced.~~

30 ~~IV. Any party subject to orders for repayment shall be required to notify the clerk of the~~  
31 ~~court and the unit of cost containment of each change of mailing address and actual street address.~~  
32 ~~Whenever notice to the party is required, notice to the last known mailing address on file shall be~~  
33 ~~deemed notice to and binding on the party.]~~

34 230 Termination of Parental Rights; Fees and Court Costs. Amend RSA 170-C:13, III to read as  
35 follows:

36 III. When appointment of counsel is made by the court pursuant to RSA 170-C:10 for a  
37 parent determined to be financially unable to employ counsel, the court shall ~~[use a financial~~

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1 ~~eligibility guideline established by the office of cost containment to]~~ determine if the party is  
2 indigent. Upon determination that the party is indigent, the court may appoint counsel~~[- subject to~~  
3 ~~an order of repayment through the office of cost containment]~~. The judicial council shall bear the  
4 financial responsibility for the payment of costs for attorneys appointed pursuant to RSA 170-C:10  
5 ~~[in accordance with the financial eligibility guideline established by the office of cost containment]~~.  
6 The cost of such appointment, including counsel and investigative, expert, or other services and  
7 expenses necessary to provide adequate representation, shall be paid from funds appropriated for  
8 indigent defense pursuant to RSA 604-A. Counsel shall petition the court for investigative, expert,  
9 or other services necessary to provide adequate representation. If the court finds that such services  
10 are necessary and that the parent is financially unable to obtain them, the court shall authorize  
11 counsel to obtain the necessary services on behalf of the parent. Services authorized under this  
12 section shall not include the payment of expenses that are the responsibility of any other agency  
13 pursuant to RSA 169-C or this chapter.

14 ***IV. Any person subject to a court order for reimbursement pursuant to this section***  
15 ***may petition the court to vacate such order.***

16 231 Directive; Department of Administrative Services. Upon the effective date of this act, the  
17 commissioner of the department of administrative services shall immediately cease all active  
18 collection efforts related to any money owed under RSA 604-A:9. The commissioner shall wind down  
19 all aspects of the program within a reasonable timeframe, and once the program is ended, the  
20 commissioner shall have all records related to payment of money owed under RSA 604-A:9  
21 destroyed.

22 232 Repeal. The following are repealed:

23 I. RSA 21-I:4, IV, relative to the office of cost containment.

24 II. RSA 21-I:7-b, relative to the unit of cost containment.

25 III. RSA 604-A:2-a, relative to additional inquiry regarding appointed counsel for indigent  
26 criminal defendants.

27 IV. RSA 604-A:2-d, relative to partial liability regarding appointed counsel for indigent  
28 criminal defendants.

29 V. RSA 604-A:2-f, relative to appointment of counsel for nonpayment or nonperformance.

30 VI. RSA 604-A:10, IV, relative to rulemaking authority by the commissioner of  
31 administrative services adopting rules governing determinations of eligibility for payment of  
32 indigent defense expenditures, determinations of repayment schedules, and financial and credit  
33 investigations.

34 VII. RSA 604-A:2, III, relative to commissioner decision on eligibility for counsel.

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AMENDED ANALYSIS

REPLACE:

120. Abolishes the repayment requirement and recoupment procedures for indigent criminal defendants and certain others who are appointed counsel.

UNAPPROVED