

Committee Report

REGULAR CALENDAR

March 11, 2021

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

**The Committee on Children and Family Law to which
was referred HB 494,**

**AN ACT relative to temporary relief and permanent
restraining orders issued in a divorce proceeding.**

**Having considered the same, report the same with the
recommendation that the bill OUGHT TO PASS.**

Rep. Debra DeSimone

FOR THE COMMITTEE

COMMITTEE REPORT

Committee:	Children and Family Law
Bill Number:	HB 494
Title:	relative to temporary relief and permanent restraining orders issued in a divorce proceeding.
Date:	March 11, 2021
Consent Calendar:	REGULAR
Recommendation:	OUGHT TO PASS

STATEMENT OF INTENT

This bill protects the important constitutional rights of involved parties. HB 494 fills a void in the first part of RSA 458:161, "with such conditions and limitations as the court deems just." This bill specifically exempts domestic violence orders because they represent compelling government interests. While such orders infringe on constitutional rights, they are narrowly tailored to protect victims from physical abuse and there is no less restrictive way to accomplish the purpose. The bill simply clears up a void in an area of the statute. Parties will no longer be able to engage in harassment, stalking, or any other prohibitive activities. Finally this bill is very easy for self-represented parties to understand and to find online with dozens of references and articles that explain it in layman's terms.

Vote 8-7.

Rep. Debra DeSimone
FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

Children and Family Law

HB 494, relative to temporary relief and permanent restraining orders issued in a divorce proceeding. **OUGHT TO PASS.**

Rep. Debra DeSimone for Children and Family Law. This bill protects the important constitutional rights of involved parties. HB 494 fills a void in the first part of RSA 458:161,; "with such conditions and limitations as the court deems just." This bill specifically exempts domestic violence orders because they represent compelling government interests. While such orders infringe on constitutional rights, they are narrowly tailored to protect victims from physical abuse and there is no less restrictive way to accomplish the purpose. The bill simply clears up a void in an area of the statute. Parties will no longer be able to engage in harassment, stalking, or any other prohibitive activities. Finally this bill is very easy for self-represented parties to understand and to find online with dozens of references and articles that explain it in layman's terms. **Vote 8-7.**

Original: House Clerk

Cc: Committee Bill File

Voting Sheets

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

Exec
Session
Date: 3-11-2021

Motion: DTP

Bill #: 444 AM #:

Members	YEAS	Nays	NV
Rice, Kimberly A. Chairman	✓		
DeSimone, Debra L. Vice Chairman	✓		
Yokela, Josh S.	✓		
Lewicke, John	✓		
Belanger, Cody M.	✓		
Cross, Kenna E. Rep 4111	✓		
Litchfield, Melissa A.	✓		
Smith, Denise M. Rep 1044	✓		
Long, Patrick T.			✓
Alicea, Caroletta C. Clerk			✓
Grossman, Gaby M.			✓
Levesque, Cassandra N.			✓
Wazir, Safiya			✓
Petrigno, Peter			✓
Altschiller, Debra			✓
TOTAL VOTE:			

8.7

HOUSE COMMITTEE ON CHILDREN AND FAMILY LAW

EXECUTIVE SESSION on HB 494

BILL TITLE: relative to temporary relief and permanent restraining orders issued in a divorce proceeding.

DATE: March 11, 2021

LOB ROOM: remote

MOTIONS: **OUGHT TO PASS**

Moved by Rep. DeSimone

Seconded by Rep. Lewicke

Vote: 8-7

Respectfully submitted,

Rep Caroletta Alicea, Clerk

Public Hearing

HOUSE COMMITTEE ON CHILDREN AND FAMILY LAW

PUBLIC HEARING ON HB 494

BILL TITLE: relative to temporary relief and permanent restraining orders issued in a divorce proceeding.

DATE: March 3, 2021

LOB ROOM: remote **Time Public Hearing Called to Order:**

Time Adjourned:

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

Bill Sponsors:

Rep. DeSimone
Sen. Birdsell

Rep. Harb

Rep. Baldasaro

TESTIMONY

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

DeSimone - Sponsor - This is a need to permanent want to make it more fair, very serious situation.

*J. Markett - To remedy what is viewed as key issues. Companion bill of HB 495. RSA 458, section 16 allows a family court judge to say after filing the family court can issue limitation...468:110. Solution for existing problem. Courts do what ever they could, the ability to order. This exempts domestic violence, does apply to abuse and neglect. The bill says it applies to enumerated rights you saves that when you file. The state can assert that parties are protected. anti-harassment orders are still in place.

Rep. Long - The court is responsible for infringement. I don't understand.

J. Markett - You absolutely have the right.

Rep. Long - With newly added right privacy that could be tied into anything you ask me to do. I have a gun in my bedroom and now I am compelled to share that.

J. Markett - That is your right. Could a court leave guns around the house loaded. I'm seeing an order because they have a 5 yr. old child. If I am the judge I'm going to say, the best interest of the child to preserve the best interest of the child. Thats my order of the court.

Rep. Altschiller - Delightful to hear some sense to be brought to the NH leg. about guns. Someone being able or not.

J. Markell - respectfully restate RSA 458:16 - BC&D, in joining any party of entering "place where the person of religion 468 A 101 B & C retracts the same language.

Rep. Altschiller - Line 5 to identify to line 7, seems intent is for a form for judges to fill out

J. Markell - Any judge should have ? constitutional law. Compelling government interest. That is telling the courts the family has nothing to do with you.

