

Date: 29 May 1979

The Senate Committee on Public Inst/Health & Welfare
held its hearing in Room 103 , LOB, Concord, N.H.

Bill No. HB 831 Title: Concerning delinquency, child protection and children in
need of services

Members of committee present:

see attached notes

Those appearing in favor:

Name and Address

Representing

Those appearing in opposition:

Name and Address

Representing

Report:

Ought to Pass XXX Inexpedient to Legislate _____
Ought to Pass with Amendment _____

HB 831
1979

ANALYSIS OF CHANGES

<u>Section</u>	<u>Change</u>
I. Delinquency	
1. Purpose	No changes except the insertion of "minor" for "child."
2. Definitions	
"minor"	Added minor.
"court"	Modified court to mean district courts only.
"delinquent"	Eliminated "violation of probation" as a delinquent offense (this removes a "chins" probation violation as a delinquent offense).
	Changed the order of the sections to provide greater clarity and to more closely follow the chronological sequence of events in the majority of cases.
3. Jurisdiction (S. 29)	Eliminated municipal court from juvenile jurisdiction.
4. Jurisdiction over certain people	Changed wording to provide jurisdiction for one additional year if petition is filed after 18th birthday (present wording sets no limitation on time for petition filing automatically extending jurisdiction to 19).
5. Venue	
I. (3)	Language taken from old 3.
II. (3)	Expands transfer authority to the court and parties and adds the requirement of notice to the recipient court.

- III. (New) Provides for transfer of jurisdiction when probationer moves.
- 6. Petition
 - I. (3) Eliminates reference to "reputable" person and changes "verified by affidavit" to "verified under oath" - a more realistic and specific standard.
 - II. (New) Specificity of petition required by Gault.
- 7. Issuance of Summons and Notice
 - I. (4) Changed section to read "summons and notice" (current section confuses summons and notice); require "legally sufficient" petition before summons is issued; established 7 day summons limits.
 - II. (New) Required that petition is attached ("due process right" addressed).
 - III. (New) Requires provision of counsel notice (not done at present).
- 8. Failure to appear - Warrant
 - I. (5) Same as existing section
 - II. (6) Expands upon present warrant section to include the issuance of a warrant for the minor.
- 9. Arrest (6) Same as present section (6). Reference to morals removed.
- 10. Release without court referral (new) Adds capability of disposition without court referral.
Adds authority for diversion program use.
Requires officer's written report if court referral is not made.

11. Release Prior to Arraignment (New)
 - Authorized release prior to arraignment by police.
 - Requires court review beyond 4 hours.
 - Establishes a hierarchy of custody provisions pending arraignment, from the least to most restrictive.
 - Requires use of detention criteria for a detention order to be issued.
12. Appointment of Counsel/Waiver of Counsel (New)
 - I. Requires appointment of counsel 1) absent a waiver and 2) for all detained minors.
 - II. Establishes criteria which must be used to allow waiver of counsel.
13. Arraignment (New)
 - I. Establishes requirement for arraignment, time standards and sequence of events.
 - II. Provides the court with authority to dispose of a case with a diversion placement.
14. Release pending Adjudicatory Hearing (New)
 - I. Statement of alternative release status set forth. Establishes prosecutorial burden to make detention request (probable cause; clear and convincing evidence for detention order).
 - Establishes criteria for making detention order.
 - II. Sets time limits for adjudicatory hearing.
 - III. Requires written findings for all release or detention orders.

- 15. No Detention in Jail (8) Change "menace" which was hard to define to bodily harm; and limit confinement in adult facilities to those which do not constitute "solitary confinement" when separated.
- 16. Adjudicatory Hearing (New)
 - I. (20) First sentence from S. 20 of present code.
 - II. (New) Limited description of due process rights afforded minor charged with delinquency, (any notice and remain silent are omitted).
 - III. (9) Makes completion of an investigation report mandatory by the court (present statute is mandatory); investigatory report initiated upon finding of delinquency.
 - IV. (New) Requires the investigation report to be shared with parties.
 - V. (9) Time schedule established for the dispositional hearing.
- 17. Burden of Proof (New) Petitioner must prove case "beyond a reasonable doubt."
- 18. Custody pending final disposition (new) Same as S. 19.
- 19. Dispositional Hearings (14)
 - I. Establishes emphasis on the least restrictive alternative; adds ability to fine up to \$250; includes family in treatment plan (at courts discretion).

II. Interstate Compact on Placement of Children

III. Limits present court authority by eliminating state prison committal and requires separation per S. 13.

IV. Requires investigation report to accompany all committals.

V. Requires written findings for all dispositional orders.

20. Determination of competence 9(a) Same as present section 9(a).

21. Mental Health Evaluation 17(a) Modifies the existing statute to provide for evaluations of the minor and parents, guardian or custodian, notice and the right to object are included as in S.20.

22. Disposition of a Mentally Ill or Mentally Retarded Minor New: Replaces RSA 169:18, divests the district court of commitment power, prescribes the proceedings for civil commitment and transfers jurisdiction to the probate court.

23. Orders for Physical Examination and Treatment Same as 169-17-a.

24. Transfer to Superior Court Replaces 169:21 and sets forth criteria to be considered in certifications to Superior Court, provides minor is entitled to counsel and that once certified the minor may not be committed to YDC pending adjudication by Superior Court.

25. Petition by County Attorney Same as 169:21-a.

26. Petition by Minor Rewording of RSA 169:21-b.

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| 27. Treatment of Juvenile as Adult | Same as 169:21-c. |
| 28. Disqualification of Judge | Same as 169:21-d. |
| 29. Appeals | New: Replaces RSA 169:24. An appeal may be perfected by the minor within 30 days only from a final dispositional order and shall be heard de novo by the Superior Court. |
| 30. Committal of Children Under Eleven. | Same as 169:31. |
| 31. Review of Disposition Required | Same as 169:31-a. |
| 32. Limitations of Authority | Same as 169:30 II. |
| 33. Religious Preference | Same as 169:19. |
| 34. Court Sessions | Incorporates 169:20 but specifies parties who may be present. |
| 35. Juvenile Records | Incorporates 169:22 but adds destruction of records once delinquent reaches 19 years of age. |
| 36. Penalty for Disclosure of Juvenile Records | New: Provides that any institutional officer or employee who permits publication of juvenile records shall be in contempt of court. |
| 37. Publication of Delinquency Restricted | Same as 169:27. |
| 38. Penalty for Forbidden Publication | Same as 169:28. |
| 39. Reports to Board of Probation | Same as 169:16. |
| 40. Liability of Expenses and Hearing on Liability | |
| I. | Repeals RSA 169:31-b. Provides that the town where the minor resides or the town where the minor is taken into custody, is liable |

in the first instance for any expenses incurred pursuant to court order. Either town has a right of recovery for such expenses against the person chargeable by law for the minor's support and necessities.

II.

New: The legally liable unit i.e. the town shall receive notice of liability and may request a hearing on the issue of liability within 30 days of a determination of liability.

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| 41. Intentional Contribution to Delinquency | Same as 169:32. |
| 42. Procedure | Same as 169:33. |
| 43. Court Orders | Same as 169:34. |
| 44. Civil Action for Compensation | Same as 169:36. |
| 45. Severability | New: Standard section that prevents the entire chapter from being declared void should any individual section of it or application thereof be deemed illegal or unconstitutional. |

Chapter 169-D
Children In Need of Service

RSA 169-D:1 Applicability of Chapter; Purpose

Subsections I through III are new and provide for behavior recognition, parental responsibility and preserving the integrity of the family unit.

Subsections IV and V are essentially restatements of the present provisions of RSA 169:1 (I) and (IV) respectively.

RSA 169-D:2 Definitions

- I. Child - present jurisdictional definition contained in RSA Chapter 169.
- II. Services - New: Paraphrase of present provision of RSA 169:1
- III. Court - eliminates jurisdiction of municipal courts
- IV. Children in need of services - new term but essentially the same definition of PINS contained in RSA 169:2 (VI). Only the runaway provision of IV(b) and the service provision of IV(d) are new.
- V. Shelter Care - same definition contained in RSA 169:2 VIII.
- VI. Probation - essentially the same definition contained in RSA 169:2 VII.

RSA 169-D:3 Jurisdiction - replaces provision of RSA 169:29 and provides that the district court shall have exclusive and original jurisdiction over CHINS.

RSA 169-D:4 Venue:

- Sec. I Venue - incorporates present language of RSA 169:3
- Sec. II Change of Venue - Changes present language of RSA 169:3 and permits change of venue on motion of court or any party, not just a probation officer upon notice and acceptance by foreign court.
- Sec. III Probation Transfer - New:
Jurisdiction over a child on probation may be transferred if in the best interest of the minor

RSA 169-D:5 Petition

- Sec. I Essentially the same language contained presently in RSA 169:3 with the exception of the substitution of "any person" for "any reputable person" and "judicial district" for "any district or municipal court."

- Sec. II New: Contents necessary for a legally sufficient petition.
- RSA 169-D:6 Issuance of Summons and Notice
 - Sec. I Summons - Reiterates the present language of RSA 169:4 Summons, with the exception that the initial appearance must be held within 7 days of the return of service.
 - Sec. II New: Petition to be attached or incorporated in summons.
 - Sec. III New: The summons shall contain notice of the Child's right to counsel and procedures for obtaining same.
- RSA 169-D:7 Failure to appear - warrant
 - Sec. I Incorporates present language of RSA 169:5
 - Sec. II Identical to language of first sentence of RSA 169:6, warrant.
- RSA 169-D:8 Temporary Custody
 - Sec. I New but follows prescription presently found in RSA 169:30 (I).
 - Sec. II Reiteration of second sentence contained in RSA 169:6.
- RSA 169-D:9 Release without court referral
 - New: A police or probation officer who takes a child into temporary custody may release the child without court disposition provided a report in writing is made of the incident to his department.
- RSA 169-D:10 Release prior to Initial Appearance
 - Sec. I New: Prescribes to whom a child taken into temporary custody is released by a police or probation officer
 - Sec. II New: Directs to whom the court shall release a child pending the initial appearance. Basis for this disposition is contained presently in RSA 169:7 (II) Custody.
- RSA 169-D:11 Initial Appearance
 - Sec. I New: Prescribes the time frame within which an initial appearance must be held.
 - Sec. II New: Delineates due process rights that must be afforded the child.
 - Sec. III New: After initial appearance, court may dispose of petition with consent of the child by ordering the child to a court approved diversion program.

- RSA 169-D:12 Appointment of Counsel/Waiver of Counsel
- Sec. I New: Court appointed counsel at initial appearance
 - Sec. II New: Voluntary Waiver of Counsel.
- RSA 169-D:13 Release Pending Adjudicatory Hearing
- Sec. I New: Generally incorporates the language presently contained in RSA 169:7 (II)
 - Sec. II New: Time limit within which an adjudicatory hearing must be scheduled
 - Sec. III New: All orders for release shall be in writing and state findings of fact for same.
- RSA 169-D:14 Adjudicatory Hearing
- Sec. I Restates first sentence of RSA 169:20 Court Sessions
 - Sec. II States due process rights of the child
 - Sec. III Compilation of present language found in RSA 169:9, 169:17-a and 169:9-a.
 - Sec. IV New: Provides to whom investigation report shall be made available and when it may be used by the court.
 - Sec. V New: Time frame within which the dispositional hearing must be scheduled.
- RSA 169-D:15 Burden of Proof
- New: Beyond a reasonable doubt which the most rigorous standard of proof.
- RSA 169-D:16 Release pending trial Disposition
- New: Again utilizes language of RSA 169:7 (II)
- RSA 169-D:17 Dispositional Hearing
- Sec. I New: Adopts dispositional alternatives contained in RSA 169:7 (II) and RSA 169:13-a(I) and (III) subject to specific court ordered conditions.
 - Sec. II Incorporates placement provisions of RSA 170-A and 170-E
 - Sec. III New: Reiteration of present provisions contained in RSA 169:17(a) Orders for Physical and Mental Treatment and RSA 169:9-a Mental Health Evaluation.
 - Sec. IV New: Dispositional Orders shall include written findings of fact which form the basis of the order.

- RSA 169-D:18 Disposition of a mentally ill or mentally retarded child
New: Replaces RSA 169:18, divests the district court of commitment power, prescribes the proceedings for civil commitment and transfers jurisdiction to the probate court.
- RSA 169-D:19 Modification of Dispositional Orders.

