

HOUSE RECORD

Second Year of the 162nd General Court Calendar and Journal of the 2012 Session

Vol. 34 Concord, N.H.

Tuesday, March 20, 2012

No. 22A

Contains: Additional Committee Reports and Amendments.

ADDENDUM TO HOUSE CALENDAR NO. 22

PROPOSED AMENDMENT TO HOUSE RULES

PROPOSED BY THE COMMITTEE ON RULES

Insert After House Rule 65 the following:

66. No subpoena shall issue except by majority vote of the Committee on Rules and upon the signature of the Speaker. The Committee on Rules shall determine the form of subpoenas and subpoenas *duces tecum* and specify conditions if any with regard to the issuance and use of such subpoenas.

Any Committee that has voted to seek the issuance of a subpoena or a subpoena *duces tecum* shall, through its Chairman, make a written request to the Committee on Rules. The request shall identify with particularity the witness or witnesses the requesting Committee seeks to subpoena or, in the case of a subpoena *duces tecum*, the information and materials the requesting Committee seeks to obtain. The request shall provide a sufficient explanation for the Committee on Rules to understand the purpose for which the witness or information is sought and why it is necessary to subpoena the witness or information and materials.

The Committee on Rules shall consider the request at its next meeting. The Committee on Rules may grant the request in whole or in part, or may deny the request.

The Speaker shall be authorized to take such action as may be necessary and proper to enforce any subpoena or subpoena *duces tecum*.

WEDNESDAY, MARCH 21

ADDITIONAL COMMITTEE REPORTS

CRIMINAL JUSTICE AND PUBLIC SAFETY

SPECIAL ORDER

HB 1537-FN, relative to violations of privacy occurring outside a private place. **OUGHT TO PASS.** Rep. David A Welch for Criminal Justice and Public Safety: This bill was amended by the House on recommendation of the Constitutional Review and Statutory Recodification Committee (RSA 644:9, I(c)). The existing amendment for this section is currently a Class A misdemeanor. We are only authorized to change or confirm the penalty. The committee voted to confirm the existing penalty. **Vote 15-1.**

EDUCATION

SPECIAL ORDER

CACR 8, relating to education. Providing that the legislature shall have the power to authorize schools. **MAJORITY: OUGHT TO PASS. MINORITY: INEXPEDIENT TO LEGISLATE.** Rep. Michael A Balboni for the **Majority** of Education: CACR 8 restores the people's right to local control of education and the authority of the Legislature in education and education funding. In 1968, NH ballots included Question No. 3, a proposed Constitutional amendment which read: "Are you in favor of amending Article 6 of Part I of the Constitution so as to strike out certain specific sectarian references ...". The ballot question included this summary of the original Article 6: "Article

6 authorizes local public taxation for the support of ‘Protestant’ clergymen only, and promises equal protection of the law solely to ‘every denomination of Christians.’” The ballot question provided voters with the following explanation of the effect of the proposed amendment: “If the amendment is adopted, ... the above-described sectarian references will be stricken from the state constitution, putting all religious denominations on a basis of equality and removing the present conflict with the U.S. Constitution.” Though the voters were told that only the sectarian references were to be removed, the actual amendment changes went far beyond this. The amendment also removed and altered several non-religious phrases in the Article, and these changes were not explained to the voters. CACR 8 would give the people the opportunity to restore to their Constitution the non-religious aspects that were removed in 1968. These restorations include the following: the purpose of education as being to teach the fundamental principles of the Constitution so that the people are better able to control their government; empowering the legislature to authorize schools, to create and regulate public schools; providing school districts the exclusive control over the selection of their teachers and their compensation; the school districts control over curriculum which is inherent in the original Article’s exclusive control over the selection of teachers; and each school district’s responsibility as the first payers of education expense consistent with the exclusive control over teacher selection and compensation and curriculum selection. CACR 8 then proposes two further changes: it ratifies judicial rulings which enable the state to pay for non-religious education at religious schools; and it clarifies the legislature’s power to supplement local funding of public education. The first change makes clearly and permanently constitutional the state’s current practices such as funding the non-religious education component for special needs students as required, for example, under federal special ed regulations, and the giving of scholarships to nursing students for the non-religious part of their education at religious schools. The second part ensures that the state funding of education will be consistent with the coordinating Articles of the Constitution of New Hampshire, specifically Part I, Articles 12, 28 and 29 and Part II, Articles 2 and 5 which make the legislature the supreme policy body of the state, and the only body capable of determining state spending. CACR 8 can be summed up as restoring the local control of education and the authority of the legislature in regard to education and education funding; thereby returning the people firmly in control of public education. **Vote 12-5.**

