

# Committee Report

**REGULAR CALENDAR**

**February 18, 2021**

**HOUSE OF REPRESENTATIVES**

**REPORT OF COMMITTEE**

**The Committee on Children and Family Law to which  
was referred HB 188-FN,**

**AN ACT relative to appointment of counsel in juvenile  
court proceedings. Having considered the same, report  
the same with the following amendment, and the  
recommendation that the bill OUGHT TO PASS WITH  
AMENDMENT.**

**Rep. Cody Belanger**

**FOR THE COMMITTEE**

## COMMITTEE REPORT

Committee:	<b>Children and Family Law</b>
Bill Number:	<b>HB 188-FN</b>
Title:	<b>relative to appointment of counsel in juvenile court proceedings.</b>
Date:	<b>February 18, 2021</b>
Consent Calendar:	<b>REGULAR</b>
Recommendation:	<b>OUGHT TO PASS WITH AMENDMENT 2021-0387h</b>

### STATEMENT OF INTENT

The majority believes that this bill allows earlier intervention needed with indigent minors to facilitate justice. The amendment addresses financial concerns when a civil suit is present and a minor may need counsel.

Vote 15-0.

Rep. Cody Belanger  
FOR THE COMMITTEE

Original: House Clerk  
Cc: Committee Bill File

## REGULAR CALENDAR

Children and Family Law

**HB 188-FN**, relative to appointment of counsel in juvenile court proceedings. **OUGHT TO PASS WITH AMENDMENT.**

Rep. Cody Belanger for Children and Family Law. The majority believes that this bill allows earlier intervention needed with indigent minors to facilitate justice. The amendment addresses financial concerns when a civil suit is present and a minor may need counsel. **Vote 15-0.**

Amendment to HB 188-FN

1 Amend the bill by replacing sections 3 and 4 with the following:

2

3 3 Delinquency Children; Issuance of Summons and Notice; Appointment of Counsel. RSA 169-  
4 B:7, III is repealed and reenacted to read as follows:

5 III. The court shall appoint counsel for the minor upon receipt of the petition. Such  
6 appointment shall occur no later than the time the summons is issued. The court shall apply the  
7 presumption of indigency required by RSA 169-B:12, I, so that such appointment is not delayed. The  
8 summons shall contain the contact information of the appointed counsel. The appointment shall be  
9 made sufficiently before any hearing to allow for consultation between counsel and client, as well as  
10 for any appropriate investigation. Notice of the appointment shall be provided to counsel and to the  
11 petitioner telephonically, electronically, or in some other manner that is calculated to provide actual  
12 notice on the same day as the appointment.

13 4 Appointment of Counsel; Waiver of Counsel. Amend RSA 169-B:12, I and I-a to read as  
14 follows:

15 I. ~~[Absent a valid waiver, the court shall appoint counsel at the time of arraignment of an~~  
16 ~~indigent minor, provided that an indigent minor detained pursuant to RSA 169-B:11, III, shall have~~  
17 ~~counsel appointed upon the issuance of the detention order.] **Absent a valid waiver, the court**~~  
18 ~~**shall appoint counsel for an indigent minor pursuant to RSA 169-B:7, III.**~~ For purposes of  
19 ~~[the appointment of counsel under]~~ this section, an indigent minor shall be a minor who satisfies the  
20 court, after appropriate inquiry, that the minor is financially unable to independently obtain  
21 counsel. **So that counsel can be appointed promptly pursuant to RSA 169-B:7, III, indigency**  
22 **shall be presumed for all minors who are the subject of petitions brought under this**  
23 **chapter, subject to the court's reconsideration following the receipt of complete**  
24 **information regarding the minor's financial ability to independently obtain counsel.** If the  
25 court has received information indicating that the minor has an intellectual, cognitive, emotional,  
26 learning, or sensory disability, the court shall require the minor to consult with counsel.

27 I-a. When an attorney is appointed as counsel for a child, representation shall include  
28 counsel and investigative, expert, and other services, including process to compel the attendance of  
29 witnesses, as may be necessary to protect the rights of the child. **Representation also shall**  
30 **include representation in related proceedings when such matters are based on the same**  
31 **factual circumstances as the petition under this chapter. Such appointment shall remain**

1 *in effect until the court no longer has jurisdiction over the child pursuant to this chapter,*  
2 *except in situations where the only remaining issue involves the payment of fines or*  
3 *restitution. If an action for damages is commenced based on the same factual*  
4 *circumstances as a petition under this chapter, representation by counsel appointed under*  
5 *this chapter in such action may only extend to protecting the minor's right against self-*  
6 *incrimination and other constitutional and statutory rights as related to the petition*  
7 *brought under this chapter. Under no circumstances shall representation by counsel*  
8 *appointed under this chapter in related proceedings continue after the court no longer has*  
9 *jurisdiction over the child pursuant to this chapter.*

# Voting Sheets

**HOUSE COMMITTEE ON CHILDREN AND FAMILY LAW**

**EXECUTIVE SESSION on HB 188-FN**

**BILL TITLE:** relative to appointment of counsel in juvenile court proceedings.

**DATE:** February 18, 2021

**LOB ROOM:** REMOTE

**MOTIONS: OUGHT TO PASS WITH AMENDMENT**

Moved by Rep. DeSimone                      Seconded by Rep. Long                      AM Vote: 15-0

Amendment # 2021-0387h

Moved by Rep. DeSimone                      Seconded by Rep. Long                      Vote: 15-0

Respectfully submitted,

Rep Caroletta Alicea, Clerk





2021 SESSION

Children and Family Law

Bill #: MB 188 Motion: Adoption of Amendment AM #: 2021-0387 Exec Session Date: 2/18/2021

<u>Members</u>	<u>YEAS</u>	<u>Nays</u>	<u>NV</u>
Rice, Kimberly A. Chairman	✓		
DeSimone, Debra L. Vice Chairman	✓		
Yokela, Josh S.	✓		
Lewicke, John	✓		
Belanger, Cody M.	✓		
Cross, Kenna E. <i>Rep. MRSH</i>	✓		
Litchfield, Melissa A.	✓		
Smith, Denise M.	✓		
Long, Patrick T.	✓		
Alicea, Caroletta C. Clerk	✓		
Grossman, Gaby M.	✓		
Levesque, Cassandra N.	✓		
Wazir, Safiya	✓		
Petrigno, Peter	✓		
Altschiller, Debra	✓		
<b>TOTAL VOTE:</b>	<b>15</b>		<b>0</b>

STATE OF NEW HAMPSHIRE  
OFFICE OF THE HOUSE CLERK



1/22/2021 9:54:23 AM  
Roll Call Committee Registers  
Report

2021 SESSION

Children and Family Law

Bill #: HB 188 Motion: OTPH AM #: 2021-03876 Exec Session Date: 2/18/2021

<u>Members</u>	<u>YEAS</u>	<u>Nays</u>	<u>NV</u>
Rice, Kimberly A. Chairman	✓		
DeSimone, Debra L. Vice Chairman	✓		
Yokela, Josh S.		✓	
Lewicke, John	✓		
Belanger, Cody M.	✓		
Gross, Kenna E. <i>R. Marsh</i>	✓		
Litchfield, Melissa A.	✓		
Smith, Denise M.	✓		
Long, Patrick T.	✓		
Alicea, Caroletta C. Clerk	✓		
Grossman, Gaby M.	✓		
Levesque, Cassandra N.	✓		
Wazir, Safiya	✓		
Petrigno, Peter	✓		
Altschiller, Debra	✓		
<b>TOTAL VOTE:</b>	<b>14</b>	<b>1</b>	

# Public Hearing

HOUSE COMMITTEE ON CHILDREN AND FAMILY LAW

PUBLIC HEARING ON HB 188-FN

**BILL TITLE:** relative to appointment of counsel in juvenile court proceedings.

**DATE:** January 28, 2021

**LOB ROOM:** 306-308                      **Time Public Hearing Called to Order:** 9:38 AM

**Time Adjourned:** 10:55 AM

**Committee Members:** Reps. Rice, DeSimone, Alicea, Yokela, Lewicke, Belanger, Litchfield, D. Smith, Long, Grossman, Levesque, Wazir, Petrigno and Altschiller

**Bill Sponsors:**

Rep. Berch

Rep. M. Smith

Rep. Gordon

Rep. Belanger

Rep. Walz

Rep. Levesque

Rep. Salloway

Rep. Rouillard

**TESTIMONY**

\* Use asterisk if written testimony and/or amendments are submitted.

