

LEGISLATIVE COMMITTEE MINUTES

SB404

Bill as Introduced

SB 404 - AS INTRODUCED

2016 SESSION

16-2918
05/09

SENATE BILL

404

AN ACT relative to the burden of proof for a divorced parent's petition to relocate children of the marriage.

SPONSORS: Sen. Feltes, Dist 15; Sen. Lasky, Dist 13; Sen. Carson, Dist 14; Rep. Cushing, Rock. 21

COMMITTEE: Judiciary

ANALYSIS

This bill provides that a parent petitioning for relocation of a child bears the burden of proving that the relocation is for a legitimate purpose, the proposed location is reasonable in light of that purpose, and relocation is in the best interest of the child.

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

SB 404 - AS INTRODUCED

16-2918
05/09

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Sixteen

AN ACT relative to the burden of proof for a divorced parent's petition to relocate children
of the marriage.

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

1 1 Parental Rights and Responsibilities; Relocation of the Child's Residence. Amend RSA 461-
2 A:12, V to read as follows:

3 V. The parent seeking permission to relocate bears the ~~[initial]~~ burden of demonstrating, by
4 a preponderance of the evidence, that:

5 (a) The relocation is for a legitimate purpose; ~~[and]~~

6 (b) The proposed location is reasonable in light of that purpose; **and**

7 (c) **Relocation is in the best interest of the child.**

8 2 Parental Rights and Responsibilities; Relocation of the Child's Residence. RSA 461-A:12, VI
9 is repealed and reenacted to read as follows:

10 VI. The responding parent may offer evidence that the proposed relocation is not for a
11 legitimate purpose, the proposed location is not reasonable in light of that purpose, or relocation is
12 not in the best interest of the child.

13 3 Effective Date. This act shall take effect January 1, 2017.

Committee Minutes

SENATE CALENDAR NOTICE
Judiciary

Sen Sharon Carson, Chair
Sen Sam Cataldo, Vice Chair
Sen Gary Daniels, Member
Sen Bette Lasky, Member
Sen David Pierce, Member

Date: February 25, 2016

HEARINGS

Tuesday	03/08/2016	
(Day)	(Date)	
Judiciary	SH 100	9:00 a.m.
(Name of Committee)	(Place)	(Time)

EXECUTIVE SESSION MAY FOLLOW

9:00 a.m.	SB 350	establishing a moratorium on federal land acquisition pending a study by the department of resources and economic development.
9:10 a.m.	SB 382	relative to the authority of a federal law enforcement officer to make arrests in New Hampshire.
9:30 a.m.	SB 402	relative to procedures related to the disclosure of exculpatory evidence by police officers.
10:00 a.m.	SB 404 ✓	relative to the burden of proof for a divorced parent's petition to relocate children of the marriage.
10:20 a.m.	SB 506	clarifying who may adopt.

10:40 a.m.

SB 391

relative to annulment of certain misdemeanor offenses.

Sponsors:

SB 350

Sen. Avard
Rep. Hill

Rep. McConnell

Rep. Burt

Rep. Weyler

SB 382

Sen. Woodburn
Rep. Tholl

Rep. Theberge

Rep. Y. Thomas

Rep. Richardson

SB 402

Sen. Carson

Rep. Heffron

SB 404

Sen. Feltes

Sen. Lasky

Sen. Carson

Rep. Cushing

SB 506

Sen. Pierce

Sen. Lasky

Sen. Watters

Rep. M. Hennessey

SB 391

Sen. Forrester
Rep. Ford

Sen. Watters

Rep. Vadney

Rep. Gallagher

Susan Duncan 271-3076

Sharon M Carson
Chairman

Senate Judiciary Committee
Kaytlynn Jacobs-Brett, Senate Judiciary Intern

SB 404, relative to the burden of proof for a divorced parent's petition to relocate children of the marriage.

Hearing Date: March 8, 2016

Time Opened: 10:43 a.m.

Time Closed: 11:00 a.m.

Members of the Committee Present: Senators Carson, Cataldo, Daniels, Lasky and Pierce

Members of the Committee Absent: Senator Daniels

Bill Analysis: This bill provides that a parent petitioning for relocation of a child bears the burden of proving that the relocation is for a legitimate purpose, the proposed location is reasonable in light of that purpose, and relocation is in the best interest of the child.