Rep. June M Frazer for the **Minority** of Education: This constitutional amendment opens the door to local funding of schools without any supplement from the state. Note the word “may” in the following sentence: “The several political subdivisions ... shall make adequate provision at their own expense for their schools, provided that the legislature may supplement that provision in the manner and degree that the legislature finds most beneficial to the general good.” Should a future legislature choose to unfund the public schools, funding them would force already overburdened property taxpayers to pay markedly higher taxes to maintain the quality of their schools. Moreover, CACR 8, in this same language, has already been rejected by the House. The reason why it was recommitted to the education committee was to hold it in case other related bills did not materialize. Since CACR 12 is still in process, passing CACR 8, already rejected once, would be in opposition to the reason it was recommitted.

HEALTH, HUMAN SERVICES AND ELDERLY AFFAIRS

CORRECTED COMMITTEE REPORT

HB 1642-FN, relative to destination cancer hospitals. **MAJORITY: OUGHT TO PASS WITH AMENDMENT. MINORITY: INEXPEDIENT TO LEGISLATE.**

Rep. John M Reagan for the **Majority** of Health, Human Services and Elderly Affairs: The only successful strategy for reducing health care costs is the timely resolution of the disease or injury. Destination hospitals are successful because their specialization sees better outcomes for the patients and lower costs for the payers. Many destination specialty providers are located outside of the United States attracting American patients. The New Hampshire health delivery paradox is how can we be the healthiest state in the union but have the highest per capital health care costs? The reason is obvious. We are paying the hospitals and doctors too much for too many procedures and not enough health problem resolution. We are paying too much to those who deliver our New Hampshire health care and have no basis for comparing the health providers success. The solution to the high price conundrum is competition between providers. Competition often brings a better outcome faster and competition always lowers the price when we allow it. We should have specialty hospitals operating their businesses in New Hampshire and advance the transparency allowing the consumer to choose his or her own best outcome. We will allow New Hampshire to enjoy the good

jobs, valuable service and tax payments from new providers like all successful business provide. The amendment resolved the contentious requirement to exempt a hospital from paying the undesirable but necessary MET, Medicaid Enhancement Tax. **Vote 10-8.**

Rep. Donald L LeBrun for the **Minority** of Health, Human Services and Elderly Affairs: HB 1642 in its amended form allows small specialty hospitals to come into New Hampshire without going through the Certificate of Need process (CON). The CON requires health care facilities to submit an application for review and approval before expanding or building and prior to the purchase of expensive medical technology. The goal of the CON is to contain health care costs by assuring unnecessary duplication of services and promoting rational allocation of health care resources. In addition the CON stimulates collaboration among providers to manage health care costs. Exempting specialty hospitals from the CON process gives them an unfair competitive advantage over existing health care facilities in NH. Furthermore, specialty hospitals will not take Medicaid patients which will leave our community hospitals with the Medicaid patients and patients who have no insurance. This is called “cherry picking.” As a result, the cost of care will be shifted to private insurance companies who will then have to increase their premiums which will then put a significant burden on those that must pay the costs for health insurance- New Hampshire businesses. This is the reason that the BIA opposes HB 1642. Experts testified before the committee that increasing availability of health care services increases utilization of services and therefore increases health care costs. “If you build it, they will come.” Any new capacity in the form of a new hospital or technology will be utilized whether or not there is a documented need for these services. This only stands to reason as the new service or equipment must be paid for. The only way you can pay for the equipment is to use it. The CON process provides for a rational review as to the need for these services in a community and the impact the service will have on the health care delivery and health care costs. The minority supports specialty hospitals coming to New Hampshire but opposes HB 1642 because it creates an uneven playing field for our local community hospitals.