New: Dispositional orders may be modified upon proof of changed circumstances.
- RSA 169-D:20 Appeals
New: Replaces RSA 169:24. An appeal may be perfected within thirty days only from a final dispositional order and shall be heard de novo by the superior court.
- RSA 169-D:21 Review of disposition required. Incorporates present language of RSA 169:31-a.
- RSA 169-B:22 Limitations of authority conferred. Adopts present language of RSA 169:30 (II)
- RSA 169-D:23 Religious Preference. Identical to present language contained in RSA 169:19.
- RSA 169-D:24 Court Sessions. First sentence is identical to that contained in RSA 169:20. Second sentence defines the parties who may be admitted to court hearings and is more specific than language presently in RSA 169:20.
- RSA 169-D:25 Records. Replaces RSA 169:22 and specifically delineates, parties entitled to access of a child's records. Contains a new provision of destruction of court and police records when child attains the age of eighteen.
- RSA 169-D:26 Penalty for disclosure of Records.
New: Any person who permits unauthorized access or publishes information in a child's records shall be in contempt of court.
- RSA 169-D:27 Publication restricted. Incorporates language of the first sentence of RSA 169:27.
- RSA 169-D:28 Penalty for forbidden publication. Incorporates language of RSA 169:28, adding the words "agent or employee".
- RSA 169-D:29 Liability of Expenses and Hearing a Liability.
- Sec. I Liability of Expenses repeals RSA 169:31-b. Provides that the town where the child resides or the town where the child is taken into custody is liable in the first instance for any expenses incurred in the maintenance of a child pursuant to court order. Either town has a right of recovery for such expenses against the person chargeable by law for the child's support and necessities.

Sec. II Hearing on Liability.

New: The legally liable unit, i.e., the town shall receive notice of liability and may request a hearing on the issue of liability within 30 days of a determination of liability.

RSA 169-D:30

Severability. Standard provision that prevents entire chapter from being declared void should any applicable section of the chapter be found unconstitutional.

Chapter 169-C
Child Protection Act of 1979

RSA 169-C:1	Short Title
RSA 169-C:2	New: Source: H.E.W. Model Child Protection Act. Purpose.
Section I	New: Combines mandatory reporting of child abuse and neglect pursuant to RSA 169:37 with overall purpose of the statute, that is, preservation of the family unit.
Section II	Subsection (a) (b) and (c) are taken verbatim from RSA 169:1(I), (III) and (IV).
RSA 169-C:3	Definitions.
I. Abandoned	New: Paraphrase of meaning of the term contained in RSA 170-C: Termination of Parental Rights.
II. Abused Child	Present definition contained in RSA 169:38 with the exception of subsection (b). Subsection (b) is new.
III. Adjudicatory Hearing	New: Hearing on the merits of a petition alleging abuse or neglect.
IV. Bureau	Same definition found in RSA 169:38(II).
V. Child	Present jurisdictional definition contained in RSA 170-C:2(II) and RSA 170-E:1(I).
VI. Child care agency	Adopts meaning of the term contained in RSA 170-E:1(X).
VII. Child placing agency	Specification of predominant agencies providing child care services within the definition of the term found in RSA 170-E:1(XI).

VIII. Consent order	New: Provides an alternative to formal adjudication and disposition.
IX. Court	Means district court and eliminates jurisdiction of municipal courts.
X. Custodian	
XI. Dispositional Hearing	
XII. Division	Present definition found in RSA 170-B:2(V).
XIII. Foster Home	Adaptation of present definition contained in RSA 170-E:3.
XIV. Guardian	Adaptation of present definition contained in RSA 170-C:2(V).
XV. Imminent Danger	New: Standard for taking child into protective custody.
XVI. Institutional Abuse and Neglect	New: Source: H.E.W. Model Child Protection Act.
XVII. Legal Custody	Paraphrase of present definition found in RSA 170-C:2(IV) Termination of Parental Rights.
XVIII. Legal Supervision	New: Status short of change in legal custody. Alternative preliminary disposition.
XIX. Neglected	Present definition contained in RSA 169:2(V) with the exception that subsection (d) has been deleted.
XX. Notice	New: Prescribes the manner and to whom notice of a hearing shall be given.
XXI. Parent	Identical definition contained in RSA 170-B:2(II), the adoption statute.
XXII. A person responsible for a child's welfare	

XXIII. Probable Cause	New: Source: H.E.W. Model Child Protection Act. Standard definition of probable cause with the exception of inclusion of hearsay.
XXIV. Protective Custody	Resolves conflict between warrant provision of RSA 169:6 and limitations of authority conferred provision of RSA 169:30 in present statute.
XXV. Protective Supervision	Alternative preliminary disposition pending the adjudicatory hearing.
XXVI. Relative	Incorporates present language of RSA 170-E:1(VI).
XXVII. Residual parental rights and responsibilities	Adaptation of language found in RSA 170-C:2(IX).
XXVIII. Unfounded Report	New: Source: H.E.W. Model Child Protection Act.
RSA 169-C:4	Jurisdiction, Continued Jurisdiction, Modification.
Section I - Jurisdiction	Replaces RSA 169:29 eliminating jurisdiction of municipal courts.
Section II - Continued Jurisdiction	Incorporates almost verbatim language of RSA 169:10-a continued jurisdiction over neglected child.
Section III - Modification	New: Resolution of anticipated conflict between custody award of district court and custody award pursuant to divorce proceedings in Superior Court.
RSA 169-C:5	Venue.
Section I - Venue	Adopts language of RSA 169:3 Petition and substitutes "judicial district" for "district or municipal court."

Section II - Change of Venue

Changes of present language of RSA 169:3 and permits change of venue on motion of court or any party, not just a probation officer upon notice and acceptance by foreign court.

RSA 169-C:6

Protective Custody.

Section I

Resolves conflict between warrant provision of RSA 169:6 and limitations of authority conferred provision of RSA 169:30 in present statute.

Section II

New: Prescribes the duties of a police or probation officer upon taking a child into protective custody.

Section III

New: Provides immunity from liability for police or probation officers taking a child into protective custody. This section is in accord with the H.E.W. Model Child Protection Act.

Section IV

New: A hearing on the propriety of taking a child into protective custody must be held within 24 hours. Conforms with Model Act which prescribes 24 hours as the maximum time a child may be held in protective custody without a court order.

Section V

New: A social worker is not allowed to take a child into protective custody. A social worker must obtain a court for the removal of a child in imminent danger.

Section VI

New: The court has authority to issue an ex parte order for removal of a child from the home.

RSA 169-C:7

Petition.

Section I

Incorporates language of RSA 169:3 petition with substitution of the words "any person" for "any reputable person" and "judicial district" for "any district or municipal court."

Section II

New: Form of petition verified under oath by the petitioner.

Section III

New: Specific contents necessary for a legally sufficient petition.

RSA 169-C:8

Issuance of Summons and Notice.

Section I - Summons

Adopts language of RSA 169:4 Summons with the following exceptions:

(1) the summons is to be served by a police officer or sheriff where present statute is silent on who shall serve the summons;

(2) preliminary hearing to be held not less than 24 hours nor more than 7 days after the return of service. Present statute does not provide a maximum time limit within which the preliminary hearing must be held;

(3) both parents of the child shall be notified of the hearing.

Section II

New: Petition to be attached or incorporated in summons.

Section III

New: Summons shall contain notice that the child shall have an attorney appointed by the court.

RSA 169-C:9

Failure to Appear - Warrant.

Section I	Identical to language presently contained in RSA 169:5, Failure to Appear.
Section II	Incorporates language of first sentence of RSA 169:6, Warrant.
RSA 169-C:10	Attorney - New: Incorporates legal counsel provision for neglected or abused children contained in RSA 604-A:1-a. Provides counsel for indigent parents.
RSA 169-C:11	Subpoena - New: Subpoenas may be issued by the judge or upon application of a party requiring the attendance of witnesses or the production of documents.
RSA 169-C:12	Evidence - Incorporates language of RSA 169:26 and allows for the admissibility of hearsay evidence.
RSA 169-C:13	Burden of Proof New: Provides for allocation and standard of burden of proof which is the least restrictive.
RSA 169-C:14	Hearings Not Open to the Public. Utilizes language contained presently in RSA 169:20 Court Sessions.
RSA 169-C:15	Preliminary Hearing. New: Prescribes two standards for determining the sufficiency of a petition: (1) imminent danger and (2) reasonable cause. An adjudicatory hearing must be held within 30 days of the filing of a petition.

RSA 169-C:16

Preliminary Disposition. New: Compilation of RSA 169:7 Custody, 169:9-a Mental Health Evaluation and 169:17-a Orders for Physical and Mental Treatment.

RSA 169-C:17

Consent Order - New: Parties may enter into stipulation approved by the court as an alternative to a formal adjudication.

RSA 169-C:18

Adjudicatory Hearing - New:

Section I - Cases

Adopts language of RSA 169:20, Court Sessions.

Section II - Record

New: Provides for recording of proceedings.

Section III - Rights

New: Due process rights of parties afforded.

Section IV - Dismissal

New: Abuse or neglect not shown by preponderance of the evidence.

Section V - Social Study

Essentially the same provisions as that contained in RSA 169:9 Hearing.

Section VI - Use of Social
Study

New: Report shall be shared with parties.

Section VII - Hearing on Final
Disposition

New: Must be within 30 days of finding of neglect or abuse.

RSA 169-C:19

Dispositional Hearing - New:

Section I (a)

Retains custody provision of RSA 169:7 subject to specific requirements.

Section I (b)
169:7 - Custody
169:10 - Disposition of
Neglected Children

Retains custody provision of RSA 169:7 and 169:10 subject to written social study being conducted of a relative's home.

Section II

Interstate Compact on Placement of Children 170-A.

Section III

RSA 169-C:20

Reiteration of present provisions contained in RSA 169:17(a) Orders for Physical and Mental Treatment and RSA 169:9-a Mental Health Evaluation. Disposition of a Mentally Ill or Mentally Retarded Child - New: Replaces RSA 169:18, divests the district court of commitment power, prescribes the proceedings for civil commitment and transfers jurisdiction to the probate court.

RSA 169-C:21

Final Order - New: Finding of abuse or neglect must be in writing which shall contain: (1) conditions the parents must meet before the child is returned home; and (2) a specific plan of services to be provided to the child and family by the child placing agency.

RSA 169-C:22

Modification of Dispositional Orders.

New: Dispositional orders may be modified upon proof of changed circumstances.

RSA 169-C:23

Standard for Return of Child in Placement.

New: Sets forth criteria for return of custody to the parents.

RSA 169-C:24

Court Review of the Disposition retains present requirement of RSA 169:31-a and provides that the court may review a case, upon the request of any party, at any time and that at least 14 days prior to the annual review, a dispositional recommendation shall be made by the child placing agency, social workers or the child care agency.

RSA 169-C:25

Section I

Confidentiality.

Retains RSA 169:22 regarding confidentiality of court records.

Section II

Compilation of RSA 169:27, Publication of Delinquency Restricted and 169:28, Penalty for Forbidden Publication adding that it is a misdemeanor for any party present during a hearing to divulge information pertaining to child abuse or neglect proceedings.

RSA 169-C:26

Continuances - New: Granted for good cause shown.

RSA 169-C:27

Liability of Expense and Hearing on Liability.

Section I - Liability of
of Expenses

Repeals RSA 169:31-b. Provides that the town where the child resides or town where child is taken into custody, rather than the parents, is liable in the first instance for any expenses incurred for the maintenance of a child pursuant to court order. Either town has a right of recovery against the person chargeable by law for the child's support and necessities.

Section II - Hearing on
Liability

New: The legally liable unit, i.e., the town shall receive notice of liability and may request a hearing on the issue of liability within 30 days of a determination of liability.

RSA 169-C:28

Appeals.

New: Replaces RSA 169:24. An appeal may be perfected by the child or an interested party

within 30 days only from a final dispositional order and shall be heard de novo by the superior court.

REPORTING LAW

RSA 169-C:29

Persons Required to Report, identical to present reporting provision of RSA 169:40.

RSA 169-C:30

Nature and Content of Report. Rephrases current language of RSA 169:41 deleting the requirement that the bureau investigate the matter immediately and that the bureau report the case to the appropriate legal authority, if necessary.

RSA 169-C:31

Immunity from Liability rephrases current immunity section of RSA 169:42 only adding that anyone who participates in an investigation by the bureau shall also be granted immunity.

RSA 169-C:32

Abrogation of Privileged Communication. Replaces RSA 169:43, Evidence not Privileged, and adopts the more specific language of the H.E.W. Model Child Protection Act.

RSA 169-C:33

Photographs and X-rays.

New: Source: Model Child Protection Act.

RSA 169-C:34

Duties of the Bureau of Child and Family Services.

New: Source: H.E.W. Model Child Protection Act.

RSA 169-C:35

Central Registry.

Section I - Registry

Reiteration of RSA 169:44 Registry.

Section II - Expunction	Adopts language of last sentence of RSA 169:44 and conforms to standards of H.E.W. Model Child Protection Act.
Section III	Disclosure of Information to Subject of Report. New: Source: H.E.W. Model Child Protection Act.
Section IV	Amendment or removal of report by subject of report. New: Source: H.E.W. Model Child Protection Act.
Section V	Notice of Amendment or Removal to Subject of Report. New: Source: H.E.W. Model Child Protection Act.
RSA 169-C:36	Confidentiality. New: Source: H.E.W. Model Child Protection Act.
RSA 169-C:37	Institutional Abuse and Neglect. New: Source: H.E.W. Model Child Protection Act. Purpose is to insure that no agency polices itself in the investigation of a report of institutional abuse or neglect.
RSA 169-C:38	Report to Legal Authority. Incorporates language of RSA 169:41 to the effect that the bureau, in its discretion, may report cases to the Attorney General or to the county attorney.
RSA 169-C:39	Penalty for Violation. Identical to language of RSA 169:45.
RSA 169-C:40	Severability. New: Standard section that prevents the entire act being declared void should any individual section of it or application thereof be deemed illegal or unconstitutional.