Sponsors:

Sen. Feltes
Rep. Cushing

Sen. Lasky

Sen. Carson

Who supports the bill: Senator Dan Feltes; Senator Carson; Senator Lasky; Attorney Keith Kuenning, Child and Family Services

Who opposes the bill: No one

Who is neutral on the bill: No one

Summary of testimony presented in support:

Senator Feltes

Introduced the bill and its intent:

The bill is focused on situations where one parent has 150+ days of primary custody, there is no parenting plan and there is court no order in place that can govern the relocation of the child(ren). In order for the parent to relocate the child they must notify the other parent of their plans. If the parent opposes the relocation they can request a hearing. But the burden of proof is placed on the relocating parent, which modifies current law.

Current law: relocation must be reasonable, have legitimate reason and the contesting party has the burden of persuasion.

SB 404 adds that the best interest of the child must be taken into account and the burden of proof

switches from the contesting party to the relocating party.

- Senator Feltes explained reasons to support or oppose this bill.

Support:

- Modifies standard to recognize best interest of the child, which was not explicitly stated in the current law.
- Establishes a codified default for relocating children within this situation**

Oppose:

- Bill could be redundant in regards to "best interest of the child" portion. The parent that the child resides with has already been deemed (regardless of location) by the court as the placement that is in the best interest of the child.
- If there is a domestic violence case, placing the burden of proof on the relocating parent may cause a potential safety risk if the parent is trying to provide a safe location. Putting the burden on them may give an unfair advantage to the perpetrator.
- People have the right to live in other places and travel. Would changing the burden of proof make this more difficult for people?

The House introduced HB 1280 which acts as the second step to SB 404. HB 1280 focuses more on relocation after the initial relocation or after the court has already made a decision. But both bills deal with adding "in the best interest of the child."

Senator Cataldo presented a hypothetical situation where he gets divorced, has the 150+ days of primary custody and wants to move himself and the children. Who would have the burden of proof?

And where is the reference in the SB of amount of custody? As well as other states who have done this. Senator Feltes explains that the relocating parent has the burden of proof under SB 404. This bill does not govern relocation of full time custodial parents. And he was unsure of other states.

Senator Carson removed some confusion by explaining that she understood SB 404 to be the first step in the beginning of a divorce and HB 1280 to be the second step for relocation requests after the initial relocation.

Summary of testimony presented in opposition:

Senator Feltes noted that positions in opposition would be:

- Bill could be redundant in regards to "best interest of the child" portion. The parent that the child resides with has already been deemed (regardless of location) by the court as the placement that is in the best interest of the child.
- If there is a domestic violence case, placing the burden of proof on the relocating parent may cause a potential safety risk if the parent is trying to provide a safe location. Putting the burden on them may give an unfair advantage to the perpetrator.
- People have the right to live in other places and travel. Would changing the burden of proof make this more difficult for people?

Neutral Information Presented: None

Fiscal Note: None

Future Action: Pending

kjb
Date Hearing Report completed: March 9, 2016

Speakers

Testimony

In re:
SB 404

HB 1280 - AS INTRODUCED

2016 SESSION

16-2282
05/01

HOUSE BILL 1280

AN ACT relative to grounds for modification of parental rights and responsibilities.

SPONSORS: Rep. Gargas, Hills, 27; Rep. Froburg, Coos 3; Rep. DeSimone, Rock, 14; Sen. Carson, Dist 14

COMMITTEE: Children and Family Law

ANALYSIS

This bill provides for modification of a parenting order based on a change in travel time required for visitation, a change in the parent's work schedule, or the age of the child. The bill also permits the court to modify a parenting order or schedule based on the relocation of a child's residence.

Explanation: Matter added to current law appears in *bold italics*.
Matter removed from current law appears [~~in brackets and struck through~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.
16-2282
05/01

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Sixteen

AN ACT relative to grounds for modification of parental rights and responsibilities.

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

- 1 New Subparagraphs; Parental Rights and Responsibilities; Grounds for Modification. Amend RSA 461-A:11, I by inserting after subparagraph (f) the following new subparagraphs:
 - (g) If one parent's allocation of parenting time was based in whole or in part on the travel time between the parents' residences at the time of the order and the parents are now living either closer to each other or further from each other by such distance that the existing order is not in the child's best interest.
 - (h) If one parent's allocation or schedule of parenting time was based in whole or in part on his or her work schedule and there has been a substantial change in that work schedule such that the existing order is not in the child's best interest.
 - (i) If one parent's allocation or schedule of parenting time was based in whole or in part on the young age of the child, the court may modify the allocation or schedule or both based on a finding that the change is in the best interests of the child, provided that the request is at least 5 years after the prior order.
- 2 Modification of Parental Rights and Responsibilities. Amend RSA 461-A:11, II to read as follows:
 - II. Except as provided in RSA 461-A:11, I(b)-[(f)] (i) for parenting schedules and RSA 461-A:12 for a request to relocate the residence of a child; the court may issue an order modifying any section of a

permanent parenting plan based on the best interest of the child. RSA 461-A:5, III shall apply to any request to modify decision-making responsibility.