**Rep. Berch – Bill sponsor**

- 5th term of House Judiciary Committee
- To improve delivery in Juvenile Justice System J Commissioned are post affording of counsel and how the job was done (see sheet) filing petition and getting counsel should be gotten as early as possible
- Fee for Juvenile cases would be ended – eliminates flat and quick fee contracts

**Q:** Rep. Yokela – Is this your understanding that it is for criminal cases strictly or also civil?

**A:** Bill relates to the aspect. The liberty is such that an argument can be made for civil matters but not doing that today

**Q:** Rep. Lewicke – Do we have an idea of how much it will cost and how will they be appropriated?

**A:** Overall cost will not be huge

**Q:** Rep. Rice – We vote on policy, not the fine civil aspects

**\*Christina Gilbert – National Juvenile Defender Center – Nonprofit – Support**

- She is the senior staff Attorney
- Work to improve and reform policies at the state level
- Have done 28 assessments
- Her agency does not get council early enough in NH

**Q:** Rep. Yokela – In your assessment that you created; do you find anything contrary to the assessment?

**A:** Sure- Most people saw that council could not be gotten earlier

**Michael Skibbie – Lobbyist – Disability Rights Center – Juvenile reform**

- ACL, Waypoint and New Futures
- Pervasive juvenile justice is in the DD population
- 70% or more have disabilities – maybe higher in NH
- When someone has a disability, they may have difficulty considering consequences of their behaviors (see section 7 line 10 page 3)
- Setting a flat fee is inherently \*unreadable\*
- Setting a flat fee under compensates lawyer
- Section 2-4 page 2 Delinquency cases do not see lawyers until court

- Typically the child goes to court without a lawyer
- Competition and adversary consequences are profound and lifelong
- This bill will give the child counsel immediately
- The judge decides whether the families can hold counsel or not consider modifying this urgent to pass bill – it improves public safety and saves

**Sarah Blodgett – Judicial Council – Support**

- Executive Director – Support
- Circuit court member abstained
- Initiate pilot program
- Bill does an excellent job – Sponsors did a great job
- Fiscal note is needed
- Contract attorney gets same money drawbacks of flat fee system

**Rep. Walz – Support**

- NH is facing the threat of more litigation
- Sometimes spending money early appointment is the best for children
- Reimbursement – parents do not want to get stuck paying
- Geographic and or finances should not make a difference of the cost that comes with this
- Choices have lifelong consequences
- Cost savings for the state

**Katherine Cooper – NH Criminal Defense Lawyer – Private State/Federal**

**Michelle Wanagerin – NH Legal Assistant Youth Law Project Assistant**

- Was a public defender -sec 4 par 1:A pg 2 line 24

**Madam Chair, Rep. Rice – moved to fiscal note to LBA – Rep. Belanger and Rep. Long agree**

Respectfully submitted,

Rep. Caroletta Alicea

# House Remote Testify

## Children and Family Law Committee Testify List for Bill HB188 on 2021-01-2

Support: 92 Oppose: 2 Neutral: 1 Total to Testify: 8

[Export to Excel](#)

<u>Name</u>	<u>City, State</u> <u>Email Address</u>	<u>Title</u>	<u>Representing</u>	<u>Position</u>	<u>Testifying</u>	<u>Non-Germane</u>
Blodgett, Sarah	Sarah.T.Blodgett@jc.nh.gov	State Agency Staff	Judicial Council	Support	Yes (0m)	No
Gilbert, Christina	cgilbert@njdc.info	A Member of the Public	National Juvenile Defender Center	Support	Yes (0m)	No
Wangerin, Michelle	mwangerin@nhla.org	A Lobbyist	New Hampshire Legal Assistance	Support	Yes (0m)	No
skibbie, michael	mikes@drcnh.org	A Lobbyist	Disability Rights Center -- NH	Support	Yes (0m)	No
O, Moira	moira.k.oneill@childadvocate.nh.gov	State Agency Staff	Office of the Child Advocate	Support	Yes (0m)	No
Cooper, Katherine	katherine@NHACDL.org	A Lobbyist	NH Association of Criminal Defense Lawyers	Support	Yes (0m)	No
Gordon, Ned	44towne@gmail.com	An Elected Official	Grafton District 9	Support	Yes (0m)	No
Berch, Paul	pberch@myfairpoint.net	An Elected Official	Myself	Support	Yes (0m)	No
Spencer, Louise	lpskentstreet@gmail.com	A Member of the Public	Myself	Support	No	No
Torpey, Jeanne	jtorp51@comcast.net	A Member of the Public	Myself	Support	No	No
Ross, Rebecca	Rebecca.Ross@dhhs.nh.gov	State Agency Staff	DHHS-DCYF	Neutral	No	No
Sargent, Elizabeth	esargent@sheehan.com	A Lobbyist	NH Association of Chiefs of Police	Oppose	No	No
Lindpaintner, Lyn	Lynlin@bluewin.ch	A Member of the Public	Myself	Support	No	No
Johnson, Dawn	Dawn.Johnson@leg.state.nh.us	An Elected Official	Myself	Oppose	No	No
McConnell, Liz	lizmc99@yahoo.com	A Member of the Public	Myself	Support	No	No
Lawrence, Emily	Emily.L.Lawrence@childadvocate.nh.gov	State Agency Staff	Office of the Child Advocate	Support	No	No
NH), Sherry Frost (Strafford	sherry.frost@leg.state.nh.us	An Elected Official	Myself	Support	No	No
Garland, Ann	annhgarland@gmail.com	A Member of the Public	Myself	Support	No	No
Seavey, Deb	Dshoward1@aol.com	A Member of the Public	Myself	Support	No	No
Reeder, Frank	622fnr@gmail.com	A Member of the Public	Myself	Support	No	No
Siegel, Lawrence	larry@tricinium.com	A Member of the Public	Myself	Support	No	No
Kinsler, Dr. Philip	Psyfil@me.com	A Member of the Public	Myself	Support	No	No
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Crichton, Lucy	Lucycrichton@comcast.net	A Member of the Public	Myself	Support	No	No
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Stavis, Laurel	Laurel.stavis@leg.state.nh.us	An Elected Official	Myself	Support	No	No
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Trinkle, Galen	gltrinkle@yahoo.com	A Member of the Public	Myself	Support	No	No
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Corell, Elizabeth	Elizabeth.j.corell@gmail.com	A Member of the Public	Myself	Support	No	No
Balch, John	chris1953balch@gmail.com	A Member of the Public	Myself	Support	No	No
Czech, Paula	Pcl1943@gmail.com	A Member of the Public	Myself	Support	No	No
Azzaro, Carmela	cazzaro@ne.rr.com	A Member of the Public	Myself	Support	No	No
McNamee, Brigid	brigidmcnamee@yahoo.com	A Member of the Public	Myself	Support	No	No
Walton, Geri	geriwalton@yahoo.com	A Member of the Public	Myself	Support	No	No
Fox, Dru	dru.fox@leg.state.nh.us	An Elected Official	Myself	Support	No	No
Bartlett, Rep Christy	christydbartlett@gmail.com	An Elected Official	Merrimack 19	Support	No	No
Hruska, Jeanne	Jeanne@aclu-nh.org	A Lobbyist	ACLU-NH	Support	No	No
Doherty, David	ddoherty0845@gmail.com	A Member of the Public	Myself	Support	No	No
Van Houten,		An Elected Official	Myself	Support	No	No