9:35 AM
29 May 1979

The Senate Committee on Public Inst/Health & Welfare held a hearing in Room 103 of the LOB on the following:

HB 831 - Concerning delinquency, child protection and children in need of services

Committee Members Present

Senator Vesta M. Roy, Chairman

Senator John H. McLaughlin, Vice-Chairman

Senator Robert Fennelly

Senator Roy opened the hearing by asking the sponsor to testify.

Sen. Gardner: I am one of the sponsors of this bill. It addresses itself to delinquency, child protection and children in need of services. It revises the law dealing with children. The present statute was enacted in 1937 and has been amended many many times since then. Children have changed and laws in government must change. For nearly two years a group of people under the leadership of the Supreme Court have worked to bring together a law that has been amended many times, incorporating the new changes which bring it into conformity with HEW child protection act. HB 831 makes changes into the law which allows flexibility to deal with the problems of each child on an individual basis. This is a department bill, so I am sure that personnel from the Dept. of HEW will explain the technicalities of the bill. I am happy to announce that this bill has been written so as not to increase the cost to the taxpayer.

Helen WILSON: I am a co-sponsor of this bill. I would like to testify in strong support of this most important piece of legislation. Because there are so many people who wish to testify I will be brief. HB 831 is a revision of the law that deals with NH's children. The present law that was enacted in 1937 as Senator Gardner stated, has been amended many times. Over the past year, members of our committee have worked with the members of NH Senate, Judiciary, State and private agencies and members of the general public to produce a bill which does not represent the views of one group in particular but does represent a realistic and responsive solution to NH's concerned regarding our children. This bill divides a chapter into three sections: 169B for delinquents; 169C for neglected and abused children; and 169D for children in need of services who insure clarity and to treat each category of children differently and individually as they should be. I will defer to others at this time and hope you recommend HB 831 as amended ought to pass.

Rep. Blanchette: I was prepared to go through the bill page by page with you and give you any hi-lights of the bill. Instead, if the committee wishes, I will give you a copy of the present RSA.169 and a written analysis of the changes that we made in the bill. This analysis contains every single new change in the RSA and has a little bit of analysis of why this was done. (Please see attached prepared statement).

Rep. Nighswander: I am also a co-sponsor of this bill. I feel the whole bill is very important because it puts into one statute the procedures for dealing with children in trouble. It separates the varying kinds of problems and how to deal with them. In short, it defines the steps to be taken so that children in trouble can be treated humanely with understanding and still with firmness so bad situations will not be compounded.

HOUSE BILL No. 831

INTRODUCED BY: Rep. Blanchette of Rockingham Dist. 14; Rep. Wilson of Rockingham Dist. 2; Rep. Nighswander of Belknap Dist. 2; Rep. Spanos of Sullivan (continued below)

REFERRED TO: Health and Welfare

AN ACT concerning delinquency, child protection and children in need of services.

ANALYSIS

This bill repeals RSA 169 relative to neglected and delinquent children and persons in need of supervision. This repealed chapter is replaced by 3 new chapters: RSA 169-B deals with delinquency, RSA 169-C with child protection and RSA 169-D with children in need of services (CHINS).

Chapter 169-B defines a delinquent as a person who, before the age of 18, commits an offense that is a felony or misdemeanor if committed by an adult and who is expressly found to be in need of counselling, supervision, treatment or rehabilitation as a consequence of the offense committed. However, the chapter does not apply to persons 16 or over who are charged with violating a motor vehicle law, an aeronautical law, a fish and game law or a law relating to navigation of boats. The chapter establishes the procedures to be followed for a minor charged with an offense. It sets up a series of hearings to determine the facts, to decide how best to treat an individual case and to implement the best solution to each individual problem.

Chapter 169-C deals with those who under current law are considered neglected children; i.e., those who have been abandoned by the person responsible for their care or abused by someone. It sets up the procedures to be followed in dealing with such cases and in implementing the best solution for each individual case. It requires anyone who comes in contact with a child who is suspected of having been abandoned or abused to report such child. Anyone making such a report in good faith is immune from any civil or criminal liability as a result of such report.

Chapter 169-D defines a child in need of services (CHINS) as a habitual truant or runaway or disobedient child or one who has violated a law or ordinance and, in addition to any of the foregoing, is expressly found to be in need of care, guidance, counseling, discipline, supervision, treatment or rehabilitation. It also sets up the procedures to be used in dealing with such children including the ordering of physical and/or mental exams as required in order to determine and implement the best treatment possible for each child in need of supervision.

(Additional sponsors - Dist. 6; Sen. Champagne of Dist. 20; Sen. Gardner of Dist. 4)

HB 831

STATE OF NEW HAMPSHIRE

In the year of Our Lord one thousand
nine hundred and seventy-nine

AN ACT

concerning delinquency, child protection and children
in need of services.

Be it Enacted by the Senate and House of Represen-
tatives in General Court convened:

1 Repeal. RSA 169 relative to neglected and delinquent children and
persons in need of supervision is hereby repealed.

2 Delinquents and Children Needing Protection and Services. Amend RSA
by inserting after chapter 169-A the following new chapters:

CHAPTER 169-B

Delinquent Children

169-B:1 Applicability of Chapter, Purpose. This chapter shall apply to
delinquent children as defined in RSA 169-B:2. This chapter shall be
liberally interpreted, construed and administered to effectuate the
following purposes and policies:

I. To encourage the wholesome moral, mental, emotional, and physical
development of each minor coming within the provisions of this chapter, by
providing him with the protection, care, treatment, counselling,
supervision, and rehabilitative resources which he needs and has a right to

receive;

II. Consistent with the protection of the public interest, to remove from a minor committing a delinquency offense the taint of criminality and the penal consequences of criminal behavior, by substituting therefor an individual program of counselling, supervision, treatment, and rehabilitation;

III. To achieve the foregoing purposes and policies, whenever possible, by keeping a minor in contact with his home community and in a family environment by preserving the unity of the family and separating the minor from his parents only when it is clearly necessary for his welfare or the interests of public safety and when it can be clearly shown that a change in custody and control will plainly better the minor; and

IV. To provide effective judicial procedures through which the provisions of this chapter are executed and enforced and which recognize and enforce the constitutional and other rights of the parties and assures them a fair hearing.

169-B:2 Definitions. In this chapter:

I. "Court" means the district court, unless otherwise indicated.

II. "Delinquent" means a person who has committed an offense before reaching the age of 18 years which would be a felony or misdemeanor under the criminal code of this state if committed by an adult, and is expressly found to be in need of counselling, supervision, treatment, or rehabilitation as a consequence thereof.

III. "Detention" means the care of a minor in physically restricted facilities.

IV. "Minor" means a person under the age of 18.

V. "Probation" means a legal status created by court order following an adjudication that a child is delinquent whereby the minor is permitted to remain in the community, including his home, subject to:

(a) The conditions and limitations of his conduct prescribed by the court;

(b) Such counselling and treatment as deemed necessary, pursuant to methods and conditions prescribed by the court, for the minor and his family;

(c) The supervision of a probation officer or volunteer counselor, as authorized by RSA 504:19; and

(d) Return to the court for violation of probation and change of disposition at any time during the period of probation.

169-B:3 Jurisdiction. The court shall have exclusive original jurisdiction over all proceedings alleging delinquency.

169-B:4 Jurisdiction Over Certain Persons. The court shall have jurisdiction over any person with respect to whom a petition is filed under this chapter after his eighteenth and before his nineteenth birthday for an alleged delinquency offense committed before his eighteenth birthday, provided no person may be detained at or committed to the youth development center after his eighteenth birthday. Jurisdiction obtained by a court over a person under this section and all orders affecting him then in force, unless terminated prior thereto by the court, shall terminate when the person reaches 19 years of age.

169-B:5 Venue.

I. Proceedings under this chapter may be originated in any judicial district in which the minor is found or resides.

II. By the court, upon its own motion, or that of any party, proceedings under this chapter may, upon notice and acceptance, be transferred to another court as the interests of justice or convenience of the parties require.

III. When a minor who is on probation moves from one political subdivision to another, the court may transfer, upon notice and acceptance, to the court with jurisdiction over the political subdivision of the minor's new residence, if such transfer is in the best interest of the minor.

169-B:6 Petition.

I. Any person may file a petition, alleging the delinquency of a minor, with a judge or clerk of the court in the judicial district in which the minor is found or resides. The petition shall be in writing and verified under oath.

II. To be legally sufficient, the petition must set forth with particularity, but not be limited to, the date, time, manner and place of the conduct alleged and should state the statutory provision alleged to have been violated.

169-B:7 Issuance of Summons and Notice.

I. After a legally sufficient petition has been filed, the court shall issue a summons to be served personally or, if personal service is not possible, at the usual place of abode of the person having custody or control of the minor or with whom the minor may be, requiring that person

to appear with the minor at a specified place and time, which time shall not be less than 24 hours nor more than 7 days after service. If the person so notified is not the parent or guardian of the minor, then a parent or guardian shall be notified, provided they and their residence are known, or if there is neither parent nor guardian, or their residence is not known, then some relative, if there be one and his residence is known.

II. A copy of the petition shall be attached to each summons or incorporated therein.

III. The summons shall contain a notice of the right to representation by counsel and the available procedures for obtaining counsel.

169-B:8 Failure to Appear; Warrant.

I. Any person summoned who, without reasonable cause, fails to appear with the minor, may be proceeded against as in case of contempt of court.

II. If a summons cannot be served or the party served fails to obey the same, and in any case where it appears to the court that such summons will be ineffectual, a warrant may be issued for the minor's appearance or for the appearance of anyone having custody or control of the minor or for both.

169-B:9 Arrest. Nothing in this chapter shall be construed as forbidding any police officer or probation officer from immediately taking into custody any minor who is found violating any law, or who is reasonably believed to be a fugitive from justice, or whose circumstances are such as to endanger his person or welfare, unless immediate action is taken.

169-B:10 Release Without Court Referral. An officer authorized under RSA 169-B:9 to take a minor into custody may dispose of the case without court referral by releasing the minor to a parent, guardian, or custodian and may, with the consent of the minor and minor's parent, guardian or custodian, refer the minor to a court approved diversion program. The officer shall make a written report to his department identifying the minor, specifying the grounds for taking the minor into custody and indicating the basis for the disposition.

169-B:11 Release Prior to Arraignment. An officer taking a minor into custody pursuant to RSA 169-B:9 may release the minor to a parent, guardian or custodian pending arraignment; however, if the minor is not released within 4 hours of being taken into custody, the court shall be notified, and thereupon, placement, until arraignment, shall be determined by the court.

I. A minor taken into custody pursuant to RSA 169-B:9 shall be released to a parent, guardian, or custodian pending arraignment; or

II. If such a person is not available, the court may release the minor under the supervision of a relative or friend; or place the minor in a crisis home, shelter care facility or group home with expenses charged according to RSA 169-B:40; or

III. If the court determines that continued detention is required, based upon the criteria specified under RSA 169-B:14 I, (d) (2), it may order continued detention at a police station, jail or the youth development center; provided, that any minor so detained shall not be placed in a facility in which the minor can come into contact with an adult

charged, convicted or committed for a criminal offense.

169-B:12 Appointment of Counsel; Waiver of Counsel.

I. Absent a valid waiver, the court shall appoint counsel at the time of arraignment, provided that a minor detained pursuant to RSA 169-B:11, III, shall have counsel appointed upon the issuance of the detention order.

II. The court may accept a waiver of counsel in a delinquency proceeding only when:

(a) The minor is represented by a non-hostile parent, guardian or custodian; and

(b) Both the minor 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) Detention will not occur at any stage of the proceedings.

169-B:13 Arraignment.

I. No minor shall be detained for more than 24 hours, Sundays and holidays excluded, from the time of being taken into custody without being brought before a court. At any arraignment the court shall:

(a) Advise the minor in writing and orally of any formal charges;

(b) Inform the minor of the applicable constitutional rights;

(c) Appoint counsel pursuant to RSA 169-B:12;

(d) Establish any conditions for release; and

(e) Set a hearing date.

However, no plea shall be taken until the minor has the opportunity to consult with counsel or until a waiver is filed pursuant to RSA 169-B:12.

II. After hearing, the court may, with the consent of the minor, dispose of the petition by ordering the minor to participate in an approved court diversion program.

169-B:14 Release or Detention Pending Adjudicatory Hearing.