3 New Paragraph; Parental Rights and Responsibilities; Relocation. Amend RSA 461-A:12 by inserting after paragraph VIII the following new paragraph:

IX. If the parties agree on or the court authorizes the relocation of a residence of a child, the court may modify the allocation or schedule of parenting time or both based on a finding that the change is in the best interests of the child.

4 Effective Date. This act shall take effect January 1, 2017.

Committee Report

STATE OF NEW HAMPSHIRE

SENATE

REPORT OF THE COMMITTEE

Wednesday, March 9, 2016

THE COMMITTEE ON Judiciary

to which was referred **SB 404**

AN ACT

relative to the burden of proof for a divorced parent's petition to relocate children of the marriage.

Having considered the same, the committee recommends that the Bill

OUGHT TO PASS

BY A VOTE OF: 3-0

Senator Bette Lasky
For the Committee

Susan Duncan 271-3076

New Hampshire General Court - Bill Status System

Docket of SB404

Docket Abbreviations

Bill Title: relative to the burden of proof for a divorced parent's petition to relocate children of the marriage.

Official Docket of SB404:

Date	Body	Description
12/29/2015	S	To Be Introduced 01/06/2016 and Referred to Judiciary; SJ 1
2/25/2016	S	Hearing: 03/08/2016, Room 100, SH, 10:00 am; SC8
3/9/2016	S	Committee Report: Ought to Pass, 03/17/2016; SC 10
3/17/2016	S	Ought to Pass: MA, VV; OT3rdg; 03/17/2016; SJ 9
3/29/2016	H	Introduced 03/23/2016 and referred to Children and Family Law HJ 27 P. 68
3/30/2016	H	Public Hearing: 04/05/2016 11:30 AM LOB 206
4/13/2016	H	Executive Session: 04/19/2016 10:30 AM LOB 206
4/21/2016	H	Committee Report: Inexpedient to Legislate for 05/11/2016 (Vote 12-0; CC) HC 29 P. 5
5/11/2016	H	Inexpedient to Legislate: MA VV 05/11/2016 HJ 38 P. 6

NH House

NH Senate

Other Referrals

SB 404 - Rel. to the burden of proof
for a divorced parent's petition to relocate
children of the marriage.

COMMITTEE REPORT FILE INVENTORY

ORIGINAL REFERRAL RE-REFERRAL

1. THIS INVENTORY IS TO BE SIGNED AND DATED BY THE COMMITTEE AIDE AND PLACED INSIDE THE FOLDER AS THE FIRST ITEM IN THE COMMITTEE FILE.
2. PLACE ALL DOCUMENTS IN THE FOLDER FOLLOWING THE INVENTORY IN THE ORDER LISTED.
3. THE DOCUMENTS WHICH HAVE AN "X" BESIDE THEM ARE CONFIRMED AS BEING IN THE FOLDER.
4. THE COMPLETED FILE IS THEN DELIVERED TO THE CALENDAR CLERK.

- DOCKET (Submit only the latest docket found in Bill Status)
- COMMITTEE REPORT
- CALENDAR NOTICE
- HEARING REPORT
- PREPARED TESTIMONY AND OTHER SUBMISSIONS HANDED IN AT THE PUBLIC HEARING

SIGN-UP SHEET(S)

ALL AMENDMENTS (passed or not) CONSIDERED BY COMMITTEE:

- AMENDMENT # _____ - AMENDMENT # _____
 - AMENDMENT # _____ - AMENDMENT # _____

ALL AVAILABLE VERSIONS OF THE BILL:

AS INTRODUCED _____ AS AMENDED BY THE HOUSE
 _____ FINAL VERSION _____ AS AMENDED BY THE SENATE

OTHER (Anything else deemed important but not listed above, such as amended fiscal notes):

PLEASE INCLUDE THE COMMITTEE OF CONFERENCE REPORT HERE IF IT IS SIGNED BY ALL.

DATE DELIVERED TO SENATE CLERK

8/2/16

By:

Susan J. DeLuca
COMMITTEE AIDE