Constance	constance.vanhouten@leg.state.nh.us					
Garen, June	jzanesgaren@gmail.com	A Member of the Public	Myself	Support	No	No
Avery, Cheryl	cavery@new-futures.org	A Lobbyist	New Futures	Support	No	No
Watson, Joan	joan@watsonshome.com	A Member of the Public	Myself	Support	No	No
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Larson, Ruth	ruthlarson@msn.com	A Member of the Public	Myself	Support	No	No
Schreier, Lori	schreierlori@aol.com	A Member of the Public	Myself	Support	No	No
Audette, Robert	236orr@gmail.com	A Member of the Public	Myself	Support	No	No
DeJoie, John	dejoiej@waypointnh.org	A Lobbyist	Waypoint and Juvenile Reform Project	Support	No	No
Aronson, Laura	laura@mlans.net	A Member of the Public	Myself	Support	No	No
Cornell, Patricia	Cornell49@comcast.net	An Elected Official	Myself	Support	No	No
Toll, Amanda	electamandan@comcast.net	An Elected Official	Myself	Support	No	No
Anderson, Keryn	kerynlanderson@gmail.com	A Member of the Public	Myself	Support	No	No
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Walz, Mary Beth	Mbwalz@leg.state.nh.us	An Elected Official	Merrimack 23	Support	No	No
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Mulligan, MaryJane	maryjane.mulligan99@gmail.com	A Member of the Public	Myself	Support	No	No
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Simpson, Alexis	Alexis.simpson@leg.state.nh.us	An Elected Official	Myself	Support	No	No
Meuse, David	David.Meuse@leg.state.nh.us	An Elected Official	Rockingham 29	Support	No	No
Murphy, Nancy	murphy.nancya@gmail.com	A Member of the Public	Myself	Support	No	No
Caplan, Tony	anthonycaplan1@gmail.com	An Elected Official	Merrimack, 6	Support	No	No
jakubowski, dennis	dendeb146@gmail.com	A Member of the Public	Myself	Support	No	No
Hinebauch, Mel	melhinebauch@gmail.com	A Member of the Public	Myself	Support	No	No



# Testimony



February 19, 2021

Madam Chair Karen Rice,  
Children and Family Law Committee  
New Hampshire House of Representatives  
107 North Main Street  
Concord, NH 03301

**RE: Support for HB 188 – An Act Relative to Appointment of Counsel in  
Juvenile Court Proceedings**

Madam Chair and Members of the Committee:

Thank you for giving the National Juvenile Defender Center (NJDC) the opportunity to provide live testimony in support of HB 188<sup>1</sup> on January 28<sup>th</sup> and to submit this additional written testimony.

NJDC is a non-profit, non-partisan organization dedicated to promoting justice for all children by ensuring excellence in juvenile defense. NJDC believes all youth have the right to ardent, well-resourced defense representation and we work to improve access to and quality of counsel for all young people in delinquency court; provide technical assistance, training, and support to juvenile defenders across the country; and support the reform of court systems and policies that negatively impact our nation's youth.

NJDC has also supported effective and developmentally appropriate juvenile court reform through assessments of access to and quality of juvenile defense counsel at the state level. To date, we have conducted assessments in 28 states,<sup>2</sup> including the release of our Assessment of New Hampshire's juvenile defense system last August.<sup>3</sup> Our work on both the New Hampshire Assessment and nationally provides us with a unique perspective on appointment of counsel in juvenile court and the efforts to protect the due process rights of youth across the country. While HB188 does not tackle all of the issues found in NJDC's Assessment, if passed, it would address at least six separate significant recommendations.<sup>4</sup>

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<sup>1</sup> H.B.188, 2021 SESS. (N.H. 2021) (proposed legislation introduced on 01/6/21 and presented a public hearing on 01/28/21).

<sup>2</sup> See generally *State Assessments*, NAT'L JUV. DEF. CTR., <https://njdc.info/our-work/juvenile-indigent-defense-assessments/> (last visited Feb. 17, 2021).

<sup>3</sup> NAT'L JUV. DEF. CTR., *Undervalued: An Assessment of Access to and Quality of Juvenile Defense Counsel in New Hampshire* (2020), <https://njdc.info/wp-content/uploads/NewHampshire-Assessment-Web.pdf>.

<sup>4</sup> NAT. JUV. DEF. CTR., *Undervalued: An Assessment of Access to and Quality of Juvenile Defense Counsel in New Hampshire* 74 (2020), <https://njdc.info/wp-content/uploads/NewHampshire-Assessment-Web.pdf>.

NJDC supports efforts to ensure children are afforded legal counsel at the earliest possible interaction with the legal system and throughout the time of court involvement. NJDC supports HB188 in its entirety, and specifically highlights our support of the following provisions: 1) requiring the appointment of counsel once a delinquency petition has been filed or summons issued and before the child's first appearance in court; 2) requiring that young people can consult with counsel prior to waiving the right to counsel; 3) prohibiting admittance of a statement to law enforcement from an unrepresented minor in any judicial proceeding; 4) defining legal representation of young people to include any "related proceedings when such matters are based on the same factual circumstances as the petition;" 5) requiring an hourly rate for contract attorneys rather than a flat fee; and 6) removing any potential financial reimbursement obligation for a young person for the appointment of counsel.

More than 50 years ago, the United States Supreme Court issued *In re Gault*, a landmark decision declaring that children require "the guiding hand of counsel at every step in the proceedings."<sup>5</sup> This vital constitutional right to counsel must begin prior to the child's first appearance in court. Since *Gault*, state legislatures and courts have grappled with how to implement the right to ensure youth have meaningful access to counsel.

### **The Importance of Early Appointment of Counsel**

If a young person is accused of a crime and faces the awesome power and resources of the state dedicated to prosecuting them, most people would expect the young person would at least have the opportunity to speak with a lawyer before appearing in front of a judge. The sad reality is thousands of young people across this country never get a lawyer, either because none is provided or the young person has waived their right to an attorney without any information about the impact of forgoing their right to counsel.

Too often in courts across our country and in New Hampshire, a defender will not meet their client until the first appearance at the courthouse. If they are lucky, the defender and child might have five to ten minutes to discuss the case and the upcoming hearing. If they are not so lucky, the defender might get only a few whispered comments to their new client while standing at counsel table just before the hearing begins. These examples fall far short of affording the constitutional right to counsel.

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(highlighting recommendations: (1) Eliminate flat-fee contracts for private attorneys representing youth in delinquency court, (2) Eliminate all fees & costs associated with access to a publicly funded juvenile defender, (3) Provide counsel to youth during law enforcement, (4) Automatically appoint counsel for all youth prior to their first appearance, (5) Allow youth to waive counsel only after consulting with a qualified juvenile defender, and (6) Ensure youth are represented throughout their involvement in the juvenile legal system).

<sup>5</sup> *In re Gault*, 387 U.S. 1, 59 (1966); *Powell v. Alabama*, 287 U.S. 45, 69 (1932).