I. Following arraignment a minor alleged to be delinquent may be ordered by the court to be:

(a) Retained in the custody of a parent, guardian, or custodian;
or

(b) Released in the supervision and care of a relative or friend;
or

(c) Placed in a group home, crisis home or shelter care facility, with expenses charged according to RSA 169-B:40; or

(d) Detained at the youth development center pursuant to the following:

(1) No minor charged with delinquency shall be detained following arraignment unless the prosecution establishes reasonable cause to believe that the minor committed the alleged delinquent acts and unless the prosecution demonstrates by clear and convincing evidence the need for detention, based upon the detention criteria specified in subparagraph (2);

(2) A minor should not be detained unless detention is necessary:

(i) To insure the presence of the juvenile at a subsequent hearing; or

(ii) To provide care and supervision for a minor who is in

danger of harming himself when no parent, guardian, custodian or other suitable person or program is available to supervise and provide such care; or

(iii) To protect the personal safety of others where serious bodily harm is probable.

II. The adjudicatory hearing shall be held within 21 days of arraignment for minors detained pending such hearing and within 30 days of arraignment for minors not detained.

III. All orders issued pursuant to this section shall set forth findings in writing and may be subject to such conditions as the court may determine.

169-B:15 No Detention at Jail. Following arraignment no minor shall be detained at a jail or police station or other place where he can come in contact with any adult under arrest, charged with a criminal offense or serving sentence under conviction of crime; provided that a minor whose habits or conduct are found to constitute serious bodily harm to himself or to other minors may by order of the court, be detained in a jail or other place of detention for adults but in a separate room or ward provided that services afforded adults be available to the minor and provided that the room or ward not be one used for solitary confinement for adults.

169-B:16 Adjudicatory Hearing.

I. An adjudicatory hearing under this chapter shall be conducted by the court, separate from the trial of criminal cases.

II. Following arraignment, the court shall proceed to hear the case in accordance with the due process rights afforded a minor charged with delinquency. The prosecution shall present witnesses to testify in support

of the petition and any other evidence necessary to support the petition. The minor shall have the right to present evidence and witnesses on his behalf and to cross-examine adverse witnesses.

III. If the court finds the minor has committed the alleged offense, it shall, unless a report done on the same minor less than 3 months previously is on file, order the probation department or other appropriate agency to make an investigation and written report consisting of, but not limited to, the home conditions, school records and the mental, physical and social history of the minor. When ordered by the court, such investigation shall include a physical and mental examination of the minor conducted pursuant to RSA 169-B:23, RSA 169-B:20 and RSA 169-B:21. No disposition order shall be made by the court without first reviewing the investigation report.

IV. The court shall share the report with the parties. The report shall be used only after a finding of delinquency and only as a guide for the court in determining an appropriate disposition for the minor.

V. The court shall hold a hearing on final disposition within 21 days of the adjudicatory hearing if the minor is detained and within 30 days of the adjudicatory hearing if the minor is released.

169-B:17 Burden of Proof. The petitioner has the burden to prove the allegations in support of the petition beyond a reasonable doubt.

169-B:18 Custody Pending Final Disposition. Following the adjudicatory hearing, release pending the dispositional hearing shall be determined in accordance with RSA 169-B:14.

169-B:19 Dispositional Hearing.

I. If the court finds that a minor is delinquent, the court may order the following disposition, which the court finds is the least restrictive and most appropriate:

- (a) Return the minor to a parent, custodian or guardian;
- (b) Fine the minor up to \$250, require restitution or both;
- (c) Order the minor or the family or both to undergo physical treatment or treatment by a mental health center or any other psychiatrist, psychologist, psychiatric social worker or family therapist as determined by the court, with expenses charged according to RSA 169-B:40;
- (d) Place the minor on probation for a term certain;
- (e) Release the minor in the care and supervision of a relative or friend;
- (f) Release the minor in the care and supervision of a group home, crisis home or shelter care facility, which is not used for the placement of children in need of services or a child found to be abused or neglected, with expenses charged according to RSA 169-B:40;
- (g) Any combination of the above; or
- (h) Commit the minor to the youth development center for his minority.

II. If a minor is placed out of state, the provisions of RSA 170-A shall be followed.

III. A minor found to be a delinquent after his seventeenth birthday but before his eighteenth birthday, in addition to or in place of the

dispositions provided for in paragraph I, may be committed to the house of corrections or jail for no greater term than an adult could be committed for a like offense; provided, however, that said term may not extend beyond his nineteenth birthday and provided further that during his minority he may not be confined in a house of correction or jail unless he can be separated from adults as provided in RSA 169-B:15.

IV. A summary of the investigative officer's report shall accompany each commitment order.

V. All dispositional orders issued pursuant to this section shall include written findings as to the basis for the disposition, and such conditions as the court may determine.

169-B:20 Determination of Competence. Any minor before the court shall, at the discretion of the court, together with parents, guardian or person with custody or control submit to a mental health evaluation to be completed within 60 days, by an agency other than the New Hampshire hospital, approved by the director of the division of mental health, of the department of health and welfare, a psychologist certified in New Hampshire, or a qualified psychiatrist, provided that the evaluation may be performed by the New Hampshire hospital upon certification to the hospital and the director of the division of mental health by the local community mental health center established pursuant to RSA 126-B that such center cannot provide a completed evaluation within 60 days. A written report of the evaluation shall be given to the court before the hearing on the merits is held. The court shall inform the parents, guardian or counsel of the minor of their right to object to the mental health evaluation. They shall

object in writing if they so desire to the court having jurisdiction of the matter within 5 days after notification of the time and place of said evaluation, and the court shall hold a hearing to consider the objection prior to ordering said evaluation or, upon good cause shown, may excuse the minor, parents, guardian, or person in custody or control from the provisions of this section. Whenever such an evaluation has been made for consideration at a previous hearing, it shall be jointly reviewed by the court and the evaluating agency before the case is heard. The evaluating facility, agency or individual shall keep records; but no reports or records of information contained therein shall be made available, other than to the court and parties except upon the written consent of the person examined or treated and except as provided in RSA 169-B:35. The expense of such evaluation is to be borne as provided in RSA 169-B:40.

169-B:21 Mental Health Evaluation. Any court finding that a minor has committed the alleged offense may, before making a final disposition, order the minor, minor's parents, guardian or person with custody or control to submit to a mental health evaluation to be completed within 60 days, by an agency or individual as specified in RSA 169-B:20. A written report of the evaluation shall be given to the court before the dispositional hearing. If the parents, guardian, minor or person having custody and control objects to the mental health evaluation, they shall object in writing to the court having jurisdiction within 5 days after notification of the time and place of said evaluation. The court shall hold a hearing to consider the objection prior to ordering said evaluation. Upon good cause shown, the court may excuse the parents, guardian, minor or person with custody or

control from the provisions of this section. Whenever such an evaluation has been made for consideration at a previous hearing, it shall be jointly reviewed by the court and the evaluating agency before the case is heard. The evaluating facility, agency or individual shall keep records, but no reports or records of information contained therein shall be made available, other than to the court and parties, except upon the written consent of the person examined or treated and except as provided in RSA 169-B:35. The expense of such evaluation is to be borne as provided in RSA 169-B:40.

169-B:22 Disposition of a Mentally Ill or Mentally Retarded Minor. If the evidence received at an adjudicatory or dispositional hearing indicates that a minor is mentally ill or mentally retarded, the court may request the state to initiate proceedings or to assist the minor's parent or guardian to initiate civil commitment proceedings in the probate court pursuant to RSA 135-B or 171-A.

169-B:23 Orders for Physical Examination and Treatment. If it is alleged in any petition, or it appears at any time during the progress of the case, that a delinquent is in need of physical treatment, the failure to receive which is a contributing cause of delinquency, due notice of that fact shall be given as provided in RSA 169-B:7. If the court, upon hearing, finds that such treatment is reasonably required, it shall be ordered and the expense thereof shall be borne as provided in RSA 169-B:40.

169-B:24 Transfer to Superior Court. All cases before the court in which the offense complained of constitutes a felony or would amount to a felony in the case of an adult may be transferred to the superior court

prior to hearing under 169-B:16 as provided herein. The court shall conduct a hearing on the question of transfer and shall consider, but not be limited to, the following criteria in determining whether a case should be transferred:

I. The seriousness of the alleged offense to the community and whether the protection of the community requires transfer;

II. The aggressive, violent, premeditated or willful nature of the alleged offense;

III. Whether the alleged offense was committed against persons or property;

IV. The prosecutive merit of the complaint;

V. The desirability of trial and disposition of the entire offense in one court if the minor's associates in the alleged offense were adults who will be charged with a crime;

VI. The sophistication and maturity of the minor;

VII. The minor's prior record and prior contacts with law enforcement agencies; and

VIII. The prospects of adequate protection of the public, and the likelihood of reasonable rehabilitation of the minor through the juvenile court system.

The minor is entitled to the assistance of counsel, who shall have access to said court records, probation reports or other agency reports. If the court orders transfer to superior court, it shall provide a written statement of findings and reasons for such transfer to the minor. Cases so certified and accepted by the superior court may be disposed of by the

superior court according to the laws of this state relating thereto without any limitations as to sentence or orders required by this chapter. All original papers in transferred cases shall remain in the court from which transferred and certified copies of the same shall be filed with and shall constitute the records of the court to which transfer is made. Pending disposition by the superior court, a juvenile whose case is thus transferred and accepted by the superior court may be committed ^{placed under} ~~to~~ the ^{the} custody of the probation officer or required to recognize with sufficient sureties, or in default thereof, be detained at a county jail, house of corrections or state prison to await disposition of the case in said superior court; provided, however, once a minor is certified for trial as an adult and his case is transferred to the superior court, detention at the youth development center is prohibited.

169-B:25 Petition by County Attorney. If facts are presented to the county attorney establishing that a person under the age of 18 has been guilty of conduct which constitutes a felony or would amount to a felony in the case of an adult and if such person is not within the jurisdiction of this state, the county attorney may file a petition with the judge of the municipal or district court which would otherwise have jurisdiction under the provisions of this chapter. The petition shall set forth the nature of the offense with which the person is charged and shall specify his whereabouts if known. On receipt of such petition, the court may summarily authorize the county attorney to proceed against such person under regular criminal procedures, and without regard to the provisions of this chapter. Pending determination by the superior court as herein

provided and pending final disposition of the matter, such persons shall be bailable with sufficient sureties as in the case of adults and, in default thereof, may be committed to the custody of the probation officer or detained at the county jail or house of corrections unless detention elsewhere is ordered by the superior court. The superior court shall determine, after hearing, whether such person shall be treated as a juvenile under the provisions of this section or whether the case shall be disposed of according to regular criminal procedures.

169-B:26 Petition by Minor. At any time prior to hearing pursuant to RSA 169-B:16, a minor who is charged with an act of delinquency committed after his seventeenth birthday may petition the court to be tried as an adult and to have his case dealt with in the same manner as any other criminal prosecution.

169-B:27 Treatment of Juvenile as Adult. Any minor who has been tried and convicted as an adult shall henceforth be treated as an adult for all purposes in connection with any criminal offense with which said minor may be charged.

169-B:28 Disqualification of Judge. A judge who conducts a hearing pursuant to RSA 169-B:24, RSA 169-B:25 or RSA 169-B:26 shall not participate in any subsequent proceedings relating to the offense or conduct alleged in the delinquency petition if the minor or his counsel object to such participation.

169-B:29 Appeals. An appeal, under this chapter, may be taken to the superior court by the minor within 30 days of the final dispositional order; but an appeal shall not suspend the order or decision of the court

unless the court so orders. The superior court shall hear the matter de novo, and shall give an appeal under this chapter priority on the court calendar.

169-B:30 Committal of Children Under Eleven. Notwithstanding any other provision of law, minors under the age of 11 years shall not be committed to the youth development center unless and until the court has referred the matter to and received the recommendation of an appropriate public or private agency or of a probation officer that there is no other public or private home or institution suitable for such commitment.

169-B:31 Review of Disposition Required. The court shall review the disposition of each minor under RSA 169-B:19 at least once within 1 year after such disposition and at least annually thereafter so long as the order of disposition is pending.

169-B:32 Limitations of Authority Conferred. This chapter shall not be construed as applying to persons 16 years of age or over who are charged with the violation of a motor vehicle law, an aeronautics law, a law relating to navigation of boats or a fish and game law.

169-B:33 Religious Preference. The court and officials, in placing minors, shall, as far as practicable, place them in the care and custody of some individual holding the same religious belief as the minor or the parents of said minor, or with some association which is controlled by persons of like religious faith. No minor under the supervision of any state institution shall be denied the free exercise of his religion or the religion of his parents, whether living or dead, nor the liberty of

worshipping God according thereto.

169-B:34 Court Sessions. All juvenile cases shall be heard separately from the trial of criminal cases, and such hearing shall be held wherever possible in rooms not used for such trials. Only such persons as the parties, their witnesses, their counsel, the county attorney, the attorney general and the representatives of the agencies present to perform their official duties shall be admitted. In those cases where the delinquent act complained of would constitute a felony if the act of an adult, the attorney general and the county attorney of the county in which the offense took place shall receive notice thereof by the court.

