

HB 254 - AS AMENDED BY THE HOUSE

24Feb2021... 0140h

6Jan2022... 2162h

2021 SESSION

21-0275

05/04

HOUSE BILL **254**

AN ACT relative to the placement of minors in secure settings.

SPONSORS: Rep. Rice, Hills. 37; Rep. Long, Hills. 10; Rep. Wallner, Merr. 10; Rep. M. Smith, Straf. 6; Sen. Carson, Dist 14; Sen. Hennessey, Dist 1; Sen. Rosenwald, Dist 13

COMMITTEE: Children and Family Law

AMENDED 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.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty One

AN ACT relative to the placement of minors in secure settings.

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

1 1 Statement of Findings. The general court finds that:

2 I. Placement in corrections settings can be harmful to children and lead to increased
3 delinquency and adult criminal behavior. It should therefore be reserved for those circumstances in
4 which the safety of a child or of the community requires such confinement.

5 II. Placement of children who are not serious violent offenders in settings other than the
6 Sununu Youth Services Center (SYSC) complies with The Families First Act, PL 115-123, and the
7 New Hampshire system of care established pursuant to 2019; 44 (SB 14), which prioritize
8 community-based treatment of children.

9 III. This act is in furtherance of these goals.

10 2 Delinquent Children; Release or Detention Pending Adjudicatory Hearing. Amend RSA 169-
11 B:14, I(e)(3) to read as follows:

12 (3) Secure detention shall ~~[not]~~ **only** be ordered:

13 **(A)** For delinquency charges which may ~~[not]~~ form the basis for commitment
14 under RSA 169-B:19, I(j); **or**

15 **(B)** *When a petition does not allege a violation of RSA 262 or RSA 637,*
16 *possession of a controlled drug without intent to sell under RSA 318-B, or any violation of*
17 *RSA 634, RSA 635, RSA 641, or RSA 644, which would be a misdemeanor if committed by an*
18 *adult.*

19 3 Delinquent Children; Release or Detention Pending Adjudicatory Hearing. RSA 169-B:14,
20 I(e)(3) is repealed and reenacted to read as follows:

21 (3) Secure detention shall not be ordered for delinquency charges which may not
22 form the basis for commitment under RSA 169-B:19, I(j).

23 4 Delinquent Children; Dispositional Hearing. Amend RSA 169-B:19, I(j) to read as follows:

24 (j) Commit the minor to the custody of the department of health and human services for
25 the remainder of minority. Commitment under this subparagraph may only be made following
26 written findings of fact by the court, supported by clear and convincing evidence, that commitment is
27 necessary to protect the safety of the minor or of the community, and may only be made if the minor
28 has not waived the right to counsel at any stage of the proceedings. If there is a diagnosis or other
29 evidence that a minor committed under this subparagraph may have a serious emotional
30 disturbance or other behavioral health disorder, the minor shall, with the consent of the minor and

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1 the minor's family, be referred to a care management entity pursuant to RSA 135-F:4, III. The care
2 management entity shall develop and oversee the implementation of a care plan for the minor,
3 intended to reduce the period of commitment. Commitment may not be based on a finding of
4 contempt of court if the minor has waived counsel in the contempt proceeding or at any stage of the
5 proceedings from which the contempt arises. Commitment may include, but is not limited to,
6 placement by the department of health and human services at a facility certified for the commitment
7 of minors pursuant to RSA 169-B:19, VI, administrative release to parole pursuant to RSA 621:19, or
8 administrative release consistent with the cap on youth development center population under RSA
9 621:10, provided that the appropriate juvenile probation and parole officer is notified. Commitment
10 under this subparagraph shall not be ordered as a disposition for ~~[a violation of RSA 262 or 637,~~
11 ~~possession of a controlled drug without intent to sell under RSA 318-B, or violations of RSA 634, 635,~~
12 ~~641, or 644, which would be a misdemeanor if committed by an adult]~~ **any offense other than first**
13 **degree murder, second degree murder, attempted murder, manslaughter, negligent**
14 **homicide under RSA 630:3, II, first degree assault, second degree assault, except when the**
15 **allegation is a violation of RSA 631:2, I(d), felonious sexual assault, aggravated felonious**
16 **sexual assault, kidnapping, criminal restraint, robbery punishable as a class A felony,**
17 **burglary while armed or involving the infliction of bodily harm under RSA 635:1, II, or**
18 **arson punishable as a felony.** ~~[However, commitment may be ordered under this subparagraph~~
19 ~~for any offense which would be a felony or class A misdemeanor if committed by an adult if the~~
20 ~~minor has previously been adjudicated under this chapter for at least 3 offenses which would be~~
21 ~~felonies or class A misdemeanors if committed by an adult. A court shall only commit a minor based~~
22 ~~on previous adjudications if it finds by clear and convincing evidence that each of the prior offenses~~
23 ~~relied upon was not part of a common scheme or factual transaction with any of the other offenses~~
24 ~~relied upon, that the adjudications of all of the prior offenses occurred before the date of the offense~~
25 ~~for which the minor is before the court, and that the minor was represented by counsel at each stage~~
26 ~~of the prior proceedings following arraignment.]~~

27 5 New Subparagraph; Delinquent Children; Dispositional Hearing. Amend RSA 169-B:19, I by
28 inserting after subparagraph (l) the following new subparagraph:

29 (m) Notwithstanding the provisions of RSA 169-B:19, I(j), a court may commit the minor
30 to the custody of the department of health and human services for the remainder of minority if the
31 minor is found delinquent for an offense which would be a felony if committed by an adult and the
32 court finds that there is no placement or set of supervision and treatment services other than secure
33 confinement that will protect the public from a substantial risk of serious bodily injury. A court's
34 finding pursuant to this subparagraph is only sufficient to support secure confinement if it is made
35 by clear and convincing evidence following either a stipulation by the parties or an evidentiary
36 hearing at which the rules of evidence have applied. Further, the court's finding shall include
37 written case-specific findings which identify the evidence relied upon and the basis for the

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determination that secure confinement is necessary. Commitment under this subparagraph may only be made if the minor has not waived the right to counsel at any stage of the proceedings. If there is a diagnosis or other evidence that a minor committed under this subparagraph may have a serious emotional disturbance or other behavioral health disorder, the minor shall, with the consent of the minor and the minor's family, be referred to a care management entity pursuant to RSA 135-F:4, III. The care management entity shall develop and oversee the implementation of a care plan for the minor, intended to reduce the period of commitment. Commitment may include, but is not limited to, placement by the department of health and human services at a facility certified for the commitment of minors pursuant to RSA 169-B:19, VI, administrative release to parole pursuant to RSA 621:19, or administrative release consistent with the cap on youth development center population under RSA 621:10, provided that the appropriate juvenile probation and parole officer is notified.

6 Applicability.

I. RSA 169-B:14, I(e)(3), as amended by sections 2 of this act, shall apply to cases pending on September 1, 2022 in which a dispositional order has not yet been entered.

II. RSA 169-B:14, I(e)(3), as amended by section 3 of this act, shall apply to cases pending on January 1, 2023 in which a dispositional order has not yet been entered.

III. RSA 169-B:19, as amended by sections 4 and 5 of this act, shall apply to cases pending on September 1, 2022 in which a dispositional order has not yet been entered.

7 Effective Date.

I. Section 3 of this act shall take effect January 1, 2023.

II. The remainder of this act shall take effect September 1, 2022.