

LEGISLATIVE COMMITTEE MINUTES

**SB122**

Bill as  
Introduced

SB 122-FN - AS INTRODUCED

2021 SESSION

21-0830  
11/04

SENATE BILL        ***122-FN***

AN ACT            adopting omnibus legislation relative to certain crimes and judicial processes and procedures.

SPONSORS:        Sen. French, Dist 7

COMMITTEE:      Judiciary

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ANALYSIS

This bill adopts legislation relative to:

I. Allowing persons charged with driving or operating under the influence of drugs or liquor to register for an impaired driving education program after attending or waiving their arraignment.

II. Exemptions from prosecution for victims of human trafficking.

III. Bail commissioners fees.

IV. Guardianship by grandparents.

V. Immunity from arrest or prosecution for prostitution for seeking medical assistance for reporting certain crimes.

VI. Increasing the penalty for harming a service animal and making changes to the membership of the council on autism spectrum disorders.

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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                         Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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            adopting omnibus legislation relative to certain crimes and judicial processes and procedures.

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

1            1 Sponsorship. This act consists of the following proposed legislation:

2            Part I. LSR 21-0830, relative to the impaired driver education program, sponsored by Sen.  
3 French, Prime/Dist. 7; Sen. Bradley, Dist. 3; Sen. Giuda, Dist. 2; Sen. Carson, Dist. 14.

4            Part II. LSR 21-0191, relative to exemptions from prosecution for victims of human  
5 trafficking, sponsored by Sen. Ward, Prime/Dist. 8.

6            Part III. LSR 21-0399, relative to bail commissioners fees, sponsored by Sen. Gannon,  
7 Prime/Dist. 23; Sen. Avard, Dist. 12; Sen. Carson, Dist. 14; Sen. D'Allesandro, Dist. 20; Sen. Reagan,  
8 Dist. 17; Sen. Prentiss, Dist. 5; Sen. Cavanaugh, Dist. 16; Rep. Welch, Rock. 13; Rep. Piemonte,  
9 Rock. 4.

10           Part IV. LSR 21-0600, relative to guardianship by grandparents, sponsored by Sen. French,  
11 Prime/Dist. 7; Sen. Avard, Dist. 12; Sen. Gannon, Dist. 23; Sen. Reagan, Dist. 17; Sen. Watters, Dist.  
12 4; Sen. Whitley, Dist. 15; Sen. Hennessey, Dist. 1; Sen. Carson, Dist. 14; Sen. Kahn, Dist. 10; Sen.  
13 Sherman, Dist. 24; Sen. Prentiss, Dist. 5; Sen. Giuda, Dist. 2; Sen. D'Allesandro, Dist. 20; Sen.  
14 Bradley, Dist. 3; Sen. Cavanaugh, Dist. 16; Sen. Soucy, Dist. 18.

15           Part V. LSR 21-0921, relative to immunity from arrest or prosecution for prostitution for  
16 seeking medical assistance for reporting certain crimes, sponsored by Sen. French, Prime/Dist. 7;  
17 Sen. Reagan, Dist. 17; Sen. Watters, Dist. 4.

18           Part VI. LSR 21-0479, increasing the penalty for harming a service animal and making  
19 changes to the membership of the council on autism spectrum disorders, sponsored by Sen. Bradley,  
20 Prime/Dist. 3

21           2 Legislation Enacted. The general court hereby enacts the following legislation:

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PART I

24

Relative to the Impaired Driver Education Program.

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1 New Paragraph; Motor Vehicles; Driving or Operating Under the Influence of Drugs or Liquor;  
Penalties for Intoxication or Under Influence of Drugs Offenses. Amend RSA 265-A:18 by inserting  
after paragraph X the following new paragraph:

28

29

XI. Any person charged with violating any provision of RSA 265-A:2, 265-A:3, or 265-A:19  
who would be required to complete an IDCMP if convicted may, at his or her discretion, register for

1 such a program after attending or waiving arraignment in a criminal proceeding. Such registration  
2 shall not be considered as evidence of his or her culpability in judicial or administrative proceedings.

3 2 Effective Date. Part I of this act shall take effect 60 days after its passage.

4  
5 PART II

6 Relative to Exemptions from Prosecution for Victims of Human Trafficking.

7 1 New Paragraph; Trafficking in Persons; Definitions. Amend RSA 633:6 by inserting after  
8 paragraph VI the following new paragraph:

9 VII. "Victim of human trafficking" means:

10 (a) An individual who, at any point in time, was the victim of a trafficking in persons  
11 offense under RSA 633:7, I-III, whether or not the offense was prosecuted; or

12 (b) An individual who at any point in time was the victim of a severe form of trafficking  
13 in persons offense under 22 U.S.C. section 7102(11)(A), whether or not the offense was prosecuted.