169-B:35 Juvenile Records. Except as provided in RSA 169-B:24 and RSA 169-B:39, all records pertaining to cases of delinquency shall be kept at all times so that no one shall have access to the same except officers of the institution where the minor is committed, duly accredited probation officers, parent, guardian, custodian, minor's attorney, and others entrusted with the corrective treatment of said minor. Additional access may be granted by court order or upon the written consent of the minor. Once a delinquent reaches 19 years of age, all court and individual institutional records including police records shall be destroyed. (10⁵ year period)

169-B:36 Penalty for Disclosure of Juvenile Records. Any officer or employee of an institution who permits other than authorized persons to have access to such records, or any officer or employee or person entrusted with the use of the same for corrective purposes, or anyone else, who publishes or broadcasts or permits the publication or broadcast of such records or parts of the same, except by court order, shall be in contempt

of court. This prohibition shall not be construed to prevent publication as provided in RSA 169-B:37.

169-B:37 Publication of Delinquency Restricted. It shall be unlawful for any newspaper to publish, or any radio or television station to broadcast or make public the name or address or any other particular information serving to identify any juvenile arrested, without the express permission of the court; and it shall be unlawful for any newspaper to publish, or any radio or television station to make public, any of the proceedings of any juvenile court. Nothing in this section or RSA 169-B:35 and RSA 169-B:36 shall be construed to prevent publication without using the name of the delinquent or information which shall be furnished by the court about the disposition of a case when the delinquent act would constitute a felony if it were the act of an adult.

169-B:38 Penalty for Forbidden Publication. The publisher of any newspaper or the manager, owner or person in control of a radio or television station or agent or employee of any of the above who violates any provision of RSA 169-B:37 shall be guilty of a misdemeanor.

169-B:39 Reports to Board of Probation. The court shall forward monthly to the board of probation on forms provided by said board such statistical data concerning minors who have been adjudged delinquent as may be required by said board in making its biennial report relative to number, age, sex, and types of delinquencies; provided, such data shall not include any reference to the names of such delinquents.

169-B:40 Liability of Expenses and Hearing on Liability.

I. Liability of Expenses. Whenever an order creating liability for

expenses is issued by the court under this chapter, any expenses incurred shall be payable by the town in which the minor resides at the time the petition is filed or, if such residence cannot be determined, by the town in which the minor is taken into custody. Either town shall have a right of action over for such expenses against the person chargeable by law for the minor's support and necessities. If a town cannot collect for such payments made in behalf a minor, such payments shall be considered assistance to a pauper as to the person chargeable by law for the minor's support and necessities and such person shall be subject to a loss of settlement in accordance with the provisions of RSA 164-A:5. A court may make such order as to reimbursement to the town of residence as may be reasonable and just, based on the person's ability to pay.

II. Hearing on Liability. Upon determination of liability at any stage of the proceeding, the court shall send notice to the appropriate legally liable unit. Said legally liable unit may within 30 days from receipt of notice request a hearing on the issue of liability.

169-B:41 Intentional Contribution to Delinquency.

I. Any parent or guardian or person having custody or control of a minor, or anyone else, who shall knowingly encourage, aid, cause, or abet, or connive at, or has knowingly or wilfully done any act to produce, promote, or contribute to the delinquency of such minor, shall be guilty of a misdemeanor. The court may release such person on probation, subject to such orders as it may make concerning future conduct tending to produce or contribute to such delinquency, or it may suspend sentence, or before trial, with his consent, it may allow him to enter into a recognizance, in

such penal sum as the court may fix, conditioned for the promotion of the future welfare of the minor, and said case may be placed on file.

II. Notwithstanding the provisions of paragraph I, any parent, guardian or person having custody or control of a minor, or anyone else, who shall knowingly or wilfully, encourage, aid, cause or abet, or connive at, or has knowingly done any act to produce, promote, or contribute to the utilization of a minor in any acts of sexual conduct as defined in RSA 650:1, VI, for pornographic purposes, shall be guilty of a class B felony.

169-B:42 Procedure. If any minor is found more than once to be delinquent by the court as provided in RSA 169-B:41, the court may, upon complaint of the county attorney or any other person, or upon its own motion, issue a warrant commanding any parent, guardian or person having custody or control of the minor found to be delinquent to be brought before the same court in which the findings of delinquency was made.

169-B:43 Court Orders. The court, upon a complaint issued under RSA 169-B:42, may proceed under said section and, in addition thereto, if the court finds, after a hearing, that the parent, guardian or person having custody or control of the minor has failed to exercise reasonable diligence in the control of such minor to prevent him from becoming guilty of juvenile delinquency as defined by statute, or from becoming adjudged by the court to be in need of the care and protection of the state as defined by statute, it may make such order specifying future conduct as are designed to reasonably prevent the reoccurrence of delinquency and to promote the future welfare of the minor. Such order shall remain in effect for a period of not more than 1 year to be specified by the court, and said

order may be extended or renewed by the court. Before issuing any such order, the court shall advise such parent, guardian or other person of his right to have the reasonableness thereof immediately reviewed; and, in this connection, the superior court is vested with jurisdiction to summarily determine the reasonableness of any question of law or fact relating to such written specifications and to make such further orders upon review thereof as justice may require.

169-B:44 Civil Action for Compensation. Nothing in this chapter shall bar civil action to recover damages for the negligence of a person having custody or control of a minor who causes injury to property or persons.

169-B:45 Severability. If any provision of this chapter or the application thereof to any person or circumstances is held to be invalid, the remainder of the chapter and the application of such provision to other persons or circumstances shall not be affected thereby.

CHAPTER 169-C

Child Protection Act

169-C:1 Short Title. This chapter shall be known as the Child Protection Act.

169-C:2 Purpose.

I. It is the purpose of this chapter, through the mandatory reporting of suspected instances of child abuse or neglect, to provide protection to children whose life, health or welfare is endangered and to establish a judicial framework to protect the rights of all parties involved in the adjudication of child abuse or neglect cases. Each child

coming within the provisions of this chapter shall receive, preferably in his own home, the care, emotional security, guidance and control that will promote the child's best interest; and, if the child should be removed from the control of his parents, guardian or custodian, adequate care shall be secured for the child. This chapter seeks to coordinate efforts by state and local authorities, in cooperation with private agencies and organizations, citizens' groups, and concerned individuals, to:

- (a) Preserve the unity of the family whenever possible;
- (b) Provide assistance to parents to deal with and correct problems in order to avoid removal of children from the family;
- (c) Take such action as may be necessary to prevent abuse or neglect of children;
- (d) Provide protection, treatment and rehabilitation, as needed, to children placed in alternative care.

II. This chapter shall be liberally construed to the end that its purpose may be carried out, to wit:

(a) To encourage the mental, emotional, and physical development of each child coming within the provisions of this chapter, by providing him with the protection, care, treatment, counselling, supervision, and rehabilitative resources which he needs and has a right to receive.

(b) To achieve the foregoing purposes and policies, whenever possible, by keeping a child in contact with his home community and in a family environment by preserving the unity of the family and separating the child from his parents only when it is clearly necessary for his welfare or the interests of public safety and when it can be clearly shown that a c

hange in custody and control will plainly better the child; and

(c) To provide effective judicial procedures through which the provisions of this chapter are executed and enforced and which recognize and enforce the constitutional and other rights of the parties and assures them a fair hearing.

169-C:3 Definitions. When used in this chapter and unless the specific context indicates otherwise:

I. "Abandoned" means the child has been left by his parent, guardian or custodian, without provision for his care, supervision or financial support although financially able to provide such support.

II. "Abused child" means any child who has:

- (a) Been sexually molested; or
- (b) Been sexually exploited; or
- (c) Been intentionally physically injured; or
- (d) Been psychologically injured so that said child exhibits symptoms of emotional problems generally recognized to result from consistent mistreatment or neglect; or
- (e) Been physically injured by other than accidental means.

III. "Adjudicatory hearing" means a hearing to determine the truth of the allegations in the petition filed under this chapter.

IV. "Bureau" means the bureau of child and family services, division of welfare, department of health and welfare.

V. "Child" means any person who has not reached his eighteenth birthday.

VI. "Child care agency" means any person, corporation, partnership,

voluntary association or other organization either established for profit or otherwise, who regularly receives for care one or more children, unrelated to the operator of the agency, in any facility established and maintained for the care of children and licensed pursuant to RSA 170-E.

VII. "Child placing agency" means the division, Catholic charities of New Hampshire or child and family services of New Hampshire or any successor organization.

VIII. "Consent order" means a written agreement entered into among or between the parties regarding the facts and the disposition in a neglect or abuse case, and approved by the court.

IX. "Court" means the district court, unless otherwise indicated.

X. "Custodian" means an agency or person, other than a parent or guardian, licensed pursuant to RSA 170-E to whom legal custody of the child has been given by court order.

XI. "Dispositional hearing" means a hearing held after a finding of abuse or neglect to determine what dispositional order should be made on behalf of the child.

XII. "Division" means the division of welfare, department of health and welfare.

XIII. "Foster home" means a facility licensed pursuant to RSA 170-E for child care in which family care and training are provided on a regular basis for no more than 6 unrelated children, unless all the children are of common parentage.

XIV. "Guardian" means a parent or person appointed by a court having jurisdiction with the duty and authority to make important decisions in

matters having a permanent effect on the life and development of the child, and to be concerned about the general welfare of the child. Such duty and authority include but are not necessarily limited either in number or kind to:

(a) The authority to consent: (1) to marriage, (2) to enlistment in the armed forces of the United States, and (3) to major medical, psychiatric and surgical treatment, (4) to represent the child in legal actions; and (5) to make other decisions of substantial legal significance concerning the child;

(b) The authority and duty of reasonable visitation, except to the extent that such right of visitation has been limited by court order; and

(c) The rights and responsibilities of legal custody except where legal custody has been vested in another individual or in an authorized agency.

XV. "Imminent danger" means circumstances or surroundings causing immediate peril or risk to a child's health or life.

XVI. "Institutional child abuse or neglect" means situations of known or suspected child abuse or neglect wherein the person responsible for the child's welfare is a foster parent or is an employee of a public or private residential home, institution or agency.

XVII. "Legal custody" means a status created by court order embodying the following rights and responsibilities unless otherwise modified by court order:

(a) The right to determine where and with whom the child shall live;

(b) The right to have the physical possession of the child;

(c) The right and the duty to protect and constructively discipline the child; and

(d) The responsibility to provide the child with food, clothing, shelter, education, emotional security and ordinary medical care provided that such rights and responsibilities shall be exercised subject to the power, rights, duties and responsibilities of the guardian of the child and subject to residual parental rights and responsibilities if these have not been terminated by judicial decree.

XVIII. "Legal supervision" means a legal status created by court order wherein the child is permitted to remain in his home under the supervision of a child placing agency subject to further court order.

XIX. "Neglected child" means a child:

(a) Who has been abandoned by his parents, guardian, or custodian; or

(b) Who is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for his physical, mental, or emotional health, when it is established that his health has suffered or is very likely to suffer serious impairment; and the deprivation is not due primarily to the lack of financial means of the parents, guardian or custodian, or

(c) Whose parents, guardian or custodian are unable to discharge their responsibilities to and for the child because of incarceration, hospitalization or other physical or mental incapacity;

Provided, that no child who is, in good faith, under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner thereof shall, for that reason alone, be considered to be a neglected child under this chapter.

XX. "Notice" means communication given in person or in writing to the parent, guardian, custodian or other interested party not having custody or control of the child, of the time and place fixed for hearing; and it shall be given in all cases, unless it appears to the court that such notice will be ineffectual.

XXI. "Parent" means mother, father, adoptive parent, but such term shall not include a parent as to whom the parent-child relationship has been terminated by judicial decree or voluntary relinquishment.

XXII. "A person responsible for a child's welfare" includes the child's parent, guardian or custodian.

XXIII. "Probable cause" means facts and circumstances based upon accurate and reliable information, including hearsay, that would justify a reasonable person to believe that a child subject to a report under this chapter is abused or neglected.

XXIV. "Protective custody" means the status of a child who has been taken into physical custody by a police officer or probation officer because the child was in such circumstances or surroundings which presented an imminent danger to the child's health or life and where there was not sufficient time to obtain a court order.

XXV. "Protective supervision" means the status of a child who has been placed with a child placing agency pending the adjudicatory hearing.

XXVI. "Relative" means parent, grandparent, brother, sister, stepparent, stepbrother, stepsister, uncle, aunt, nieces, nephews or first and second cousins.

XXVII. "Residual parental rights and responsibilities" means those rights and responsibilities remaining with the parent after the transfer of legal custody or guardianship except guardianship pursuant to termination of parental rights, including, but not limited to, right of visitation, consent to adoption, right to determine religious affiliation and responsibilities for support.

XXVIII. "Unfounded report" means a report made pursuant to this chapter for which the bureau finds that there is no probable cause to believe that the child is abused or neglected.

169-C:4 Jurisdiction, Continued Jurisdiction, Modification.

I. The court shall have exclusive original jurisdiction over all proceedings alleging the abuse or neglect of a child.

II. The court may, with the consent of the child, retain jurisdiction over any child, who, prior to his eighteenth birthday, was found to be neglected or abused and who is attending school until such child completes school or until his twenty-first birthday, whichever occurs first; and the court is authorized to and shall make such orders relative to the support and maintenance of said child during the period after the child's eighteenth birthday as justice may require.