The National Council of Juvenile and Family Court Judges advocates that early appointment of counsel should be encouraged.<sup>6</sup> And the United States Department of Justice has asserted that unprepared counsel is *de facto* denial of counsel. In the Statement of Interest for *N.P. et al. v. Georgia*, the Department of Justice stated, “If [defense counsel] do not have the time or resources to engage in effective advocacy...then they will inevitably fail to meet the minimum requirements of their clients’ right to counsel. These conditions lead to *de facto* nonrepresentation.”<sup>7</sup>

If counsel is not appointed until the child’s first court appearance, the child must walk into the courthouse with little to no understanding of the proceedings against them, leaving them overwhelmed, confused, and unable to participate in their defense. Counsel need more time with young clients in order to effectively represent them. “Because the client in juvenile court is a minor, counsel’s representation is more expansive than that of a criminal defense lawyer for an adult. Lawyers for children must be aware of their clients’ individual and family histories, their schooling, developmental disabilities, mental and physical health, and the clients’ status in their communities in order to assess their capacities to proceed and to assist in their representation.”<sup>8</sup>

One of the key findings of NJDC’s Assessment of New Hampshire’s juvenile defense system is that New Hampshire’s appointment system does not provide counsel to youth early enough in the process; as a result, youth may appear at their initial court hearing without counsel and enter pleas without ever consulting with an attorney.<sup>9</sup> While youth who were detained had a lawyer appointed prior to a detention hearing, non-detained youth sometimes appeared at arraignment without having ever communicated with a lawyer. As described in our assessment,

if a child asserted their wish to be represented by counsel at the arraignment hearing, that appointment was most often in the form of a piece of paper appointing counsel in name, but not in fact allowing for defense representation to occur at that hearing. Many of these youth, who had not yet met an attorney, were placed on conditional release by the court and required to comply with conditions

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<sup>6</sup> NAT’L COUNCIL OF JUV. & FAM. COURT JUDGES, *Enhanced Juvenile Justice Guidelines*, Ch. III, 17 (2018), [https://www.ncjfcj.org/wp-content/uploads/2019/01/NCJFCJ\\_Enhanced\\_Juvenile\\_Justice\\_Guidelines\\_Final.pdf](https://www.ncjfcj.org/wp-content/uploads/2019/01/NCJFCJ_Enhanced_Juvenile_Justice_Guidelines_Final.pdf).

<sup>7</sup> U.S. Dep’t of Justice Statement of Interest for *N.P. et al. v. Georgia*, No. 2014-CV-241025 (GA. SUPER. CT. 2014).

<sup>8</sup> Wallace J. Mlyniec, *In re Gault at 40: The Right to Counsel in Juvenile Court – A Promise Unfulfilled*, 44 CRIM. L. BULLETIN 371 (2010), <http://www.law.uh.edu/center4clp/events/gault-at-40/papers/44No3CrimLawBulletin5-Gault-Mlyniec.pdf>.

<sup>9</sup> NAT. JUV. DEF. CTR., *Undervalued: An Assessment of Access to and Quality of Juvenile Defense Counsel in New Hampshire*, 19 (2020), <https://njdc.info/wp-content/uploads/NewHampshire-Assessment-Web.pdf>.

that restricted their liberty, all without a lawyer representing their legal interests. And, while youth in New Hampshire cannot be detained at arraignment without counsel, the law does not prevent a judge from ordering a child to be placed in a non-secure, out-of-home placement without counsel present at arraignment.<sup>10</sup>

A member of the NJDC Assessment team pointed out “it is difficult to imagine a more disempowering experience than having to face unknown proceedings without an advocate by one’s side to offer advice and counseling about their decisions, explain what is happening, and fight for the youth’s stated interests.”<sup>11</sup>

The Assessment recommends automatically appointing counsel for all youth prior to their first court appearance and ensuring youth are represented throughout their involvement in the juvenile legal system.<sup>12</sup> It should be noted that a wide variety of New Hampshire’s system stakeholders reported a belief that defense attorneys for youth should be appointed earlier in the legal process.<sup>13</sup>

HB188’s requirement that appointment of counsel “shall be made sufficiently before any hearing to allow for consultation between counsel and client, as well as for any appropriate investigation” is an important step toward ensuring that young people have the opportunity to fully participate in their own defense.

### **Requiring Consultation with An Attorney Prior to Waiver of Counsel**

Acknowledging a national problem of waiver of counsel in juvenile courts, NCJFCJ has called on judges to safeguard against waiver of counsel: “It is vitally important that youth are represented by counsel, and it is the responsibility of juvenile court judges and judicial officers to ensure that their inquiries are as fulsome as possible. At the very least, youth should be afforded a meaningful opportunity to consult with counsel prior to any consideration of waiving that right.”<sup>14</sup>

In recognition of the critical importance of upholding young people’s constitutional rights and developmental differences that may make waiver of those rights more likely, New

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<sup>10</sup> NAT. JUV. DEF. CTR., *Undervalued: An Assessment of Access to and Quality of Juvenile Defense Counsel in New Hampshire*, 19 (2020), <https://njdc.info/wp-content/uploads/NewHampshire-Assessment-Web.pdf>.

<sup>11</sup> NAT. JUV. DEF. CTR., *Undervalued: An Assessment of Access to and Quality of Juvenile Defense Counsel in New Hampshire*, 20 (2020), <https://njdc.info/wp-content/uploads/NewHampshire-Assessment-Web.pdf>.

<sup>12</sup> U.S. Dep’t of Justice Statement of Interest for N.P. et al. v. Georgia, No. 2014-CV-241025 (Ga. Super. Ct. 2014).

<sup>13</sup> NAT. JUV. DEF. CTR., *Undervalued: An Assessment of Access to and Quality of Juvenile Defense Counsel in New Hampshire*, 20 (2020), <https://njdc.info/wp-content/uploads/NewHampshire-Assessment-Web.pdf>.

<sup>14</sup> NAT’L COUNCIL OF JUV. & FAM. COURT JUDGES, *Enhanced Juvenile Justice Guidelines*, Ch. III, 25 (2018), [https://www.ncjfcj.org/wp-content/uploads/2019/01/NCJFCJ\\_Enhanced\\_Juvenile\\_Justice\\_Guidelines\\_Final.pdf](https://www.ncjfcj.org/wp-content/uploads/2019/01/NCJFCJ_Enhanced_Juvenile_Justice_Guidelines_Final.pdf).

Hampshire has already severely limited how and when a young person may waive their right to counsel. However, NJDC observed through our Assessment that in some jurisdictions children were still waiving their right to counsel and pleading “true” to charges at arraignment, without ever consulting with counsel about their right to an attorney.<sup>15</sup> And, as noted, at the time of our Assessment, while children in New Hampshire cannot be detained without having legal representation, they may still be placed outside of the home without ever having spoken with counsel in some instances.<sup>16</sup>

HB188 would add additional safeguards necessary to ensure all children in New Hampshire, regardless of charge or jurisdiction, receive the benefit of consultation with an attorney, prior to considering waiving their right to counsel.

### **Defining Legal Representation to Include any Related Proceedings**

Involvement in the delinquency system can create a multitude of barriers to a young person’s future opportunities for employment, housing, and education. Juvenile defense attorneys can play a significant role in helping eliminate such barriers. Comprehensive representation by juvenile defense attorneys encompasses a wide range of in- and out-of-court advocacy. Currently, under New Hampshire law, representation for youth in delinquency proceedings automatically ends 30 days after disposition, unless a post-dispositional motion is filed within that timeframe.<sup>17</sup> The provision of HB188 incorporating “related proceedings when such matters are based on the same factual circumstances as the petition” will provide New Hampshire youth with holistic advocacy by their attorneys. It will also support continued communication and advocacy at critical post-disposition hearings and proceedings.

