

# 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 495,**

**AN ACT relative to restraining orders issued in a  
parenting case. 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 495
Title:	relative to restraining orders issued in a parenting case.
Date:	March 11, 2021
Consent Calendar:	REGULAR
Recommendation:	OUGHT TO PASS

### STATEMENT OF INTENT

This bill is similar to HB494 in that it protects the constitutional rights of parties involved. HB 495 fills a void in RSA 461-A:10 I, stating, "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 laymen'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 495**, relative to restraining orders issued in a parenting case. **OUGHT TO PASS.**

Rep. Debra DeSimone for Children and Family Law. This bill is similar to HB494 in that it protects the constitutional rights of parties involved. HB 495 fills a void in RSA 461-A:10 I, stating, "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 laymen's terms **Vote 8-7.**

# 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

Bill #: 495 Motion: OTF AM #: \_\_\_\_\_ Exec Session Date: 3-11-2021

<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 Hill</i>	✓		
Litchfield, Melissa A.	✓		
Smith, Denise M. <i>Rep Johnson</i>	✓		
Long, Patrick T.		✓	
Alicea, Caroletta C. Clerk		✓	
Grossman, Gaby M.		✓	
Levesque, Cassandra N.		✓	
Wazir, Safiya		✓	
Petrigno, Peter		✓	
Altschiller, Debra		✓	
<b>TOTAL VOTE:</b>	<b>8</b>	<b>1</b>	

**HOUSE COMMITTEE ON CHILDREN AND FAMILY LAW**

**EXECUTIVE SESSION on HB 495**

**BILL TITLE:** relative to restraining orders issued in a parenting case.

**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 495

**BILL TITLE:** relative to restraining orders issued in a parenting case.

**DATE:** March 4, 2021

**LOB ROOM:** hybrid                      **Time Public Hearing Called to Order:** 10:29 a.m.

**Time Adjourned:** 10:48 a.m.

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

**Bill Sponsors:**

Rep. DeSimone

Rep. Baldasaro

Sen. Birdsell

**TESTIMONY**

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

Jay Markell - Well aware of national intermediate and strict scrutiny

- can they require license to open businesses, gets rational basis review
- Visitation in a parenting - speech and parades (time place and manner
- prior restart - strict scrutiny

Does not constitute burden on court at all. Practical aspects are eliminating courts, judges names should be done. This is a mild remedy. This is not a domestic violence issue.

Arin Jasina - Direct domestic violence NHL. Fine with how you want to testify.

Erin Jasina - Protections under stalking statute. Goes to court and gets a temporary order. yes a police officer will remove the person and guns from the home. 2nd you are not getting arrested unless you committed a crime, then there is police involvement. Domestic violence related but do want something in place to make the abuse stop. Respectfully request ITL

Rep. Lewicke - Don't understand why you are saying that.

Jasina - The language of the bill is confusing and difficult to imply.

Rep. Lewicke - I'm a college dropout and I understand this language.

Mr. Richard Head - Does accomplish any exceptions to the constitution. the reason behind this bill simply does not exist.

Rep. Lewicke - While someone appeals to the court

Mr. Head - not necessary

Respectfully submitted,

Rep. Caroletta Alicea, Clerk

# House Remote Testify

## Children and Family Law Committee Testify List for Bill HB495 on 2021-03-04

Support: 3 Oppose: 4 Neutral: 0 Total to Testify: 1

[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>	<u>Signed Up</u>
Jasina, Erin	Portsmouth, NH ejasina@nhla.org	A Lobbyist	NH Legal Assistance	Oppose	Yes (2m)	No	3/2/2021 2:37 PM
Keilig, Pamela	Concord, NH pkeilig@nhheadsv.org	A Lobbyist	New Hampshire Coalition Against Domestic and Sexual Violence	Oppose	No	No	3/2/2021 6:37 PM
Howard Jr., Raymond	Alton, NH brhowardjr@yahoo.com	An Elected Official	Myself	Support	No	No	3/4/2021 9:04 AM
Baldasaro, Rep Al	Londonderry, NH mbaldasaro@comcast.net	An Elected Official	Myself	Support	No	No	3/4/2021 9:11 AM
Coss, Adrian	Concord, NH ac1459@unhlaw.unh.edu	A Member of the Public	Myself	Oppose	No	No	3/4/2021 10:30 AM
Birdsell, Senator Regina	Hampstead, NH regina.birdsell@leg.state.nh.us	An Elected Official	Senate District 19	Support	No	No	2/25/2021 3:35 PM
Bruce, Susan	Concord, NH susanb.red@mac.com	A Member of the Public	Myself	Oppose	No	No	3/1/2021 2:42 PM

# 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](#)

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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  
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Email: [jmarkell@familylegalservices.org](mailto:jmarkell@familylegalservices.org)

Bill as  
Introduced

HB 495 - AS INTRODUCED

2021 SESSION

21-0622  
05/04

HOUSE BILL

**495**

AN ACT

relative to restraining orders issued in a parenting case.

SPONSORS:

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

COMMITTEE:

Children and Family Law

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ANALYSIS

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

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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 restraining orders issued in a parenting case.

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

1           1 New Paragraph; Parental Rights and Responsibilities; Restraining Orders. Amend RSA 461-  
2 A:10 by inserting after paragraph I the following new paragraph:

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

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