III. When a custody award has been made pursuant to this chapter, said order shall not be modified or changed nor shall another order affecting the status of the child be issued by the superior court except on

appeal under RSA 169-C:28.

169-C:5 Venue.

I. Proceedings under this chapter may be originated in the judicial district in which the child is found or resides.

II. By the court, upon its own motion, or that of any party, proceedings under this chapter may, upon notice and acceptance, be transferred to another court as the interests of justice or convenience of the parties require.

169-C:6 Protective Custody.

I. A police or probation officer may take a child into protective custody without the consent of the parents or other person legally responsible for the child's care if the child is in such circumstances or surroundings as would present an imminent danger to the child's health or life unless immediate action is taken and there is not enough time to petition for a court order.

II. If a police or probation officer removes a child under paragraph I above, the officer:

(a) Shall inform the court forthwith whereupon continued protective custody pending a hearing may be ordered by the court;

(b) May take the child to a social worker of the bureau; or

(c) May place the child in a foster home; if a child is placed directly in a foster home, the bureau shall be notified of the incident and where the child is placed within 24 hours, unless there is a physician involved and treating the child and the child is or will be taken to and admitted to a hospital; and

(d) Shall, when the child is removed from an individual other than a parent or a person legally responsible for the child, make every reasonable effort to inform the parent or other person legally responsible for the child's care where the child has been taken.

III. Any police or probation officer or other individual acting in good faith pursuant to this section, shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed as a result of such removal or placement.

IV. The court shall hold a hearing on the matter within 24 hours of taking the child into protective custody, Sundays and holidays excluded. Notice shall be given to all parties designated by the petitioner or the court.

V. If a child is found by a social worker of the bureau to be in imminent danger in such circumstances or surroundings and where immediate removal appears necessary to protect the child from such imminent danger, the bureau's social worker shall contact a judge or clerk immediately for an order to remove the child.

VI. Any court having jurisdiction over a child who appears to be neglected or abused and in imminent danger may, upon the request of the bureau or police officer, issue an order, which may include an ex parte order, permitting the child to be removed from the home.

169-C:7 Petition.

I. A proceeding under this chapter is originated by any person filing a petition, with a judge or clerk in the judicial district in which the child is found or resides, alleging neglect or abuse of a child.

II. The petition shall be entitled "In the Matter of _____," and shall be verified under oath by the petitioner.

III. To be legally sufficient, the petition shall set forth:

(a) The date, time, manner and place of the conduct alleged to constitute abuse or neglect and the statutory grounds upon which the petition is based;

(b) The name, birth date and address of the child, if known;

(c) The name and address of the parent(s), or custodian, if known;

(d) The name and address of any other individual or agency having custody of the child, if known.

169-C:8 Issuance of Summons and Notice.

I. After a petition has been filed, the court shall issue a summons to be served by a police officer or sheriff personally or, if personal service is not possible, at the usual place of abode of the person or persons having custody or control of the child requiring the person or persons to appear personally and bring the child, unless otherwise ordered, before the court at a time and place set for a preliminary hearing, which shall not be less than 24 hours nor more than 7 days after return of service. If the person so summoned is other than a parent or guardian of the child, the parent or guardian or both shall also be notified of the pendency of the proceeding and of the time and place of hearing. In all cases, both parents of the child shall be notified of the hearing.

II. A copy of the petition shall be attached to each summons or incorporated therein.

III. The summons shall contain a notice that the child shall have an

attorney, appointed by the court.

169-C:9 Failure to Appear; Warrant.

I. Any person or persons summoned having custody or control of the child who, without reasonable cause, fails to appear, may be proceeded against for contempt of court.

II. In case the summons cannot be served, or the parties served fail to appear, or in the case when it appears to the court that service will be ineffectual, or that the best interest of the child requires that he be brought forthwith into the custody of the court, a warrant may be issued for the child's appearance against anyone having custody or control of the child.

169-C:10 Attorney. In cases involving a neglected or abused child under this chapter, an attorney for the child shall be provided. In any case of neglect or abuse, the court shall appoint an attorney to represent indigent parents.

169-C:11 Subpoena. A subpoena may be issued pursuant to RSA 516, or upon application of a party to the proceedings, or upon the motion of the court. The court may issue subpoenas requiring the production of papers and the attendance of any person whose presence is required by the child, his parents or guardian or any other person whose presence, in the opinion of the court, is necessary.

169-C:12 Evidence. In any hearing under this chapter, the court shall not be bound by the technical rules of evidence and may admit evidence which it considers relevant and material.

169-C:13 Burden of Proof. The petitioner has the burden to prove the

allegations in support of the petition by a preponderance of the evidence.

169-C:14 Hearings Not Open to the Public. The general public shall be excluded from any hearing under this chapter and such hearing shall be held in rooms not used for criminal trials. Only such persons as the parties, their witnesses, counsel and representatives of the agencies present to perform their official duties shall be admitted.

169-C:15 Preliminary Hearing.

I. After a petition is filed, a preliminary hearing shall be conducted by the court:

(a) To protect a child whose circumstances or surroundings present an imminent danger to his health or life; or

(b) To determine whether or not reasonable cause exists to believe that a child is abused or neglected.

II. The court shall, at the preliminary hearing, appoint an attorney to represent the child pursuant to RSA 169-C:10.

III. (a) If the court finds that the child's circumstances or surroundings present an imminent danger to the child's health or life, the court shall immediately issue orders, in writing, pursuant to RSA 169-C:16.

(b) If the court finds reasonable cause to believe that a child is abused or neglected, it may proceed under RSA 169-C:16 to make an appropriate order.

IV. If the court does not find sufficient evidence of abuse or neglect, it shall dismiss the petition.

V. The court, upon an affirmative finding under paragraph III (a) or (b) above, shall set a date for an adjudicatory hearing which shall be held

within 30 days of the filing of the petition.

169-C:16 Preliminary Disposition.

I. If the court finds sufficient facts to sustain the petition, the following orders or preliminary dispositions may be made:

(a) Permit the child to remain with the parent, relative, guardian, or other custodian, subject to such conditions and limitations as the court may prescribe.

(b) Transfer legal supervision to a child placing agency.

(c) Transfer protective supervision to a child placing agency.

II. A neglected or abused child shall not be placed in an institution established for the care and rehabilitation of delinquent children, the youth development center or any institution where an adult is confined.

III. The court at any time may order the child, the parents, guardian or custodian to submit to a mental health evaluation or undergo a physical examination or treatment with a written assessment being provided to the court. The court may order that the child, who is the subject of the petition or the family or both be evaluated by a mental health center or any other psychiatrist, psychologist or psychiatric social worker of family therapist or undergo physical examination or treatment with a written assessment provided to the court.

IV. If the child, the parent, guardian or custodian object to the mental health evaluation, he shall object in writing to the court having jurisdiction within 5 days after notification of the time and place of said evaluation. The court shall hold a hearing to consider the objection prior

to ordering said evaluation. Upon good cause shown, the court may excuse the child, the parent, guardian or custodian from the provisions of this section.

169-C:17 Consent Order.

I. At any time after the filing of the petition and prior to an order of adjudication pursuant to section RSA 169-C:18, the court may suspend the proceedings upon its own motion or upon the motion of any party, and continue the case under terms and conditions established by the parties and approved by the court.

II. A consent order shall not be approved unless the child and parents, guardian or custodian are informed of the consequences of the order by the court and the court determines that the child and parents voluntarily and intelligently agreed to the terms and conditions of the order.

169-C:18 Adjudicatory Hearing.

I. An adjudicatory hearing under this chapter shall be conducted by the court separate from the trial of criminal cases.

II. If requested by a party or ordered by a court, the proceedings shall be recorded by stenographic notes, or by other appropriate means, the cost to be borne by the party requesting the stenographer.

III. The petitioner shall present witnesses to testify in support of the petition and any other evidence necessary to support the petition. The petitioners shall have the right to present evidence and witnesses on their own behalf and to cross-examine adverse witnesses. The admissibility of all evidence in this hearing shall be determined by RSA 169-C:12.

IV. If the court does not find sufficient evidence of neglect or abuse, it shall dismiss the petition.

V. If the court determines that a child has been abused or neglected, the court shall order a child placing agency to make an investigation and a social study consisting of, but not limited to, the home conditions, family background, and financial assessment, school record, mental, physical and social history of the family and submit it in writing to the court prior to the final disposition of the case. No disposition order shall be made by a court without first reviewing the social study except pursuant to a voluntary consent order or when waived by all the parties.

VI. The social study will be used only after a finding of neglect or abuse and only as a guide for the court in determining an appropriate disposition for a child. The court shall share the report with the parties. Any psychiatric report shall be used by the court only after a finding of neglect or abuse unless such report is submitted for determination of competency.

VII. The court shall hold a hearing on final disposition within 30 days after a finding of neglect or abuse.

169-C:19 Dispositional Hearing.

I. If the court finds that a child is abused or neglected, the court may order the following disposition of a child:

(a) Permit the child to remain with the parents, guardian, relative or other custodian, subject to any or all of the following conditions:

(1) That the parents, guardian, relative or custodian accept legal supervision by a child placing agency; or

(2) That the parents, guardian, relative or custodian and/or the child accept individual or family therapy or medical treatment; or

(3) That the child attend a day care center; or

(4) That a homemaker or parent aide be allowed to visit the home and assist the family; or

(5) An order of protection. An order of protection may set forth reasonable conditions of behavior to be observed for a specified time by a person who is before the court and is a parent, custodian, relative or guardian or the spouse thereof. Such order may require any such person to:

(i) Stay away from the home, the other spouse or the child;

(ii) Permit a parent, guardian, relative, or custodian to visit the child at stated periods;

(iii) Abstain from harmful or offensive conduct against the child or against the other parent or against any person to whom custody of the child is awarded.

(iv) Give proper attention to the care of the home;

(v) Refrain from acts of commission or omission that tend not to make the home a proper place for the child.

(b) Transfer legal custody to a child placing agency or relative provided, however, that no child shall be placed with a relative until a written social study of the relative's home, conducted by a child placing agency, is submitted to the court.

II. If a child is placed out of state, the provisions of RSA 170-A

shall be followed.

III. The court may order the child or the family or both to undergo physical treatment or treatment by a mental health center or any other psychiatrist, psychologist, psychiatric social worker or family therapist as determined by the court.

169-C:20 Disposition of a Mentally Ill or Mentally Retarded Child. If the evidence received at an adjudicatory or dispositional hearing indicates that a child is mentally ill or mentally retarded, the court may request the child placing agency to initiate proceedings or to assist the child's parent or guardian to initiate civil commitment proceedings in the probate court pursuant to RSA 135-B or 171-A.

169-C:21 Final Order.

I. If facts sufficient to sustain the petition are established under RSA 169-C:18, the court shall enter a final order in writing finding that the child has been abused or neglected.

II. The order of the court shall include conditions the parents shall meet before the child is returned home. The order shall also include a specific plan which shall include, but not be limited to, the services the child placing agency will provide to the child and family. Prior to the issuance of a final order, the child placing agency shall submit its recommendation for the plan, which the court may use in whole or in part.

169-C:22 Modification of Dispositional Orders. Upon the motion of a child, parent, custodian, guardian or of the child placing agency alleging a change of circumstances requiring a different disposition the court shall conduct a hearing and pursuant to RSA 169-C:19 may modify a dispositional

order; provided that the court may dismiss the motion if the allegations are not substantiated in the hearing.

169-C:23 Standard for Return of Child in Placement. Before a child in foster care is returned to the custody of its parents, the parents shall demonstrate to the court that:

I. They are in compliance with the outstanding dispositional court order;

II. The child will not be endangered in the manner adjudicated on the initial petition, if returned home;

III. Return of custody is in the best interests of the child. Upon showing the ability to provide proper parental care, it shall be presumed that a return of custody is in the child's best interests.

169-C:24 Court Review of the Disposition. The status of all consent orders of all children not under the custody of their parents or children under legal supervision shall be reviewed by the court at least once every year following the initial approval of the order or initial dispositional hearing. The court may also review a case, upon the request of any party, at any time. At least 14 days prior to the annual review, the child placing agency social workers or child care agency in charge of providing services to the child and parents shall submit or cause to be submitted to the court a supplemental report indicating such services and shall make a dispositional recommendation. The social worker shall send copies of such report to all parties.

169-C:25 Confidentiality.

I. The court records of proceedings under this chapter shall be kept

in books and files separate from all other court records. Such records shall be withheld from public inspection but shall be open to inspection by the parties, child, parent, guardian, custodian, attorney or other authorized representative of the child.

II. It shall be unlawful for any party present during a child abuse or neglect hearing to divulge any information concerning the hearing to anyone including a newspaper, radio or television station representative. Similarly, it shall be unlawful for a newspaper to publish or any radio or television station to broadcast or make public any information pertaining to a child abuse or neglect hearing. Anyone who knowingly violates this provision shall be guilty of a misdemeanor.

169-C:26 Continuances. Continuances in proceedings under this chapter may be granted by the court only for good cause shown.

169-C:27 Liability of Expense and Hearing on Liability.