Rep. Altschiller - I have the information I need.

Drin Jasina - Domestic Advocacy project oppose 494 RSA 458:16 far too complicated for people. Understand intent was to simplify I be. Ask committee to vote ITL.

Rep. Al Baldasaro - Rock Dist. 5 Londonderry - supports - 9 out of 10 cases usually they don't even know there is a restraining order against them. How do I know this, I'm a victim, I had to leave the house. Children are used as political pawns. Thank you to the chairman for bringing this up. I was honored to co-sponsor.

Rep. Altschiller - I'm curious have you mixed the 2 different restraining orders. We are talking about parenting plan.

Rep. Baldasaro- No because there is a lot that takes place.

Rep. Altschiller - This bill seeks to compel judges why they are doing what they are doing. Do you understand this is no police involvement.

Rep. Baldasaro - The police are involved, they removed me from my house.

Mr. Richard Head - Gov. Affairs from judicial branch as to what the statute allows. Fundamental premise the judge is still bound by the constitution. Disrupt scrutiny for some its appropriate, however there are 3 courts that are still bound by the constitution.

Respectfully submitted,

Rep. Caroletta Alicea, Clerk

Testimony

Archived: Wednesday, March 10, 2021 2:30:47 PM

From: Jay Markell

Sent: Sunday, March 7, 2021 8:02:44 PM

To: ~House Children and Family Law Committee

Cc: Debra DeSimone

Subject: Supporting case law for HB 494 and HB 495 Copy of Scheduling order relative to HB 139

Importance: Normal

Attachments:

[Scheduling Order.pdf](#) [In the Matter of RA and JM.pdf](#) [Summers Case.pdf](#) [State v Mack 12 2020.pdf](#)

Dear Committee Members:

Attached to this email please find the following two relevant and highly instructive cases that deal with constitutional issues that were discussed on March 4, 2021 as to strict scrutiny. As the standard to govern constitutional rights. I

As the New Hampshire Supreme Court noted in *In the Matter of RA and JM*, the right to parent is a fundamental right and strict scrutiny would apply. (Note that RSA 458 that dealt with parenting at the time) was the precursor to the 2005 RSA 461-A (Parenting Rights and Responsibilities act) See attached case.

As that case notes, custody determinations do not get strict scrutiny are easily distinguished for that and other reasons. First, Custody disputes between two parents are not are not enumerated rights protected under the either the NH or federal constitutions. Even if that were not true, one could argue that a petition to a court would impliedly at least a partial waiver because the court is being asked to come into a family unit. Note also that such action is easily justified as a court ordered parent plan is necessary to achieve a compelling interest, which is the best interest of the child where there is no intact family unit, and/or parents cannot agree, or there is abuse. See the *Summers Case*, also attached, which describes the appropriate standard of review.

Likewise, statutes dealing with child support, property settlements or alimony, today are largely creatures of statute and not enumerated rights found in the federal or state constitutions.

This also has no effect at all on domestic violence; harassment statutes, stalking statutes and orders for same are affected at all as there is no constitutional right to engage in such conduct. Please note that I have also attached a copy of the *Mack case*, which deals with a criminal matter. But in it, the New Hampshire Supreme Court discusses how seriously constitutional rights are taken in NH Longstanding of strictly scrutinizing rights and infringements and how the New Hampshire Constitution (as well as other states) often grant more protection to the individual.

Finally., please see the attached scheduling conference order form which relates to the prior bill that was discussed, (HB 139) dealing with exhibits. The timing and exchange of exhibits for hearings is largely a matter for courts to decide, and can be written into a scheduling conference order or made elsewhere. as they manage their own docket. Parties who are aggrieved by a perceived abuse can ask a court to keep them out for a variety of reasons, and there may be a good reasons for a perceived "late" submission., such as just became available, etc. I thank the committee for its consideration, Respectfully submitted.

Jay Markell
Jay Markell, Esquire
Family Legal, PC
141 Airport Road
Concord, NH 03301
603-225-0127 direct line
603-225-1114 general line
FAX 877-272-4589
Email: jmarkell@familylegalservices.org

Bill as
Introduced

HB 494 - AS INTRODUCED

2021 SESSION

21-0623

05/04

HOUSE BILL

494

AN ACT

relative to temporary relief and permanent restraining orders issued in a divorce proceeding.

SPONSORS:

Rep. DeSimone, Rock. 14; Rep. Harb, Rock. 14; Rep. Baldasaro, Rock. 5; Sen. Birdsell, Dist 19

COMMITTEE:

Children and Family Law

ANALYSIS

This bill provides that the court shall not issue an order in a divorce proceeding that infringes on a party's constitutional rights unless the court determines there is no less restrictive means to achieve a compelling government interest.

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.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty One

AN ACT relative to temporary relief and permanent restraining orders issued in a divorce proceeding.

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

1 1 New Paragraph; Annulment, Divorce, and Separation; Temporary Relief and Restraining
2 Orders. Amend RSA 458:16 by inserting after paragraph II the following new paragraph:

3 II-a. If any order issued under this section, other than one brought under RSA 173-B,
4 infringes on any right or rights a party may have as enumerated under either the federal or state
5 constitution, the court shall identify the right or rights being infringed, and the compelling
6 government objective to be achieved by the infringement. The court shall also make written findings
7 that there is no less restrictive way to achieve the compelling government objective. Any party
8 aggrieved by an order not meeting this standard may petition the court to have the order modified or
9 vacated.

10 2 Effective Date. This act shall take effect January 1, 2022.

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