14 2 Trafficking in Persons. RSA 633:7, VI is repealed and reenacted to read as follows:

15 VI. No victim of human trafficking shall be prosecuted for any offense, where the otherwise  
16 chargeable conduct was committed as a result of being trafficked. Offenses include, but are not  
17 limited to:

18 (a) Conduct chargeable as indecent exposure and lewdness under RSA 645:1;

19 (b) Conduct chargeable as prostitution under RSA 645:2;

20 (c) Conduct chargeable as trafficking in persons under paragraphs I-III of this section; or

21 (d) Conduct chargeable as attempt, conspiracy, criminal solicitation, being an accessory  
22 to, or aiding and abetting any of the offenses listed in this subparagraph.

23 VII. A victim of human trafficking who was under 18 years of age at the time of the offense  
24 shall not be subject to juvenile delinquency proceedings under RSA 169-B for any otherwise  
25 chargeable offense, including but not limited to the offenses listed under paragraph VI, where the  
26 conduct was committed as a result of being trafficked.

27 VIII.(a) This paragraph shall apply to:

28 (1) An individual convicted for an offense which was committed as a result of being  
29 trafficked;

30 (2) An individual who was under 18 years of age at the time of the offense, who was  
31 adjudicated as delinquent for an offense which was committed as a result of being trafficked; or

32 (3) An individual who entered into a diversion agreement in lieu of further criminal  
33 proceedings for an offense which was committed as a result of being trafficked.

34 (b) A victim of human trafficking who was subject to a criminal penalty may, at any  
35 time, file a motion with the circuit court, district division or superior court to vacate a conviction,  
36 adjudication of delinquency, or diversion agreement, and the related court records and arrest

1 records, for any offense, including but not limited to the offenses listed in paragraph VI. A copy of  
2 the motion to vacate shall be provided to the agency that prosecuted the offense.

3 (c) After a hearing, the court shall grant the motion to vacate the conviction,  
4 adjudication of delinquency, or diversion agreement upon a finding by a preponderance of the  
5 evidence that the petitioner's participation in the offense underlying the conviction, delinquency  
6 adjudication, or diversion agreement was the result of being trafficked. A finding by the court that  
7 the petitioner was a victim of human trafficking at the time of the offense shall be prima facie  
8 evidence that the petitioner's participation in the offense was a result of being trafficked.

9 (d) The petitioner shall not be required to provide any official documentation indicating  
10 that he or she was a victim of human trafficking at the time of the offense. However, if such  
11 documentation is provided, it shall be prima facie evidence that the petitioner's participation in the  
12 offense was a result of being trafficked. In this subparagraph, "official documentation" means:

13 (1) A copy of an official record, certification, or eligibility letter from a federal, state,  
14 tribal, or local proceeding, including an approval notice or an enforcement certification generated  
15 from a federal immigration proceeding, that shows the petitioner was a victim of human trafficking;  
16 or

17 (2) An affidavit or sworn testimony from a member of the clergy, a medical  
18 professional, a trained professional staff member of a victim services organization, or other  
19 professional from whom the petitioner has sought legal counsel or other assistance in addressing the  
20 trauma and other challenges associated with being a victim of human trafficking.

21 (e) In determining whether the petitioner was a victim of human trafficking at the time  
22 of the offense, the court may consider any other evidence the court finds is of sufficient credibility  
23 and probative value. Such evidence may include, but is not limited to:

24 (1) The affidavit or sworn testimony of the petitioner;

25 (2) Branding or other tattoos on the body of the petitioner that identify the petitioner  
26 as having or having had a trafficker;

27 (3) Photographic evidence of branding or other tattoos on the body of the petitioner  
28 that identify the petitioner as having or having had a trafficker;

29 (4) Affidavits or sworn testimony from police, police interview notes, or police  
30 reports;

31 (5) Affidavits or sworn testimony from any person with firsthand knowledge of the  
32 petitioner's involvement in the trafficking or any person who indicates that he or she was trafficked  
33 or exploited by the same individual or group of individuals who trafficked the petitioner;

34 (6) Financial records showing revenues or expenses from the trafficking;

35 (7) Internet listings, print advertisements, or business cards used to promote the  
36 petitioner for services; or

1 (8) Email, text messages, or voicemail records between the petitioner, the trafficker,  
2 or solicitors of sex that reveal aspects of the trafficking, such as examples of the trafficker exerting  
3 control over the petitioner, evidence of behavior patterns of the trafficker or the petitioner, or  
4 discussion of meeting times or payments.