The Assessment describes how children involved in New Hampshire’s juvenile legal system face significant barriers accessing appropriate educational and other services, particularly once placed on probation.<sup>18</sup> New Hampshire’s Juvenile Code includes in its purpose statement for the juvenile court system, “providing the protection, care, treatment, counselling, supervision, and rehabilitative resources which such minor needs” and “preserving the unity of the family” whenever possible and “consistent with the protection of the public.”<sup>19</sup> Guaranteeing comprehensive representation for youth by

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<sup>15</sup> NAT. JUV. DEF. CTR., *Undervalued: An Assessment of Access to and Quality of Juvenile Defense Counsel in New Hampshire*, 22 (2020), <https://njdc.info/wp-content/uploads/NewHampshire-Assessment-Web.pdf>.

<sup>16</sup> NAT. JUV. DEF. CTR., *Undervalued: An Assessment of Access to and Quality of Juvenile Defense Counsel in New Hampshire*, 22 (2020), <https://njdc.info/wp-content/uploads/NewHampshire-Assessment-Web.pdf>.

<sup>17</sup> N.H. FAM. DIV. R. 3.11 (2020).

<sup>18</sup> NAT’L. JUV. DEF. CTR., *Undervalued: An Assessment of Access to and Quality of Juvenile Defense Counsel in New Hampshire*, 39 (2020), <https://njdc.info/wp-content/uploads/NewHampshire-Assessment-Web.pdf>.

<sup>19</sup> N.H. REV. STAT. ANN. § 169-B:1 (2020).

qualified juvenile defense counsel supports the rehabilitative mission of the juvenile court, can decrease barriers to education and other services, and assist children in remaining in their homes and communities. National standards also call for such comprehensive representation.<sup>20</sup>

The provision of HB 188 affording access to counsel in related proceedings would ensure the rights of New Hampshire youth are not abandoned as they remain entangled in what is often complicated and confusing involvement with the court. Juvenile defense attorneys with specialized knowledge of their clients, their case, and the system, would continue defending youth rights and upholding their interests..

### **No Statement or Confession to Law Enforcement Admissible without Legal Representation**

NJDC also supports HB188's provision providing youth with a sufficient opportunity to consult with counsel before any statement or confession obtained by law enforcement may be used in court. Developmental research suggests that youth may be more susceptible than adults to interrogation pressures because they are less likely to understand the legal process or their rights;<sup>21</sup> have less impulse control and are more prone to risky decision-making;<sup>22</sup> are more susceptible to immediate rewards and have more difficulty in anticipating the consequences of their actions;<sup>23</sup> are more likely to

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<sup>20</sup> NAT'L JUV. DEF. CTR., *Protecting Rights, Promoting Positive Outcomes: Post-Disposition Access To Counsel* (2014), <http://njdc.info/wpcontent/uploads/2014/10/Post-Disposition-HR-10.13.14.pdf>.

<sup>21</sup> See generally, Jodi Viljoen & Ronald Roesch, *Competence to Waive Interrogation Rights and Adjudicative Competence in Adolescent Defendants: Cognitive Development, Attorney Contact, and Psychological Symptoms*, 29 L. & HUM. BEHAV. 723 (2005) (exploring the relationship of youth's cognitive development, psychological symptoms and attorney-client contact to capacities related to adjudicative competency and Miranda waiver).

<sup>22</sup> See generally, Laurence Steinberg et al., *Age Differences in Sensation-Seeking and Impulsivity as Indexed by Behavior and Self-Report: Evidence for a Dual Systems Model*, 44 DEVELOPMENTAL PSYCHOL. 1764 (2008) (finding that sensation-seeking behaviors increased between the ages of 12-15 and then steadily declined while impulsivity declined from age 10 through adolescence); Elizabeth P. Shulman & Elizabeth Cauffman, *Reward-Biased Risk Appraisal and Its Relation to Juvenile Versus Adult Crime*, 37 L. & HUM. BEHAV. 412 (2013) (demonstrating that adolescents, more so than adults, tend to focus on the reward rather than the risk consistent with the dual system theory that the risk and reward system of the adolescent brain is stronger than the cognitive control system); Michael Dreyfuss et al., *Teens Impulsively React rather than Retreat from Threat*, 36 DEVELOPMENTAL NEUROSCIENCE 220 (2014) (showing that adolescents, compared to adults, are more likely to act impulsively when they are faced with threatening stimuli).

<sup>23</sup> See generally Laurence Steinberg et al., *Age Differences in Future Orientation and Delay Discounting*, 80 CHILD DEVELOPMENT 28 (2009) (suggesting that adolescents' preference for the immediate versus delayed rewards is more closely linked to adolescents' ability to think about the future and anticipate future consequences); Thomas Grisso et al., *Juveniles' Competence to Stand Trial: A Comparison of Adolescents' and Adults' Capacities as Trial Defendants*, 27 L. & HUM. BEHAV. 333 (2003) (finding that youth's lack of future orientation may impede their ability to fully understand the implications of waiving their right to silence when being interrogated by the police).

comply with authority;<sup>24</sup> and are more susceptible to peer influence.<sup>25</sup> Based on this existing research, it is clear that special caution is required when interrogating youth.

Prohibiting admission of any statement by a young person in judicial proceedings unless they had a prior opportunity to consult with counsel upholds children's constitutional right to counsel and ensures the integrity of investigations involving children. As long ago as 1948 the Supreme Court asserted, "... we cannot believe that a lad of tender years is a match for the police in such a contest. He needs counsel and support if he is not to become the victim first of fear, then of panic."<sup>26</sup> More recently, the Supreme Court held that age informs the *Miranda* analysis for custodial interrogations because children subjected to police questioning often feel more pressured to comply with authority than adults.<sup>27</sup> The Supreme Court aptly stated, "By its very nature, custodial police interrogation entails 'inherently compelling pressures.' Even for an adult, the physical and psychological isolation of custodial interrogation can 'undermine the individual's will to resist and . . . compel him to speak where he would not otherwise do so freely.'"<sup>28</sup> This bill would assist children in understanding their rights and the legal process before they are subject to "the overpowering presence of the law."<sup>29</sup> Studies found that in the absence of counsel, almost 90 percent of children waive their *Miranda* rights, with few children understanding the rights they are waiving.<sup>30</sup> This leaves children literally defenseless in the face of trained professionals seeking to secure confessions.

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<sup>24</sup> Thomas Grisso et al., *Juveniles' Competence to Stand Trial: A Comparison of Adolescents' and Adults' Capacities as Trial Defendants*, 27 L. & HUM. BEHAV. 333 (2003) (finding that youth tendencies to be more compliant with authorities may increase their vulnerability to police coercion).

<sup>25</sup> See generally, Margo Gardner & Laurence Steinberg, *Peer Influence on Risk Taking, Risk Preference, and Risky Decision Making in Adolescence and Adulthood: An experimental Study*, 41 DEVELOPMENTAL PSYCHOL. 625 (2005) (demonstrating that youth are more susceptible to the influence of their peers than adults, particularly when engaging in risky decision-making); Jason Chein et al., *Peers Increase Adolescent Risk Taking by Enhancing Activity in the Brain's Reward Circuitry*, 14 DEVELOPMENTAL SCI. F1 (2011) (suggesting that the presence of peers increases the salience of immediate rewards and activates the incentive processing/socio-emotional system of the brain, which subsequently increases risky decision-making).

<sup>26</sup> *Haley v. Ohio*, 332 U.S. 596, 599-600 (1948).

<sup>27</sup> *J.D.B. v. North Carolina*, 564 U.S. 261, 272 (2011).

<sup>28</sup> *J.D.B. v. North Carolina*, 564 U.S. 261, 269 (2011) (quoting *Miranda v. Arizona*, 384 U.S. 436, 467(1966)).

<sup>29</sup> *Haley v. Ohio*, 332 U.S. 596, 600 (1948).