PUBLIC WORKS AND HIGHWAYS

SPECIAL ORDER

HB 1437, relative to display of certain historical items in the state house. **INEXPEDIENT TO LEGISLATE.**

Rep. David B Campbell for Public Works and Highways: A subcommittee was formed and extensively researched the history and current status of these treasures, which belong to past, present and future generations of New Hampshire citizens. In 1978, during a renovation of the secretary of state’s vault, secretary of state Bill Gardner discovered a tube containing an engraved 1823 copy made from the original Declaration of Independence, which was sent to New Hampshire by President John Quincy Adams and one of 15 “original” hand copies of the United States Bill of Rights, which was sent to the 15 states in existence in 1793. (The Bill of Rights was adopted in 1791). The latter vellum document (one of 12 known to still exist) was appraised by experts as literally “priceless,” and to be in better condition than the original in the national archives. The documents were displayed in the State House visitors center for nearly twenty years. In 1996, because of extensive fading, they were moved by the state archivist and the director of the visitors center to the state archives building, where both documents now reside. The committee is unanimous in its recommendation that these documents remain in the archives at present. In 2006, under a Republican controlled legislature, and again in 2007 under a Democratic legislature, the joint facilities committee fully vetted the issues of when, where and how these valuable documents be displayed. Both times the consensus was to keep the documents at the archive building. Under RSA 5:4-a, the secretary of state is responsible for the care of these documents and has the discretion of when to display them; taking into account their security and protection from theft, damage or destruction. The secretary of state also believes that the Archives building is the best home for these documents presently and the committee concurs. The committee does unanimously recommend, after consultations with the secretary of state, that the joint facilities committee make new digital high resolution copies of these documents and put them on display in the State House visitor’s center. This can be accomplished for a few hundred dollars, without legislation, and within the current budget of the joint facilities committee. **Vote 15-0.**

ADDITIONAL AMENDMENTS

(LISTED IN NUMERICAL ORDER)

**Floor Amendment to HB 437-FN
(2012-1288h)**

Proposed by Rep. Bates

Amend the title of the bill by replacing it with the following:

AN ACT relative to civil unions and the definition of marriage.

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

1 New Chapter; Civil Unions. Amend RSA by inserting after chapter 457-A the following new chapter:

**CHAPTER 457-B
CIVIL UNIONS**

457-B:1 State Recognition of Civil Unions; Purpose. The state of New Hampshire recognizes the civil union between one man and another man or one woman and another woman. The purpose of this chapter is to delineate the rights, obligations, and responsibilities of parties entering a civil union, to establish a process by which the civil union is established, and to provide a process for the dissolution of a civil union.

457-B:2 Requisites. Parties entering into a civil union shall be subject to the same requirements and conditions as contained in RSA 457, provided that civil unions shall only be allowed between one unmarried man and another unmarried man both of whom are at least 18 years of age or one unmarried woman and another unmarried woman both of whom are at least 18 years of age, subject to the prohibitions in RSA 457-B:3 and RSA 457-B:4 and provided that they are not in another civil union.

457-B:3 Civil Unions Prohibited; Men. No man shall enter into a civil union with his father, his grandfather, his father's brother, his mother's brother, his son, his brother, his son's son, his daughter's son, his brother's son, his sister's son, his father's brother's son, his mother's brother's son, his father's sister's son, or his mother's sister's son.

