HB 535-FN - AS AMENDED BY THE HOUSE

3Jan2024... 2356h

2023 SESSION

23-0588
04/05

HOUSE BILL ***535-FN***

AN ACT relative to appointment of counsel for a child who is the subject of a proceeding in a child protection case.

SPONSORS: Rep. Hoell, Merr. 27; Rep. Mazur, Hills. 44

COMMITTEE: Children and Family Law

AMENDED ANALYSIS

This bill provides that the court may appoint counsel for the child in a proceeding under RSA 169-C, the child protection act, and shall appoint counsel for the child in such cases when placement in a group home or child care institution is considered. The bill also adds this requirement to the foster care children's bill of rights.

- -

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

HB 535-FN - AS AMENDED BY THE HOUSE

3Jan2024... 2356h 23-0588
04/05

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Three

AN ACT relative to appointment of counsel for a child who is the subject of a proceeding in a child protection case.

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

1 Child Protection Act; Appointment of Counsel for Child. Amend RSA 169-C:10, II to read as follows:

II.(a) In cases [~~involving a neglected or abused child~~] under this chapter, [~~where the child's expressed interests conflict with the recommendation for dispositional orders of the guardian ad litem,~~] the court may appoint an attorney to represent the ***expressed*** interests of the child. ***If a child's request for appointment of counsel is denied, the court shall state the reason for denial in an order or on the record. The child shall be notified of the court's decision.*** In any case of neglect or abuse brought pursuant to this chapter, the court shall appoint an attorney to represent an indigent parent alleged to have neglected or abused his or her child. In addition, the court may appoint an attorney to represent an indigent parent not alleged to have neglected or abused his or her child if the parent is a household member and such independent legal representation is necessary to protect the parent's interest. The court shall not appoint an attorney to represent any other persons involved in a case brought under this chapter.

(b) ***In cases under this chapter, the court shall appoint an attorney to represent the expressed interests of any child who is placed in a group home or child care institution, as defined in RSA 170-E:25. Except in the case of an emergency, if the department determines that the child's needs indicate such placement should be considered, the department shall notify the court within 2 business days of such determination, and the court shall appoint counsel to represent the expressed interests of the child. Such notification shall occur prior to referral for an independent assessment or submission of child-specific information to such placement. In the case of an emergency necessitating immediate placement of a child in a group home or childcare institution, the department shall notify the court within 2 business days of such placement***.

(c) When an attorney is appointed as counsel for a child, representation may include counsel and investigative, expert and other services, including process to compel the attendance of witnesses, as may be necessary to protect the rights of the child.

(d) An attorney appointed as counsel for the child shall have the right to request to view and copy the child's medical, dental, psychological, psychiatric, educational, and counseling records, including those maintained by any group home or child care institution, as defined in RSA 170-E:25. Such request shall not be denied except

for good cause shown. Records provided to counsel under this subparagraph shall only be used for proceedings under this chapter.

2 New Paragraph; Foster Care Children's Bill of Rights; Right to Request an Attorney in a Child Protection Case. Amend RSA 170-G:21 by inserting after subparagraph XIV the following new subparagraph:

XIV-a. To be informed of the right to request an attorney under RSA 169-C:10, II(a) and of the guaranteed right to an attorney under RSA 169-C:10, II(b). The department shall provide the child with a written statement of these rights and the process by which to request an attorney.

3 Effective Date. This act shall take effect January 1, 2025.

LBA
23-0588
Revised 2/20/24
Amended 2/13/24

HB 535-FN- FISCAL NOTE

AS AMENDED BY THE HOUSE (AMENDMENT #2023-2356h)

AN ACT relative to appointment of counsel for a child who is the subject of a proceeding in a child protection case.

FISCAL IMPACT: [X] 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	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase
Funding Source(s)	General Fund, Federal Funds			
Appropriations	$0	$0	$0	$0
Funding Source(s)	None			

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

METHODOLOGY:

This bill provides that the court may appoint counsel for the child in a proceeding under RSA 169-C, the child protection act, and shall appoint counsel for the child in such cases when placement in a group home or child care institution is considered. The bill also adds this requirement to the foster care children's bill of rights.