<sup>30</sup> Barry C. Feld, *Real Interrogation: What Actually Happens When Cops Question Kids*, 47 L. & SOC'Y REV. 1, 12 (2013) (finding, in a study of 307 young people ages 16 through 18, 92.8 percent of those young people waived their *Miranda* rights); Thomas Grisso, *Juveniles' Capacities to Waive Miranda Rights: An Empirical Analysis*, 68 CAL. L. REV. 1134, 1153 (1980) (finding, in a study of 431 youth, only 20.9 percent of those youth adequately understood all four *Miranda* rights).



Other jurisdictions have begun to introduce these critical protections for children interacting with law enforcement and New Hampshire should look to them as a model for how to implement such provisions.<sup>31</sup>

### **Adequate Compensation for Delinquency Defense Contracts**

NJDC also strongly supports the provisions of HB188 requiring hourly fees for contract attorneys rather than a flat fee. Flat-fee contracts provide a disincentive for attorneys to spend the requisite time and resources necessary to provide a constitutionally sound defense in youth cases and encourage attorneys to close cases quickly and move to the next case, regardless of the outcome.<sup>32</sup>

### **Eliminating Reimbursement Costs for Counsel**

HB 188 clarifies that there is no longer any reimbursement for public defense services charged to families. The innumerable fines, fees, and costs levied on young people and families by the juvenile court system interfere with youth's right to counsel and access to diversion, shift the state's responsibility to provide counsel and services to families of least means, and burden youth and families with insurmountable debt that follows them long after the young person's involvement in the juvenile legal system has ended. New Hampshire has already begun to make changes and start undoing the many financial barriers assessed to young people and their families.<sup>33</sup> Our Assessment indicated that costs related to counsel likely contributed to waiver of counsel in some cases.<sup>34</sup> Charging children and their families a fee to access the constitutional right to counsel runs counter to the promise of due process of law and the goals of a system premised on rehabilitation and setting a youth up for future success. To continue the progress already made in New Hampshire toward keeping youth in their homes and communities, ensuring that the rest of the financial barriers to young people accessing counsel are removed must remain a priority.

HB188 will afford children earlier access to counsel throughout New Hampshire and provide the child and attorney proper time for consultation before any court hearing and

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<sup>31</sup> See, e.g. CAL. WELF. & INST. CODE § 625.6 (2020); 705 ILL. COMP. STAT. § 405, 5-170 (2017) (providing that any child younger than 15 and accused of enumerated serious offenses must be represented by counsel during the entire custodial interrogation;

<https://www.kingcounty.gov/council/news/2017/April/04-24-youthincarceration.aspx> (noting that the opportunity to consult with counsel prior to any interrogation by law enforcement encompasses the same protections that a child's right to counsel for any court proceeding would entail).

<sup>32</sup> NAT'L JUV. DEF. CTR., *Broken Contracts: Reimagining High-Quality Representation of Youth in Contract and Appointed Counsel Systems*, 5 (2020), [https://njdc.info/wp-content/uploads/NJDC\\_Broken\\_Contracts-Report-WEB.pdf](https://njdc.info/wp-content/uploads/NJDC_Broken_Contracts-Report-WEB.pdf).

<sup>33</sup> H.B. 1162, 2020 SESS. (N.H. 2020).

<sup>34</sup> NAT'L JUV. DEF. CTR., *Undervalued: An Assessment of Access to and Quality of Juvenile Defense Counsel in New Hampshire*, 55 (2020), <https://njdc.info/wp-content/uploads/NewHampshire-Assessment-Web.pdf>.

before any waiver of a child's right to counsel. HB 188 will allow for more holistic advocacy by defense attorneys and ensure children in New Hampshire have legal representation throughout their involvement with the juvenile legal system. HB 188 would also ensure that attorneys are appropriately compensated and not disincentivized from working on juvenile cases and would take any additional financial barrier to obtaining counsel away from young people who can afford an attorney. NJDC strongly supports HB188 and respectfully urges the Legislature's support.

Please do not hesitate to contact us for additional information.

Thank you.

Sincerely,

Christina J. Gilbert  
Senior Staff Attorney and Policy Counsel



# State of New Hampshire

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Office of the Child Advocate

Moira O'Neill  
Director

**Testimony of  
Moira O'Neill, PhD  
The Child Advocate  
before  
The New Hampshire House Children and Family Law Committee  
January 28, 2021**

Good morning Chairwoman Rice, Vice Chairwoman DiSimone and esteemed members of the Children and Family Law Committee. My name is Moira O'Neill and I am the State Child Advocate. Thank you for the opportunity to speak to you today in support of **House Bill 188, relative to appointment of counsel in juvenile court proceedings.**

HB 188 addresses a gap in representation of children in the juvenile justice system that the Office of the Child Advocate has noted in annual reports and other conversations, namely that children should be appointed counsel at all stages of delinquency proceedings. It further provides that uncounseled statements or confessions shall not be admissible in any judicial proceeding and relieves children of the cost of appointed counsel.

The United States Supreme Court decision in *In re gault*<sup>1</sup> established that children have a constitutional right to counsel. However, that right is only achieved when children are actually given counsel when needed. Providing representation beginning at the earliest time ensures adequate protection of children's rights.

We know children are more susceptible to influence given their developmental capacity. Absent counsel, they are at greater risk of waiving their rights, agreeing to conditions impinging upon their liberty, or making decisions that significantly impact their future.<sup>2</sup> We think about children developing as learning from mistakes or listening to what they are told. That is part of it. However it is actually far more complicated. We now know from very elegant imaging studies and other research that the frontal lobe of the brain, including the prefrontal cortex, is still developing well in the mid-20s. The structure and function of that part of the brain determines a young person's ability to think critically and to reason. The lack of development in that area of the brain is often cited to explain anti-social behavior. Children cannot anticipate consequences. That same underdevelopment of the brain places a child at risk of providing a false statement or confession.<sup>3</sup>

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<sup>1</sup> *In re Gault*, 387 U.S.1 (1967).

<sup>2</sup> *Undervalued: An Assessment of Access to and Quality of Juvenile Defense Counsel in New Hampshire*, National Juvenile Defender Center, 18-23, Aug. 19, 2020. <https://njdc.info/wp-content/uploads/NewHampshire-Assessment-Web.pdf>

<sup>3</sup> Owen-Kostelnik, J. & Meyer, J. R., Testimony and Interrogation of Minors: Assumptions about Maturity and Morality, *American Psychologist* 286, 287, May 2006. [https://www.researchgate.net/profile/Nicholas\\_Reppucci/publication/7062342\\_Testimony\\_and\\_Interrogation\\_of\\_Minors\\_Assumptions\\_About\\_Maturity\\_and\\_Morality/links/0c96052cb0473de0ee000000/Testimony-and-Interrogation-of-Minors-Assumptions-About-Maturity-and-Morality.pdf?origin=publication\\_detail](https://www.researchgate.net/profile/Nicholas_Reppucci/publication/7062342_Testimony_and_Interrogation_of_Minors_Assumptions_About_Maturity_and_Morality/links/0c96052cb0473de0ee000000/Testimony-and-Interrogation-of-Minors-Assumptions-About-Maturity-and-Morality.pdf?origin=publication_detail)

The importance of counsel for children encountering the juvenile justice system is also elevated because of the nature of their circumstances. Children who come to the attention of law enforcement have exhibited anti-social behavior. The most common charge that the Office of the Child Advocate has encountered among children is simple assault, usually involving a parent. These children are at considerable risk for antagonistic relationships with their parents or caregivers. There is also a large population of children considered “crossover youth” who are actually abused and neglected children whose behavior is a response to their maltreatment. We also know there is an over-representation of children from impoverished circumstances whose parents may encounter barriers to appearing at court or other meetings due to lack of transportation or work obligations. All of these children are highly likely to be navigating legal systems without the support of engaged, protective parents or professional advocates.