457-B:4 Civil Unions Prohibited; Women. No woman shall enter into a civil union with her mother, her grandmother, her father's sister, her mother's sister, her daughter, her sister, her son's daughter, her daughter's daughter, her brother's daughter, her sister's daughter, her father's brother's daughter, her mother's brother's daughter, her father's sister's daughter, or her mother's sister's daughter.

457-B:5 Forms, Documents, and Applications; How Performed. The secretary of state shall develop forms, documents, and applications for entering into a civil union, which shall conform to this chapter. Civil unions shall be performed pursuant to the provisions of RSA 457:31 and entered into pursuant to the analogous provisions of RSA 5-C:41-61. Nothing in this chapter shall be construed to require a minister or clergyman or clergywoman to solemnize or perform a civil union.

457-B:6 Rights, Obligations, and Responsibilities. Notwithstanding any other law to the contrary, the parties who enter into a civil union pursuant to this chapter shall be entitled to all the rights and subject to all the obligations and responsibilities provided for in state law that apply to parties who are joined together pursuant to RSA 457.

457-B:7 Dissolution. Parties who have entered into a civil union who wish to dissolve the civil union shall do so pursuant to RSA 458.

457-B:8 Other Jurisdictions. A civil union or a marriage between a man and another man or a woman and another woman legally contracted outside of New Hampshire shall be recognized as a civil union in this state, provided that the relationship does not violate the prohibitions of this chapter.

2 Marriage; Purpose and Intent. RSA 457:1 is repealed and reenacted to read as follows:

457:1 Purpose and Intent. The legislature finds and declares that:

I. The state has a compelling interest in recognizing and maintaining the distinctiveness of a marital union between opposite-sex couples due to its unique procreative potential.

II. Every child has a natural human right to love, support, and nurturing by his or her natural mother and father, whenever possible. Marriage is the primary social institution that promotes this ideal and encourages its achievement.

III. Only the union of one man and one woman shall be recognized as marriage in New Hampshire; except however, any marriage recognized as valid in the state prior to the effective date of this section shall continue to be recognized as valid on or after the effective date of this section.

3 Marriageable. Amend RSA 457:4 to read as follows:

457:4 Marriageable. No male below the age of 14 years and no female below the age of 13 years shall be capable of contracting a valid marriage ~~[that is entered into by one male and one female],~~

and all marriages contracted by such persons shall be null and void. ~~[No male below the age of 18 and no female below the age of 18 shall be capable of contracting a valid marriage between persons of the same gender, and all marriages contracted by such persons shall be null and void.]~~

4 Repeal. The following are repealed:

- I. RSA 457:1-a, relative to equal access to marriage
- II. RSA 457:31-b, relative to solemnization of marriage; applicability.
- III. RSA 457:45, relative to civil union recognition.
- IV. RSA 457:46, relative to obtaining legal status of marriage.

5 Severability. The provisions of this act are severable. If any provision of this act is invalid, or if any application thereof to any person or circumstance is invalid, the invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

6 Ballot Question. There shall be placed on the ballot at the next statewide election a question to determine voter support for civil unions and defining marriage as the union of one man and one woman. The question on the ballot shall be: "Shall New Hampshire law allow civil unions for same-sex couples and define marriage as the union of one man and one woman?" The question shall be followed by 2 squares, one with the word "yes" beside it and another with the word "no" beside it. If no cross or mark is made in either of the squares, or if a mark is made in both of the squares, then the ballot shall not be counted on the question. The secretary of state shall certify the results to the legislature, and the results shall not be binding.

7 Effective Date.

- I. Sections 1-4 of this act shall take effect March 31, 2013.
- II. The remainder of this act shall take effect upon its passage.

AMENDED ANALYSIS

This bill establishes civil unions, defines marriage as the union of one man and one woman, and submits a question about the legislation to the voters at the next general election.