I. Liability of Expenses. Whenever an order creating liability for expenses is issued by the court under this chapter, any expenses incurred shall be payable by the town in which the child resides at the time the petition is filed or, if such residence cannot be determined, by the town in which the child is taken into custody. Either town shall have a right of action over for such expenses against the person chargeable by law for the child's support and necessities. If a town cannot collect for such payments made in behalf of a child, such payments shall be considered assistance to a pauper as to the person chargeable by law for the child's support and necessities and such person shall be subject to a loss of settlement in accordance with the provisions of RSA 164-A:5. A court may

make such order as to reimbursement to the town of resident as may be reasonable and just, based on the person's ability to pay.

II. Hearing on Liability. Upon determination of liability, at any stage of the proceeding, the court shall send notice to the appropriate legally liable unit. Said legally liable unit may within 30 days after receipt of notice request a hearing on the issue of liability.

169-C:28 Appeals. An appeal, under this chapter, may be taken to the superior court by the child or his authorized representative or any party having an interest, including the state, within 30 days of the final dispositional order; but an appeal shall not suspend the order or decision of the court unless the court so orders. The superior court shall hear the matter de novo, and shall give an appeal under this chapter priority on the court calendar.

Reporting Law

169-C:29 Persons Required to Report. Any physician, surgeon, county medical referee, psychiatrist, resident, intern, dentist, osteopath, optometrist, chiropractor, psychologist, therapist, registered nurse, hospital personnel (engaged in admission, examination, care and treatment of persons), Christian Science practitioner, teacher, school official, school nurse, school counselor, social worker, day care worker, any other child or foster care worker, law enforcement official, priest, minister, or rabbi or any other person having reason to suspect that a child has been abused or neglected shall report the same in accordance with this chapter.

169-C:30 Nature and Content of Report. An oral report shall be made immediately by telephone or otherwise, and followed within 48 hours by a

report in writing, if so requested, to the bureau. Such report shall, if known, contain the name and address of the child suspected of being neglected or abused and the parents or persons caring for such child, the specific information indicating neglect or the nature and extent of the child's injuries (including any evidence of previous injuries), the identity of the person or persons suspected of being responsible for such neglect or abuse, and any other information that might be helpful in establishing neglect or abuse or that may be required by the bureau.

169-C:31 Immunity From Liability. Anyone participating in good faith in the making of a report pursuant to this chapter is immune from any liability, civil or criminal, that might otherwise be incurred or imposed. Any such participant has the same immunity with respect to participation in any investigation by the bureau or judicial proceeding resulting from such report.

169-C:32 Abrogation of Privileged Communication. The privileged quality of communication between husband and wife and any professional person and his patient or client, except that between attorney and client, shall not apply to proceedings instituted pursuant to this chapter and shall not constitute grounds for failure to report as required by this chapter.

169-C:33 Photographs and X-Rays.

I. Any medical person or the bureau preparing or investigating a report under this chapter, may take, or cause to be taken, photographs of the areas of trauma visible on a child who is the subject of a report and, if medically indicated, cause to be performed a radiological examination of

the child without the consent of the child's parents or guardians. All photographs and X-rays taken, or copies of them, shall be sent to the appropriate offices of the bureau as soon as possible.

II. The reasonable cost of photographs or X-rays taken under this section shall be reimbursed by the bureau.

169-C:34 Duties of the Bureau of Child and Family Services.

I. If it appears that the immediate safety or well-being of a child is endangered, the family may flee or the child disappear, or the facts otherwise so warrant, the bureau shall commence an investigation immediately after receipt of a report. In all other cases, a child protective investigation shall be commenced within 72 hours of receipt of the report.

II. For each report it receives, the bureau shall promptly perform a child protective investigation to: (i) determine the composition of the family or household, including the name, address, age, sex and race of each child named in the report, and any siblings or other children in the same household or in the care of the same adults, the parents or other persons responsible for their welfare, and any other adults in the same household; (ii) determine whether there is probable cause to believe that any child in the family or household is abused or neglected, including a determination of harm or threatened harm to each child, the nature and extent of present or prior injuries, abuse or neglect, and any evidence thereof, and a determination of the person or persons apparently responsible for the abuse or neglect; (iii) determine the immediate and long-term risk to each child if the child remains in the existing home

environment; and (iv) determine the protective treatment, and ameliorative services that appear necessary to help prevent further child abuse or neglect and to improve the home environment and the parents' ability to adequately care for the children.

III. The bureau may request and shall receive from any agency of the state or any of its political subdivisions or any schools, such assistance and information as will enable it to fulfill its responsibilities under this section.

IV. Upon notification by the bureau that the immediate safety or well-being of a child may be endangered, the court may, in its discretion, order a police officer, probation officer or social worker to enter the place where the child is located, in furtherance of such investigation.

169-C:35 Central Registry.

I. There shall be established a state registry of abuse and neglect in the bureau for the purpose of maintaining a record of information on each case of alleged abuse or neglect reported under this chapter. The registry shall contain such information as shall be prescribed by rules adopted by the bureau pursuant to RSA 541-A.

II. All information identifying the subjects of an unfounded report and any or all case records of the bureau or division shall be expunged from the register forthwith but not later than 6 months from the determination that the report is unfounded.

III. Upon request, a subject of a report shall be entitled to receive a copy of all information contained in the central registry pertaining to his case. Provided, however, that the bureau is authorized

to prohibit the release of data that would identify or locate a person who, in good faith, made a report or cooperated in a subsequent investigation, when it reasonably finds that disclosure of such information would be likely to endanger the life or safety or cause harassment to such person. In addition, the bureau may seek a court order prohibiting the release of any information which the court finds is likely to be harmful to the subject of the report.

IV. At any time subsequent to the completion of the bureau's investigation, a subject of a report may request the bureau to amend, expunge identifying information from, or remove the record of the report from the registry. If the bureau refuses to do so or does not act within 30 days, the subject shall have the right to a hearing pursuant to RSA 126-A:9-a.

V. To the fullest extent possible, written notice of any amendment, expunction, or removal of any record made pursuant to this chapter shall be mailed to each subject of such report by the bureau. Nothing in this section is intended to require the destruction of case records.

169-C:36 Confidentiality. The contents of the registry shall be confidential and subject to the rules as to access adopted by the bureau pursuant to RSA 541-A. Any unfounded report shall be expunged from the registry and applicable section of case records within a period of 6 months from the determination that the report is unfounded. Information contained in the registry shall not be made available to any individual or institution except:

I. Appropriate staff of the bureau and multi-disciplinary evaluation

teams empaneled by or working with the bureau on cases of abuse or neglect;

II. Any person who is the subject of a report; however, the subject cannot have access to information concerning the name, address, occupation or any other identifying characteristics of the reporter when disclosure of such data would be likely to endanger the life or safety of or cause harassment to the reporter.

III. Any person engaged in a bona fide research project, upon written consent of the chief of the bureau; however, no information regarding the names, address or any other identifying data shall be made available to the researcher.

169-C:37 Institutional Abuse and Neglect. The office of the attorney general shall be empowered to receive and investigate reports of institutional abuse or neglect at the youth development center, Laconia state school, and New Hampshire hospital; and the bureau shall be empowered to receive and investigate reports of all other suspected instances of institutional abuse or neglect. Either the office of the attorney general or the bureau or both may promulgate regulations consistent with this authority to investigate such reports and take appropriate action for the protection of children.

169-C:38 Report to Legal Authority. The bureau may, in its discretion, refer appropriate cases of child abuse and neglect to the office of the attorney general or to the county attorney for possible criminal prosecution.

169-C:39 Penalty for Violation. Anyone who knowingly violates any provision of this subdivision shall be guilty of a misdemeanor.

Severability

169-C:40 Severability. If any provision of this chapter or the application thereof to any person or circumstances is held to be invalid, the remainder of the chapter and the application of such provision to other persons or circumstances shall not be affected thereby.

CHAPTER 169-D

Children in Need of Services

169-D:1 Applicability of Chapter; Purpose. This chapter shall apply to children in need of services as hereinafter defined and shall be construed and administered in accordance with the following purposes and policies:

I. To recognize that certain behaviors occurring within a family or school environment indicate that a child is experiencing serious difficulties and is in need of services to provide him with the treatment, care, guidance, counselling, discipline, supervision, and rehabilitation necessary to assist him in becoming a responsible and productive member of society;

II. To recognize that we must no longer bring the weight of family problems down on the child alone but that parents must be made aware of their contribution to the problem and must account for their role in the solution of the problem;

III. To keep a child, whenever possible, in contact with his home community and in a family environment by preserving and strengthening the unity of the family and separating the child from his parents only when it is clearly necessary for his welfare or the interests of public safety and when it can be clearly shown that a change in custody and control will benefit the child;

IV. To provide effective judicial procedures through which the provisions of this chapter are executed and enforced and which assure the parties fair hearings at which their constitutional and other rights as citizens are recognized and protected; and

V. To achieve the foregoing purposes and policies by providing each child coming within the provisions of this chapter with the treatment, care, guidance, counseling, discipline, supervision, and rehabilitation resources which he needs and has a right to receive.

169-D:2 Definitions.

I. "Child" means a person under the age of 18.

II. "Services" means care, guidance, counseling, discipline, supervision, treatment and rehabilitation or any combination thereof.

III. "Court" means the district court, unless otherwise indicated.

IV. "Child in need of services" means a child who:

(a) Being subject to compulsory school attendance, is habitually, and without good and sufficient cause, truant from school; or

(b) Habitually runs away from home, or otherwise repeatedly disregards the reasonable and lawful commands of his parents, guardian or custodian;

(c) Has committed an offense which, if committed by an adult, would be a violation under the criminal code of this state, or has violated an ordinance or by-law of a city or town; and

(d) If any one of the foregoing, is also expressly found to be in need of care, guidance, counseling, discipline, supervision, treatment or rehabilitation.

V. "Shelter care" means the care of a child in physically unrestricted facilities.

VI. "Probation" means a legal status created by court order following an adjudication whereby a child in need of services is permitted to remain in the community subject to such conditions as the court may impose.

169-D:3 Jurisdiction. The court shall have exclusive original jurisdiction over all proceedings charging a child is in need of services.

169-D:4 Venue.

I. Proceedings under this chapter may be originated in any judicial district in which the child is found or resides.

II. By the court, upon its own motion, or that of any party, proceedings under this chapter may, upon notice and acceptance, be transferred to another court as the interests of justice or convenience of the parties require.

III. When a child who is on probation moves from one political subdivision to another, the court may transfer, upon notice and acceptance, to the court with jurisdiction over the political subdivision of the child's new residence, if such transfer is in the best interest of the

child.

169-D:5 Petition.

I. Any person may file a petition alleging a child is in need of services with a judge or clerk of the court in the judicial district in which the child is found or resides. The petition shall be in writing and verified under oath.

II. To be legally sufficient, the petition must set forth with particularity, but not be limited to, the date, time, manner and place of the conduct alleged and should state the statutory provision alleged to have been violated.

169-D:6 Issuance of Summons and Notice.

I. After a legally sufficient petition has been filed, the court shall issue a summons to be served personally or if personal service is not possible, at the usual place of abode of the person having custody or control of the child or with whom the child may be, requiring that person to appear with the child at a specified place and time which time shall not be less than 24 hours nor more than 7 days after service. If the person so notified is not the parent or guardian of the child, then a parent or guardian shall be notified, provided they and their residence are known, or if there is neither parent nor guardian, or their residence is not known, then some relative, if there be one and his residence is known.

II. A copy of the petition shall be attached to each summons or incorporated therein.

III. The summons shall contain a notice of the child's right to representation by counsel and the available procedures for obtaining

counsel.

169-D:7 Failure to Appear; Warrant.

I. Any person summoned who, without reasonable cause, fails to appear with the child, may be proceeded against as in case of contempt of court.

II. If a summons cannot be served or the party served fails to obey the same, and in any case where it appears to the court that such summons will be ineffectual, a warrant may be issued for the child's appearance or for the appearance of anyone having custody or control of the child or for both.

169-D:8 Temporary Custody. A child may be taken into temporary custody:

I. Pursuant to a court order; or

II. By a police officer or probation officer when there are reasonable grounds to believe that a child has run away from his parents, guardian, or other custodian; or the circumstances are such as to endanger the child's health, or welfare unless immediate action is taken.

169-D:9 Release Without Court Referral. An officer authorized under RSA 169-D:8 to take a child into custody may dispose of the case without court referral by releasing the child to a parent, guardian, or custodian and may, with the consent of the child and child's parent, guardian or custodian, refer the child to a court approved diversion program. The officer shall make a written report to his department identifying the child; specifying the grounds for taking the child into custody and indictating the basis for the disposition.

169-D:10 Release Prior to Initial Appearance.

I. An officer taking a child into custody pursuant to RSA 169-D:8 shall release the child to a parent, guardian or custodian pending initial appearance; however, if a parent, guardian or custodian is not available upon taking the child into custody, the court shall be notified, thereupon the child's release shall be determined by the court.