The most common complaint we hear from children at the Sununu Youth Services Center or other residential facilities is that no one listens to them. Appointing legal counsel from the very beginning and for the life of a case increases the chances that children will be heard. We routinely find that children make reasonable, often self-preserving suggestions for their care. Consistent legal counsel for the life of a case will ensure they are listened to, and that they receive any necessary treatment and educational services for optimal rehabilitation.

The provisions in this bill were all recommendations in the August 2020 National Juvenile Defender Center’s *Assessment of Access to and Quality of Juvenile Defense Counsel in New Hampshire*.<sup>4</sup>

The Office of the Child Advocate urges the Committee to pass **HB 188, relative to the appointment of counsel in juvenile court proceedings.**

Thank you very much for taking my testimony. I welcome any questions you may have.

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<sup>4</sup> *Undervalued: An Assessment of Access to and Quality of Juvenile Defense Counsel in New Hampshire*, National Juvenile Defender Center, 76-77, Aug. 19, 2020. <https://njdc.info/wp-content/uploads/NewHampshire-Assessment-Web.pdf>

# New Hampshire Association of Criminal Defense Lawyers

To: The New Hampshire House of Representatives:  
Children and Family Law Committee

From: Katherine Cooper, executive director  
The New Hampshire Association of Criminal Defense Lawyers

Date: January 28, 2021

Re: Written Testimony on HB 188

## I. INTRODUCTION

The New Hampshire Association of Criminal Defense Lawyers (NHACDL) consists of more than 250 Granite State lawyers whose practices include a significant amount of criminal defense work. Our membership includes private practitioners and state and federal public defenders. NHACDL is an affiliate of the National Association of Criminal Defense Lawyers and shares its mission to ensure justice and due process for persons accused of crime and to promote the proper and fair administration of criminal and juvenile justice.

## II. HB 188

Attorneys who are members of NHACDL have the ability to see, over many years, the impact that the juvenile justice system has on various families and individuals. Because of the small size of our state, lawyers who practice here often see the same people multiple times over the years – in court, in jail, and on both sides of the courtroom (as both victims and defendants). As defense lawyers there is also a unique dynamic to the stories we hear. Stories that are not shared in public and are not shared with law enforcement, teachers or therapists. There is a unique relationship that forms when a lawyer represents a person in a court proceeding. Clients feel less shame in telling their stories and safer in divulging the facts of their lives because the cloak of confidentiality is meaningful and powerful. There is also a unique feeling when someone is publicly standing by your side and defending you. Many clients express it is the first time in their lives that they have had such an experience.

Because of the nature of youth outlined at the beginning of HB 188, having access to counsel is even more important for children than adults. This bill would improve access to counsel and we would encourage the Committee to go even further with the bill and make appointment for children mandatory without the need to even submit a

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waiver. Essentially, all children are indigent and all children deserve to have someone on their side. We regularly see parents who do not want their child to have a lawyer. Sometimes they just don't want to incur the cost; sometimes they are scared of what the child might tell the lawyer; and, sometimes they just don't want to give up full control of the narrative.

Currently, arraignment can be the most important day in the lifespan of a case. There are numerous cases resolved at arraignment without anyone representing the child. Conditions are put in place at arraignment that must be followed without any representation to assist in what those conditions are. It is common once counsel is appointed for motions to be filed to change conditions. It would save work and time to have a lawyer involved from the start. In addition, children frequently plead true at arraignment and that is often simply to avoid having to come back. Prosecutors and the JPPO meet with the family at arraignment and make an offer on the case to resolve it right there and that is enticing because the child just wants to get it over with. However, the ongoing impact of having an open case is huge and there are many children who later regret pleading true because they had no idea of the long-term consequences of that decision.

Appointing attorneys in all cases will incur a cost of course, but when you see how the system works day in and day out, it makes sense that increasing representation will actually save money over time. It is not possible for parents or children who are unrepresented to know the kind of information that is needed by the State to make appropriate decisions in their cases. People simply don't know what is relevant and what is not. In addition, we know that the JPPOs have huge case loads and are not able to devote a significant amount of time to every case. This means that treatment options are overlooked and out-of-home placements occur in cases where they are unnecessary. It is difficult to arrange alternate family living arrangements but developing those options is crucial both for better outcomes, reducing trauma and saving money. Attorneys can help with this workload and make case resolutions (even those that still take place at arraignment) more just and effective. Allowing attorneys to have ongoing involvement in cases also leads to improved responses when things go poorly and a greater ability to adjust what each child needs at certain times.

A couple of stories illustrate this:

One attorney told me about a case this year where her client overdosed in placement after being taken to get drugs by a staff member. The family notified the lawyer and she was able to get back involved to advocate for a different, more appropriate placement for her client. If the family had not contacted her, she would never have known he needed help because her appointment was not ongoing.

Another attorney told me about a child in a placement in who was molested by two adult female staff members. The judges, prosecutor and JPPO were far more concerned about the risk he posed to his family. No one even really apologized for

putting him in a place where he was molested. It was truly heartbreaking. Because of that incident, he was sent to a more restrictive group home. The lawyer had to have multiple hearings to get him to a less restrictive place. Without an attorney being involved, this child would have continued to be punished for his victimization.

A third lawyer related a case where she was appointed to the client after he had already been sent to the Sununu Center. When she went to see him, they tried not to let me in the building. After waiting for 3 hours, she finally saw him and he had a bunch of bruises. He had been beaten up by three guards after swearing at one of the guards. She went back with an investigator the next day and filed an emergency motion to get him out. He went to a less-restrictive group home and the lawyer referred his case to the Disabilities Rights Center.

These examples all show that a lawyer was needed to make a necessary change in a child's placement. They also show circumstances that can occur that cause severe trauma to children. There are very few stories of children who are GLAD they ended up in the juvenile justice system. Most often, it is clear that the least amount of time in the system, the better the outcome. Lawyers help make that happen.

Bill as  
Introduced



HB 188 - AS INTRODUCED

2021 SESSION

21-0225

05/04

HOUSE BILL **188**

AN ACT relative to appointment of counsel in juvenile court proceedings.

SPONSORS: Rep. Berch, Ches. 1; Rep. M. Smith, Straf. 6; Rep. Gordon, Graf. 9; Rep. Belanger, Rock. 9; Rep. Walz, Merr. 23; Rep. Levesque, Straf. 4; Rep. Salloway, Straf. 5; Rep. Rouillard, Hills. 6

COMMITTEE: Children and Family Law

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ANALYSIS

This bill directs the court to appoint counsel for a minor when the juvenile delinquency petition is filed or the summons issued. The bill also provides that a confession or statement from an unrepresented minor shall not be used in any judicial proceeding.

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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.

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Twenty One*

AN ACT relative to appointment of counsel in juvenile court proceedings.

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

1 1 Statement of Findings.

2 I. The United States Supreme Court has found that “[a] lack of maturity and an  
3 underdeveloped sense of responsibility are found in youth more often than in adults and are more  
4 understandable among the young. These qualities often result in impetuous and ill-considered  
5 actions and decisions.” It has further found that “juveniles are more vulnerable or susceptible to  
6 negative influences and outside pressures, including peer pressure...[Y]outh is more than a  
7 chronological fact. It is a time and condition of life when a person may be most susceptible to  
8 influence and to psychological damage. This is explained in part by the prevailing circumstance that  
9 juveniles have less control, or less experience with control, over their own environment.”