Floor Amendment to HB 1389

(2012-1305h)

Proposed by Reps. Bettencourt, Major and Balboni

Amend the bill by replacing all after section 1 with the following:

2 Pre-Engineering Technology Curriculum. Amend RSA 188-E:14, I to read as follows:

I. The department of education shall facilitate the development and implementation of a pre-engineering technology curriculum in the public schools for students in grades 6 through 12 who are interested in careers in engineering~~[.]~~ or allied engineering fields, **and shall encourage school districts to implement age-appropriate instruction and projects involving science, technology, engineering, and mathematics for students in kindergarten through grade 5.**

3 Pre-Engineering Technology Advisory Council. Amend RSA 188-E:15 to read as follows:

188-E:15 Pre-Engineering Technology Advisory Council. There is established a pre-engineering technology advisory council to advise the department of education in the implementation, evaluation, and expansion of the pre-engineering technology curriculum, to assist the department of education in pursuing public and private funds in order to ensure statewide access to pre-engineering technology curriculum coursework for public school students in ~~[grades 6]~~ **kindergarten** through **grade 12**.

4 Effective Date. This act shall take effect 60 days after its passage.

Floor Amendment to HB 1537-FN

(2012-1295h)

Proposed by Rep. Gandia

Amend the title of the bill by replacing it with the following:

AN ACT relative to violations of privacy occurring outside a private place and relative to minors sending or receiving sexually explicit images by using a cell phone or other mobile device.

Amend the bill by replacing all after section 1 with the following:

2 Delinquent Children; Definitions. Amend RSA 169-B:2, IV to read as follows:

IV. "Delinquent" means a person who has committed an offense before reaching the age of 17 years which would be a felony or misdemeanor under the criminal code of this state if committed by an adult, **or who has violated the provisions of RSA 169-B:48**, and is expressly found to be in need of counseling, supervision, treatment, or rehabilitation as a consequence thereof.

3 New Subdivision; Delinquent Children; Sexting. Amend RSA 169-B by inserting after section 47 the following new subdivision:

Sexting

169-B:48 Sexting.

I. In this subdivision:

(a) "Minor" means a person under the age of 17.

(b) "Telecommunication device" means a device which possesses data, telephonic, video, or sound transmission capabilities apart from any system to which such device may be connected for the sending or receiving of voice, sound, data, or video transmissions.

(c) "Transmit" means to send, distribute, transfer, or disseminate by use of a computer or telecommunication device.

(d) "Indecent visual depiction" means any digital image of a person engaged in sexually explicit conduct, and includes data stored on any telecommunication device, computer or other electronic storage media which is capable of conversion into a visual image.

(e) "Sexually explicit conduct" means actual masturbation or graphic focus on or exhibition of the nude genitals or pubic area of the minor or the nude breasts of the minor, if the minor is female.

II.(a) No minor shall knowingly and voluntarily use a computer or telecommunication device to transmit an indecent visual depiction of himself or herself to another person.

(b) No minor shall knowingly possess an indecent visual depiction of a minor that was transmitted in violation of subparagraph (a) by another minor.

III. Paragraph II shall not apply to a minor if all of the following conditions apply:

(a) The minor did not solicit the indecent visual depiction;

(b) The minor took reasonable steps to report the indecent visual depiction to the school principal or his or her designee, or a law enforcement officer; and

(c) The minor who received the indecent visual depiction did not transmit it to another person.

IV. A minor who violates the provisions of paragraph II shall be subject to the provisions of this chapter.

4 Effective Date.

I. Section 1 of this act shall take effect January 1, 2013.

II. The remainder of this act shall take effect 60 days after its passage.

AMENDED ANALYSIS

This bill amends the statute governing violations of privacy occurring outside a private place.

The bill also provides that a minor who uses a cell phone to transmit or receive sexually explicit images shall be subject to juvenile delinquency proceedings.