II. Pending the initial appearance, the court shall release the child to one of the following, which in the court's opinion is the least restrictive and most appropriate:

- (a) A parent or guardian;
- (b) A relative or friend; or
- (c) A group home, crisis home, or shelter care facility with expenses charged according to RSA 169-D:29.

169-D:11 Initial Appearance.

I. An initial appearance shall be held not less than 24 hours nor more than 7 days from the filing of a legally sufficient petition.

II. At the initial appearance, the court shall:

- (a) Advise the child in writing and orally of any formal charges;
- (b) Appoint counsel pursuant to RSA 169-D:12;
- (c) Establish any conditions for release; and
- (d) Set a hearing date.

However, no plea shall be taken until the child has had the opportunity to consult with counsel or until a waiver is filed pursuant to RSA 169-D:12.

III. After hearing, the court may, with the consent of the child, dispose of the petition by ordering the child to participate in an approved court diversion program.

169-D:12 Appointment of Counsel; Waiver of Counsel.

I. Absent a valid waiver, the court shall appoint counsel for the child at the time of the initial appearance.

II. The court may only 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.

III. Detention will not occur at any stage of the proceedings.

169-D:13 Release Pending Adjudicatory Hearing.

I. Following the initial appearance, a child alleged to be in need of services may be ordered by the court subject to such conditions as the court may order, to be:

(a) Retained in the custody of a parent, guardian, or custodian; or

(b) Released in the supervision and care of a relative; or

(c) Placed with a friend or in a group home, crisis home or shelter care facility licensed pursuant to RSA 170-E, with expenses charged according to RSA 169-D:29.

II. The adjudicatory hearing shall be held within 21 days of the initial appearance.

III. All orders issued pursuant to this section shall set forth the findings as to the form of release or any conditions in writing and shall

state any custody provisions under paragraph I.

RSA 169-D:14 Adjudicatory Hearing.

I. An adjudicatory hearing under this chapter shall be conducted by the court, separate from the trial of criminal cases.

II. Following the initial appearance the court shall proceed to hear the case in accordance with the due process rights afforded a child alleged to be in need of services. The prosecution shall present witnesses to testify in support of the petition and any other evidence necessary to support the petition. The child shall have the right to present evidence and witnesses on his behalf and to cross-examine adverse witnesses.

III. If the court finds the child is in need of services, it shall order the probation department or other appropriate agency to make an investigation and written report consisting of, but not limited to, the home conditions, school record and the mental, physical and social history of the child. When ordered by the court, such investigation shall include a physical and mental examination of the child, parents, guardian, or person having custody. The court shall inform the parents, guardian or person having custody and child of their right to object to the physical examination or mental health evaluation. Objections shall be submitted in writing to the court having jurisdiction within 5 days after notification of the time and place of the examination or evaluation. The court may excuse the child, parents, guardian, or person having custody upon good cause shown. No disposition order shall be made by the court without first reviewing the investigation report, if ordered.

IV. The court shall share the report with the parties. The report will be used only after a finding that the child is in need of services and will be used only as a guide for the court in determining an appropriate disposition for the child.

V. The court shall hold a final dispositional hearing within 30 days of the adjudicatory hearing.

169-D:15 Burden of Proof. The petitioner has the burden to prove the allegations in support of the petition beyond a reasonable doubt.

169-D:16 Release Pending Final Disposition. Following the adjudicatory hearing, custody pending the dispositional hearing shall be determined in accordance with RSA 169-D:13.

169-D:17 Dispositional Hearing.

I. If the court finds the child is in need of services, it shall order the least restrictive and most appropriate disposition considering the facts in the case, the investigation report, and the dispositional recommendations of the parties and counsel. Such disposition may include:

(a) Permitting the child to remain with a parent, guardian, relative or custodian, subject to such limitations and conditions as the court may prescribe, including:

(1) Ordering the child or parent, guardian, relative or custodian, or both, to accept individual or family counseling or medical treatment;

(2) Requiring supervision of the child, family, or both, by a probation officer or other social service agency approved by the court in accordance with paragraph IV;

(b) Releasing the child in the supervision and care of:

- (1) A relative or suitable adult; or
- (2) A group home, crisis home, or shelter care facility with expenses charged in accordance with RSA 169-D:29.

II. Any child placed under this section with someone other than a relative shall be placed in a facility licensed pursuant to RSA 170-E. If a child is placed out of state, the provisions of RSA 170-A shall be followed.

III. The court may order the child or the family or both to undergo physical treatment or treatment by a mental health center or any other psychiatrist, psychologist, psychiatric social worker or family therapist as determined by the court.

IV. All dispositional orders issued pursuant to this section shall include written findings as to the basis for the disposition and such conditions as the court imposes.

169-D:18 Disposition of a Mentally Ill or Mentally Retarded Child. If the evidence received at an adjudicatory or dispositional hearing indicates that a child is mentally ill or mentally retarded, the court may request the state to initiate proceedings or to assist the child's parent or guardian to initiate civil commitment proceedings in the probate court pursuant to RSA 135-B or 171-A.

169-D:19 Modification of Dispositional Orders. Upon the motion of a child, parent, custodian, guardian or counsel alleging a change of circumstances requiring a different disposition, the court shall conduct a hearing and pursuant to RSA 169-D:17 may modify a dispositional order; provided that the court may dismiss the motion if the allegations are not

substantiated in the hearing.

169-D:20 Appeals. An appeal, under this chapter, may be taken to the superior court by the child, parent, guardian or custodian, within 30 days of the final dispositional order, but an appeal shall not suspend the order or decision of the court unless the court so orders. The superior court shall hear the matter de novo, and shall give an appeal under this chapter priority on the court calendar.

169-D:21 Review of Disposition Required. The court shall review the disposition of such child under RSA 169-D:17 at least once within one year after such disposition and at least annually thereafter so long as the order of disposition is in effect.

169-D:22 Limitations of Authority Conferred. This chapter shall not be construed as applying to persons 16 years of age or over who are charged with the violation of a motor vehicle law, an aeronautics law, a law relating to navigation of boats or a fish and game law.

169-D:23 Religious Preference. The court and officials in placing children shall, as far as practicable, place them in the care and custody of some individual holding the same religious belief as the child or parents of the said child, or with some association which is controlled by persons of like religious faith. No child under the supervision of any state institution shall be denied the free exercise of his religion or that of his parents, whether living or dead, nor the liberty of worshipping God according thereto.

169-D:24 Court Sessions. All hearings shall be held separate from the trial of criminal cases and such hearing shall be held wherever possible in

rooms not used for such trials. Only such persons as the parties, their witnesses, counsel and representatives of the agencies present to perform their official duties shall be admitted.

169-D:25 Records. All records pertaining to cases of children in need of services shall be kept at all times so that no one, except duly accredited probation officers, others entrusted with the supervision of said child, the child, a parent, guardian, custodian, and the child's attorney shall have access to the same. Additional access may be granted by order or written consent of the child. Once a child in need of services reaches 18 years of age, all court and police records shall be destroyed.

169-D:26 Penalty for Disclosure of Records. Any person who permits other than authorized persons to have access to such records, or who publishes or broadcasts or permits the publication or broadcast of such records or parts of the same, except by court order, shall be in contempt of court.

169-D:27 Publication Restricted. It shall be unlawful for any newspaper to publish, or any radio or television station to broadcast or make public the name or address or any other particular information serving to identify any child taken into custody, without the express permission of the court; and it shall be unlawful for any newspaper to publish, or any radio or television station to make public, any of the proceedings of any court hearing.

169-D:28 Penalty for Forbidden Publication. The publisher of any newspaper or the manager, owner or person in control of a radio or television station or agent or employee of any of the above who may violate

any provision of RSA 169-D:27 shall be guilty of a misdemeanor.

169-D:29 Liability of Expenses and Hearing on Liability.

I. Liability of Expenses. Whenever an order creating liability for expenses is issued by the court under this chapter, any expenses incurred shall be payable by the town in which the child resides at the time the petition is filed or, if such residence cannot be determined, by the town in which the child is taken into custody. Either town shall have a right of action over for such expenses against the person chargeable by law for the child's support and necessities. If a town cannot collect for such payments made in behalf of a child, such payments shall be considered assistance to a pauper as to the person chargeable by law for the child's support and necessities and such person shall be subject to a loss of settlement in accordance with the provisions of RSA 164-A:5. A court may make such order as to reimbursement to the town of residence as may be reasonable and just, based on the person's ability to pay.

II. Hearing on Liability. Upon determination of liability at any stage of the proceeding, the court shall send notice to the appropriate legally liable unit. Said legally liable unit may within 30 days after receipt of notice request a hearing on the issue of liability.

169-D:30 Severability. If any provision of this chapter or the application thereof to any person or circumstances is held to be invalid, the remainder of the chapter and the application of such provision to other persons or circumstances shall not be affected thereby.

3 Correct References. Any cross reference in the RSA to a section of the RSA repealed by this act shall be considered to be a reference to the appropriate section of section 2 of this act.

4 Authority to Conform Laws. The director of legislative services, is hereby authorized, with the approval of the speaker of the house and the president of the senate, to make changes in the printed version of all laws enacted by the 1979 session of the general court that may be necessary for the purpose of conforming the language of such legislation to the language of this act, providing that no substantive changes may thereby be made. Such authority shall expire upon the printing of the 1979 session laws.

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

Rep. Danielle: I've been a Rep. for 13 years, Mayor of Franklin for 9 years, and a member of the school board for 8 years. My position is in opposition of this bill in its present form, based almost completely on one thing and that is the complete expense of this bill goes on towns and cities. I think it can well produce bankruptcy to half a dozen of our smaller towns in NH, I think it is grossly irresponsible for us to impose this burden on towns and cities. This bill was defeated on the first time it was heard on the floor by one vote. It was re-considered several days later with a great deal of arm twisting and in my opinion, a gross misrepresentation. I think that the people who support this bill are so gung-ho on it that they mesmerized themselves into feeling something that they say which is not true that are true. I think if we are to have sound legislation you have to look at this thing without emotion, coldly, and as the financial facts which are involved. There's nothing that controls cost as far as the state goes; there's no limit to the money that can be spent; there will be amendments involving state responsibility. There's another bad feature to the bill; when a court sends a child to some residence, there is no mechanism at the present time to inspect those facilities. One of the very serious things here is that there's all sorts of provisions to send children everywhere but there are no facilities to send them. You can't send them to jail; you can't send them to the YDC. It means that the cost to send children to what facilities are available is tremendous. I ran into that on the board of education where there acts saying we had to pick up all handicapped children. Originally, we were to get re-imbursed if the state had the funds. We finally provided last session -that the town would pay twice the normal cost to educate a normal child and the state would pick up the balance. That's some help, but there is no limit here, and correctional or education institutions which may be ordered under this statute can run you 15 to 20 thousand dollars a year. These are the things that cause me to say, don't be over-emotionalized on this bill. Recognize first the unfairness, as you may well know, the town of Newington has something like 2 million dollars for every child in a government town. The town of Pittsfield has something like 30 thousand. They both have the same obligation relative to children here, if the towns and cities have to bear all the expense. It's the most unfair system of taxation that could be devised. You can't have a bill like this with no limitation to the amount of money that could be spent.

The following spoke briefly in favor of HB 831:

Judge Charles Douglas	Michael Kornelius	Richard Lecombe	Kathryn Connor
Judge E. Harkoway	Debra Smiley	Ken Murray	John Sheridan
Judge Marx	Ann Kagwan	John King	Henry Byrd
Barbara Hill	Dave REIS		

Hearing adjourned at 10:30 AM

TO: Chairperson and Committee Members, Health & Welfare

FROM: Deborah J. Smiley, Juvenile Justice Advocacy Coordinator, New Hampshire Federation of Youth Services, Inc.

RE: HB 831 - An Act concerning delinquency, child protection and children in need of services.

My name is Deborah Smiley, Juvenile Justice Advocacy Coordinator for the New Hampshire Federation of Youth Services, representing my Board of Directors and approximately thirty Federation members whose agencies cover the gamut of youth services in this state.

I speak in support of HB 831 which would revise our existing juvenile justice statutes, RSA 169, Chapters B,C, & D and therefore bring New Hampshire more in line with the Juvenile Justice Delinquency Prevention Act of 1974.

There are many who have and will speak more specifically as to how this bill will affect their programs and the services they provide to children and youth. I would like to address this committee on the intent of this bill, and its philosophical and practical applications.

In 1974 Congress overwhelmingly passed the Juvenile Justice and Delinquency and Prevention Act which distinguished criminal acts by juveniles from non criminal acts, better known as status offenses. In October, 1977, President Carter signed amendments to that act which "very wisely draws a sharp distinction between these two kinds of crimes. It also encourages local administrations, states, and local government to deinstitutionalize those young people who have not committed serious crimes."

New Hampshire's response to this 1974 J.J.D.P.A. was SB 18 which amended RSA 169 to include PINS or persons in need of supervision.

Unfortunately, no appropriations were made to help in the creations of alternatives and only through the efforts of the J.J.D.P. monies from the Governor's Commission on Crime and Delinquency and responsible local programming have any real steps been taken to insure services to these status and non offenders.