The Judicial Council indicates the bill contains two provisions which impact the Judicial Council. The first provision allows for judges to appoint counsel to children at any point in proceedings under 169-C. Second, the bill would mandate appointed counsel when a child is placed out of the home, or where DHHS is considering such placement. The Council assumes that allowing counsel to be appointed by the court at any stage of the proceedings, and for any reason, would increase the number of cases where children are appointed counsel. Mandating counsel for all children placed under 169-C would increase the number of children assigned counsel. This provision would also entitle children currently placed under 169-C to counsel. It is assumed that courts would be responsible for locating and arranging specific counsel to be present at hearings

because the Council lacks the resources to locate and arrange for counsel to be present at court hearings.

The Council states the additional cost of the bill is indeterminable because the cost per case and number of possible cases are unknown. Under current law, there have been few cases where the Judicial Council has reimbursed counsel for cases arising under The Child Protection Act (CPA). Between 11/15/22-11/15/23 the Council appointed counsel to four children for representation in such cases. The average cost to the State for those cases was $1,002. This amount represents nine to eleven hours of work (at $90/hour) plus expenses. This amount likely does not reflect the cost for an attorney under the proposed legislation. Current law only provides for appointed counsel at the dispositional stage of a CPA case. The dispositional hearing can be the final substantive hearing in a CPA case (although there can be review hearings following the dispositional hearing). If counsel is appointed earlier in CPA cases, the attorney would also be present for the preliminary hearing and adjudicatory hearing as well. This would increase the amount of time spent on cases. It is unknown at this point how much time appointed counsel would need to represent children in CPA cases. The current fee cap for representation under these cases under Supreme Court Rule 48 is $2,550 (equivalent to 28.33 hours at $90/hour). An increased number of cases where counsel is appointed would also increase the number cases where children are assigned counsel for review hearings. The maximum reimbursement for a juvenile review hearing is $450.00. Fee caps can be exceeded upon authorization from a court.

The number of children who would be appointed counsel in CPA cases under this bill is unknown at this time. The first part of law is discretionary on the part of the judge, and it is unknown how frequently judges would appoint counsel. Regarding counsel for children placed in residential treatment, according to data received from the Department of Health and Human Services, the number of children placed in residential treatment from 2019 to 2023 has ranged from 300-332 per year. As of January 18, 2024, 184 children have been placed. The Council understands that all children placed under the CPA would become immediately eligible for counsel. The Judicial Council does not have data on the number of cases where DHHS may *consider* placement. The Council is also unable to project how much additional funding would be required for experts, translators, or other services related to representation in these cases. Finally, the Council cannot project whether additional funds would be required for administering payments to attorneys appointed under this legislation. The number of payments for indigent defense has increased recently, as more cases are handled by assigned counsel rather than contract attorneys. This has necessitated more individualized billing. The Council is already seeking to improve and expand its capacity to review and process payments.

The Department of Health and Human Services indicates with parent attorneys representing children, there could be additional legal arguments and issues that the DCYF attorneys will need to address and spend additional time communicating with the child's attorney. The Department states it would need five additional staff attorneys, including one for the North Country, one for the Seacoast region, one for the Western region, and two for the Central and Southern region.

In addition, the Department notes it would need to create a more defined structure to identify the youth that are being considered for placement in a group home or child care institution and communicate this information for the appointment of counsel. The Department assumes 14 additional Child Protective Service Workers (CPSW) will be needed to implement this function. This would allow for one CPSW per District Office, with the exception of Concord, Manchester, and the Southern region which would each receive two.

The Department provided the following costs estimates for the positions described above:

	FY 2025 (1/2 Year)	FY 2026	FY 2027
14 Child Protective Service Worker and 5 Attorney III positions	$678,300	$1,397,760	$1,456,000
Federal Fund Share	$169,575	$349,440	$364,000
General Fund Cost	$508,725	$1,048,320	$1,092,000

Of the amounts above, 25% would be funded with federal funds (Medicaid, Title IV-E, and Title IV-A)

The Judicial Branch states review hearings in RSA 169-C cases are currently only 30 minutes in length. It is difficult to predict the additional time that would be needed to litigate the arguments of the child's attorney. Assuming that this is an additional 30 minutes, it would require approximate 240 hours of judicial time a year. The Branch has estimated the additional annual cost would be about $41,500 based on the cost of a full time judicial officer to cover this hearing time. The Branch indicates there could be additional costs and delays if attorneys are not available to represent the children. Currently, there is a shortage of attorneys accepting appointments for RSA 169-C cases. The bill is silent as to how the judge should proceed if no attorney is available to represent the child. This may also increase the costs of litigation.

AGENCIES CONTACTED:

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