

Amendment to HB 1249

1 Amend the bill by replacing all after the enacting clause with the following:

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3 1 Statement of Findings. The general court hereby finds that:

4 I. The state's removal of a child from the home is one of the most significant actions it ever
5 undertakes. Such interventions are associated with the risk of a number of negative consequences
6 for the child and the public, including:

7 (a) The weakening of protective connections with parents, other family, school, and
8 community.

9 (b) Exiting school before high school graduation.

10 (c) Homelessness.

11 (d) Future delinquency and adult criminal involvement.

12 II. Due process and other constitutional principles, as well as the statutory requirements of
13 the Americans with Disabilities Act and RSA 169-B and 169-D, require that the removal of a child
14 from the home last for no longer than is necessary to accomplish the rehabilitative and public
15 protection purposes of the juvenile justice system.

16 III. Therefore, courts should carefully and frequently monitor whether there is a continued
17 justification for the separation of children from their families and communities. The courts' ability
18 to effectively conduct this monitoring is enhanced by the continuing participation of counsel for
19 children, who can bring relevant information to the court's attention and advocate for children's
20 release to their homes and communities.

21 IV. It is also necessary for the protection of the welfare of children who have been placed
22 outside their homes that any problems with the conditions of their placement or the appropriateness
23 of their treatment be promptly brought to the attention of the courts and other authorities.
24 Continuing legal representation during periods of placement facilitate this important monitoring
25 function.

26 2 New Paragraph; Delinquent Children; Appointment of Counsel. Amend RSA 169-B:12 by
27 inserting after paragraph V the following new paragraph:

28 VI. Whenever a juvenile is detained, committed, or otherwise placed outside his or her
29 home, the court shall appoint counsel if such appointment has not previously been made in the
30 proceedings. Such appointment shall be made at a time sufficiently in advance of the decision to
31 place the juvenile outside the home to allow counsel to provide effective representation on the issue
32 of placement, and such appointment shall continue until the court no longer has jurisdiction over the

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juvenile pursuant to this chapter. The court shall not accept a waiver of counsel when appointment is required by this paragraph.

3 New Section; Delinquent Children; Continuous Legal Representation of Vulnerable Children.
Amend RSA 169-B by inserting after section 12 the following new section:

169-B:12-a Continuous Legal Representation of Vulnerable Children.

I. While a case under this chapter is pending, the department of health and human services shall notify the court whenever it becomes aware that the respondent child:

(a) Is subjected to restraint or seclusion, as defined in RSA 126-U:1, IV and V-a;

(b) Is known or suspected to be the victim of abuse, neglect, or any crime involving actual or threatened physical or psychological injury, or the risk thereof; or

(c) Is no longer in the legal custody of his or her parents.

II. Whenever the court receives a notice pursuant to paragraph I regarding a child who has been placed outside the home, the court shall ensure that the child is continually represented until the court no longer has jurisdiction over the child pursuant to this chapter. When placing a child outside the home, the court shall determine whether it has received a notice pursuant to paragraph I and, in those cases in which it has received such notice, the court shall ensure that the child is continually represented until the court no longer has jurisdiction over the child pursuant to this chapter. The court shall take the same action if it receives information from any credible source that any of the circumstances in paragraph I is present.

4 Children In Need of Services; Appointment and Waiver of Counsel. Amend RSA 169-D:12, II to read as follows:

II. The court may accept a waiver of counsel from a child alleged to be in need of services only when:

(a) The parent, guardian, or custodian did not file the petition;

(b) Both the child and parent, guardian, or custodian agree to waive counsel; ~~and~~

(c) In the court's opinion, the waiver is made competently, voluntarily, and with full understanding of the consequences; **and**

(d) The petition does not allege that the child is in need of services pursuant to RSA 169-D:2, II(d).

III. Whenever the petition alleges that a child is in need of services pursuant to RSA 169-D:2, II(d) and the court places the child outside his or her home, the court shall ensure that the child is continuously represented by counsel until the case is closed pursuant to RSA 169-D:3, III. Appointment of counsel pursuant to this paragraph shall be made at a time sufficiently in advance of the decision to place the child outside the home to allow counsel to provide effective representation on the issue of placement.

5 Children In Need of Services; Appointment Waiver of Counsel. Amend RSA 169-D:12, III to read as follows:

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1 III. Whenever ~~[the petition alleges that a child is in need of services pursuant to RSA 169-~~
2 ~~D:2, II(d) and]~~ the court places the child outside his or her home, the court shall ensure that the
3 child is continuously represented by counsel until the case is closed pursuant to RSA 169-D:3, III.
4 Appointment of counsel pursuant to this paragraph shall be made at a time sufficiently in advance of
5 the decision to place the child outside the home to allow counsel to provide effective representation
6 on the issue of placement.

7 6 New Section; Children in Need of Services; Continuous Legal Representation of Vulnerable
8 Children. Amend RSA 169-D by inserting after section 12 the following new section:

9 169-D:12-a Continuous Legal Representation of Vulnerable Children.

10 I. While a case under this chapter is pending, the department of health and human services
11 shall notify the court whenever it becomes aware that the respondent child:

12 (a) Is subjected to restraint or seclusion, as defined in RSA 126-U:1, IV and V-a;

13 (b) Is known or suspected to be the victim of abuse, neglect, or any crime involving
14 actual or threatened physical or psychological injury, or the risk thereof; or

15 (c) Is no longer in the legal custody of his or her parents.

16 II. Whenever the court receives a notice pursuant to paragraph I regarding a child who has
17 been placed outside the home, the court shall ensure that the child is continually represented until
18 the court no longer has jurisdiction over the child pursuant to this chapter. When placing a child
19 outside the home, the court shall determine whether it has received a notice pursuant to paragraph I
20 and, in those cases in which it has received such notice, the court shall ensure that the child is
21 continually represented until the court no longer has jurisdiction over the child pursuant to this
22 chapter. The court shall take the same action if it receives information from any credible source that
23 any of the circumstances in paragraph I is present.

24 7 Repeal. The following are repealed:

25 I. RSA 169-B:12-a, relative to representation of vulnerable children in delinquency
26 proceedings.

27 II. RSA 169-D:12-a, relative to representation of vulnerable children in CHINS proceedings.

28 8 Effective Date.

29 I. Sections 2, 5, and 7 of this act shall take effect July 1, 2021.

30 II. The remainder of this act shall take effect July 1, 2020.

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2020-0655h

AMENDED ANALYSIS

This bill provides for the appointment of counsel for children in out-of-home placements under RSA 169-B and RSA 169-D.