10 II. Children need access to counsel when they come in contact with the juvenile justice  
11 system.

12 III. The role of the juvenile defender is complex and reflects the unique status of childhood  
13 in terms of immaturity, disability, and trauma. The juvenile defender must be knowledgeable as to  
14 legal jurisprudence relating to the representation of children, including child development, capacity  
15 to participate in legal proceedings, methods and effectiveness and availability of treatment and  
16 dispositional alternatives.

17 IV. Juvenile defenders play a critical role in the fair administration of justice for children,  
18 including both legal and extralegal processes.

19 V. Counsel must receive appropriate training in juvenile justice law and statutes; services  
20 for children; communication with children in a developmentally appropriate and effective manner;  
21 effective interviewing techniques involving children and to recognize how trauma, disability and  
22 immaturity affect the behavior and relationships of young people.

23 VI. Effective representation of youth requires consultation and advocacy at the earliest stage  
24 possible and until the child is no longer subject to the juvenile justice system.

25 VII. The courts have long noted that young persons are more susceptible to police coercion  
26 and in more need of counsel when facing police questioning. Special protection is particularly  
27 necessary in the context of affording young persons their Miranda rights, as they are less capable of  
28 comprehending such warnings than adults. The Supreme Court ruled in 2011 that the age of the  
29 suspect can determine whether a person is in custody for purposes of Miranda. "It is beyond dispute  
30 that children will often feel bound to submit to police questioning when an adult in the same  
31 circumstances would feel free to leave.”

1           2 Delinquent Children; Issuance of Summons and Notice; Appointment of Counsel. Amend the  
2 section heading of RSA 169-B:7 to read as follows:

3           169-B:7 Issuance of Summons and Notice; ***Appointment of Counsel.***

4           3 Delinquency Children; Issuance of Summons and Notice; Appointment of Counsel. RSA 169-  
5 B:7, III is repealed and reenacted to read as follows:

6           III. The court shall appoint counsel for the minor upon receipt of the petition. Such  
7 appointment shall occur no later than the time the summons is issued. The summons shall contain  
8 the contact information of the appointed counsel. The appointment shall be made sufficiently before  
9 any hearing to allow for consultation between counsel and client, as well as for any appropriate  
10 investigation. Notice of the appointment shall be provided to counsel and to the petitioner  
11 telephonically, electronically, or in some other manner that is calculated to provide actual notice on  
12 the same day as the appointment.

13           4 Appointment of Counsel; Waiver of Counsel. Amend RSA 169-B:12, I and I-a to read as  
14 follows:

15           I. [~~Absent a valid waiver, the court shall appoint counsel at the time of arraignment of an~~  
16 ~~indigent minor, provided that an indigent minor detained pursuant to RSA 169-B:11, III, shall have~~  
17 ~~counsel appointed upon the issuance of the detention order.] ***Absent a valid waiver, the court***  
18 ***shall appoint counsel for an indigent minor pursuant to RSA 169-B:7, III.*** For purposes of  
19 [~~the appointment of counsel under~~] this section, an indigent minor shall be a minor who satisfies the  
20 court, after appropriate inquiry, that the minor is financially unable to independently obtain  
21 counsel. If the court has received information indicating that the minor has an intellectual,  
22 cognitive, emotional, learning, or sensory disability, the court shall require the minor to consult with  
23 counsel.~~

24           I-a. When an attorney is appointed as counsel for a child, representation shall include  
25 counsel and investigative, expert, and other services, including process to compel the attendance of  
26 witnesses, as may be necessary to protect the rights of the child. ***Representation also shall***  
27 ***include representation in related proceedings when such matters are based on the same***  
28 ***factual circumstances as the petition under this chapter. Such appointment shall remain***  
29 ***in effect until the court no longer has jurisdiction over the child pursuant to this chapter,***  
30 ***except in situations where the only remaining issue involves the payment of costs and fees.***

31           5 Waiver of Counsel. Amend RSA 169-B:12, II-a to read as follows:

32           II-a. If the minor and the parent, guardian, or custodian have not consulted with counsel  
33 about the possible consequences of the proposed waiver of the right to counsel, the court [~~may only~~  
34 ~~accept a waiver pursuant to paragraph II after making case-specific written findings with regard to~~  
35 ~~each of the required conditions for waiver]~~ ***shall not accept a waiver of counsel pursuant to***  
36 ***paragraph II.***

**HB 188 - AS INTRODUCED**  
**- Page 3 -**

1           6 New Section; Use of Statement or Confession from a Minor; Appointment of Counsel Required.  
2 Amend RSA 169-B by inserting after section 12-a the following new section:

3           169-B:12-b Use of Statement or Confession from a Minor. No statement or confession from a  
4 person who was a minor at the time the statement or confession was made may be used against that  
5 person at any judicial proceeding unless the person was represented by counsel at the time the  
6 statement or confession was made and that the person had adequate time to consult with such  
7 counsel. Any law enforcement agency may petition the court to appoint counsel for a minor that the  
8 agency wishes to question. Upon receipt of such petition, the court shall follow the procedures under  
9 RSA 169-B:12, and if appointment is made, promptly notify the minor and appointed counsel.

10           7 Adequate Representation of Indigent Defendants in Criminal Cases; Contracts for  
11 Representation in Juvenile Delinquency Cases. Amend RSA 604-A:2-b to read as follows:

12           604-A:2-b Contract Attorneys. The state of New Hampshire, by the judicial council and with the  
13 approval of governor and council, may, within the limits of available appropriations, contract with  
14 any qualified attorney in the state to provide for the representation of indigents in circumstances  
15 where, pursuant to RSA 604-B, the public defender program is unavailable to provide such  
16 representation. The executive director of the judicial council shall authorize payments to contract  
17 attorneys provided for under this section. ***All contracts providing for the representation of***  
18 ***juveniles under RSA 169-B shall be based upon an hourly rate, set by the judicial branch.***

19           8 Adequate Representation for Indigent Defendants in Criminal Cases. Amend RSA 604-A:9,  
20 I(a) and (b) to read as follows:

21           I.(a) Any adult defendant [~~or juvenile respondent~~] who has been assigned counsel or a public  
22 defender shall be subject to an order by the court, pursuant to this section, regarding payment to the  
23 state for counsel fees and expenses paid by the state on behalf of the defendant [~~or juvenile~~], and  
24 regarding payment of an administrative service assessment. Any payment obligation shall apply  
25 only to a defendant who has been convicted [~~or a juvenile who has been found delinquent~~]. ***No***  
26 ***payment obligation shall accrue to a juvenile, or the person legally liable for support of the***  
27 ***juvenile, for the appointment of counsel under this chapter.***

28           (b) Upon entering a judgment of conviction [~~or a finding of delinquency~~], and the  
29 issuance of sentence or disposition, the court shall enter a separate written order setting forth the  
30 reasons for the court's conclusion regarding the financial ability of the defendant [~~or the juvenile,~~  
31 ~~including any person liable for the support of the juvenile pursuant to RSA 604-A:2-a,~~] to make  
32 payment of counsel fees and expenses, and administrative service assessment. In its discretion, the  
33 court may conduct an ability-to-pay hearing to assist in its determination. If the court finds that  
34 there is an ability to pay some or all of the counsel fees and expenses and the assessment, either  
35 presently or in the future, it shall order payment in such amounts and upon such terms and  
36 conditions it finds equitable; any payment obligation shall not commence until the conviction and

**HB 188 - AS INTRODUCED**

**- Page 4 -**

1 sentence ~~[or the finding of delinquency and disposition]~~ has become final. If the court finds that  
2 there is no such ability to pay, it shall so order, and any payment obligation shall terminate.

3 9 Repeal. RSA 169-B:12, I-b, relative to the appointment of counsel for consultation with an  
4 indigent minor, is repealed.

5 10 Effective Date. This act shall take effect January 1, 2022.