5 (f) Upon request of the petitioner and in lieu of the personal appearance of the petitioner  
6 in the courtroom, a hearing shall be conducted on camera, by 2-way electronic audio-video  
7 communication, between the petitioner, the judge, and any others present in the courtroom for the  
8 hearing. If the petitioner is represented by counsel and upon request of the petitioner, the  
9 petitioner's personal appearance shall be waived and counsel for petitioner shall be permitted to  
10 appear on the petitioner's behalf.

11 IX. Upon request of the petitioner, the court shall not disclose or open to public inspection  
12 any information identifying the petitioner, including any records of the motion hearing which could  
13 provide circumstantial details that may identify the petitioner. Information regarding the petitioner  
14 that is sealed pursuant to this paragraph shall be disclosed only to the following:

15 (a) The judge of the circuit court, district division or superior court and members of the  
16 staff of the court as designated by the judge;

17 (b) Parties to the proceedings and their attorneys;

18 (c) With the consent of the petitioner, any individual or public or private agency or  
19 institution providing educational, medical, or mental health services to the petitioner;

20 (d) When necessary for the discharge of official duties, law enforcement officers,  
21 prosecutors, or law enforcement or prosecution staff; or

22 (e) When authorized by court order, any other person, subject to any conditions imposed  
23 by the order, consistent with the petitioner's safety and privacy interests.

24 X.(a) An order vacating a conviction, adjudication of delinquency, or diversion agreement  
25 shall:

26 (1) Nullify the conviction, delinquency adjudication, or diversion agreement;

27 (2) Vacate the conviction, delinquency adjudication, or diversion agreement due to a  
28 substantive defect in the underlying criminal proceedings;

29 (3) Remove all civil disabilities and disqualifications imposed as a result of the  
30 conviction, delinquency adjudication, or diversion agreement; and

31 (4) Place the petitioner in the position of never having been investigated, arrested,  
32 convicted, deemed delinquent, or diverted for the offense.

33 (b) Upon a finding that the petitioner's participation in the offense underlying the  
34 conviction, delinquency adjudication, or diversion agreement was a result of being trafficked and an  
35 entry of an order vacating the conviction, delinquency adjudication, or diversion agreement, the  
36 court shall:

1 (1) Order the conviction, delinquency adjudication, or diversion agreement and any  
2 related court records and arrest records expunged and purged from all applicable state and federal  
3 systems. The court shall enter this order regardless of whether the petitioner had any criminal  
4 record prior or subsequent to the conviction, delinquency adjudication, or diversion agreement being  
5 vacated.

6 (2) Order the division of state police to purge the conviction, delinquency  
7 adjudication, or diversion agreement, and any related court records or arrest records from the  
8 criminal history record information repository and all applicable state and federal databases. The  
9 clerk of the court shall send a certified copy of the order to the division of state police, which shall  
10 carry out the order and shall notify the following of the court's order: the Federal Bureau of  
11 Investigation, the New Hampshire department of corrections, and any other criminal justice agency  
12 that may have a record of the conviction, adjudication of delinquency, or diversion agreement and  
13 related court records or arrest records.

14 (c) Upon a finding that the petitioner's participation in the offense underlying the  
15 conviction, delinquency adjudication, or diversion agreement was a direct result of being trafficked  
16 and an entry of an order vacating the conviction, delinquency adjudication, or diversion agreement,  
17 the court may, in its discretion, grant other relief to the petitioning victim in the interests of justice.

18 (d) Vacating a conviction, delinquency adjudication, or diversion agreement shall not  
19 affect any right of the person whose offense was vacated to appeal the conviction or sentence.

20 3 Effective Date. Part II of this act shall take effect upon its passage.

21  
22 PART III

23 Relative to Bail Commissioners Fees.

24 1 Bail Commissioners; Fees. Amend RSA 597:20 to read as follows:

25 597:20 Fees. The bail commissioners in such cases shall be entitled to a fee of [~~\$40~~] **\$65**.  
26 However, clerks of court or members of their staffs who are bail commissioners shall be entitled to  
27 collect such fee only when called while not on active duty. In jurisdictions where the bail  
28 commissioner is a full-time salaried police officer, constable, sheriff, deputy sheriff, state police  
29 employee, or anyone else authorized to execute police powers, such person shall not receive the fee  
30 established in this section, but instead such amount shall be remitted to the town or city in which  
31 the district court is situated. If the defendant is indigent, the fee shall be waived.

32 2 Effective Date. Part III of this act shall take effect 60 days after its passage.

33  
34 PART IV

35 Relative to Guardianship by Grandparents.

36 1 New Paragraph; Guardianship of Minors; Definition of Grandparent Added. Amend RSA  
37 463:2 by inserting after paragraph III the following new paragraph:



1 III-a. "Grandparent" includes a great-grandparent or great-great grandparent.

2 2 Effective Date. Part IV of this act shall take effect 60 days after its passage.

3

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PART V

5

Relative to Immunity from Arrest or Prosecution for

6

Prostitution for Seeking Medical Assistance for Reporting Certain Crimes.

7

1 New Paragraphs; Prostitution and Related Offenses; Immunity From Prosecution. Amend  
8 RSA 645:2 by inserting after paragraph VI the following new paragraphs:

9

10 VII. As used in this section, "reports being the victim of a sexual assault" or other crime  
11 means reporting the initial crime to law enforcement and assisting law enforcement to identify the  
12 alleged perpetrator. It does not include further cooperation in prosecution.

12

13 VIII. It shall be a defense to a violation of this section that a person reports being the victim  
14 of a sexual assault as defined in RSA 632-A:2, 632-A:3, or 632-A:4, incest under RSA 639:2, or  
15 assault under RSA 631:1 through RSA 631:2-b. A person who reports being the victim of such an  
16 offense shall not be arrested, prosecuted, or convicted for a violation of this section if the evidence for  
17 the charge was gained as a proximate result of the person's reporting. Any victim seeking medical  
18 treatment following a sexual assault shall be afforded all options of care outlined in the New  
19 Hampshire attorney general's sexual assault medical forensic exam protocol without making a  
20 report to or cooperating with law enforcement.

20

21 IX. Nothing in this section shall be construed to limit the admissibility of evidence in  
22 connection with the investigation or prosecution of a crime involving a person who is not protected as  
23 provided in paragraph VIII. Nothing in this section shall be construed to limit the lawful seizure of  
24 any evidence or contraband. Nothing in this section shall be construed to limit or abridge the  
25 authority of a law enforcement officer to detain or place into custody a person as part of a criminal  
26 investigation who is not protected by the provisions of paragraph VIII.

26

2 Effective Date. Part V of this act shall take effect January 1, 2022.

27

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PART VI

29

Increasing the Penalty for Harming a Service Animal and

30

Making Changes to the Membership of the Council on Autism Spectrum Disorders.

31

1 Penalty; Harming a Service Dog. Amend RSA 167-D:10, II to read as follows:

32

33 II. It is a [~~misdemeanor~~] **class B felony** if a person willfully causes physical injury to a  
34 service animal or willfully allows his or her animal to cause physical injury to a service animal. If  
35 the physical injury to a service animal is severe enough that a veterinarian or service animal trainer  
36 determines that the service animal is incapable of returning to service, that person shall be guilty of  
a [~~class A misdemeanor~~] **class A felony**.

SB 122-FN - AS INTRODUCED

- Page 7 -

1           2 Council on Autism Spectrum Disorders; Membership. RSA 171-A:32, I is repealed and  
2 reenacted to read as follows:

3           I. There is established a council on autism spectrum disorders to provide leadership in  
4 promoting comprehensive and quality education, health care, and services for individuals with  
5 autism spectrum disorders and their families. The members of the council shall be as follows:

6           (a) The governor, or designee.

7           (b) The commissioner of the department of education, or designee.

8           (c) The commissioner of the department of health and human services, or designee.

9           (d) The director of the division of public health services, department of health and  
10 human services, or designee.

11           (e) The bureau chief of the bureau of developmental services, department of health and  
12 human services, or designee.

13           (f) The bureau chief of the bureau of behavioral health, department of health and human  
14 services, or designee.

15           (g) The director of the Institute on Disability, University of New Hampshire, or  
16 designee.

17           (h) A special education director, appointed by the New Hampshire Association of Special  
18 Education Administrators, Inc.

19           (i) The president of the New Hampshire Medical Society, or designee.

20           (j) A representative of the New Hampshire Developmental Disabilities Council,  
21 appointed by the council.

22           (k) An individual who has an autism spectrum disorder, appointed by the governor.

23           (l) A family member of a person who has an autism spectrum disorder, appointed by the  
24 governor.

25           (m) A representative of the Community Support Network, Inc., appointed by such  
26 organization.

27           (n) A representative of the New Hampshire Psychological Association, appointed by the  
28 association.

29           (o) The director of the office of Medicaid business and policy, department of health and  
30 human services, or designee.

31           (p) Five additional members, appointed by the council.

32           (q) A person who has an autism spectrum disorder, appointed by the council.

33           (r) A representative of the New Hampshire Nurses' Association, appointed by the  
34 association.

35           (s) A licensed speech-language pathologist, appointed by the New Hampshire Speech-  
36 Language-Hearing Association, Inc.

37           3 Effective Date.

**SB 122-FN - AS INTRODUCED**

**- Page 8 -**

- 1 I. Section 1 of Part VI of this act shall take effect January 1, 2022.
- 2 II. The remainder of Part VI this act shall take effect upon its passage.

LBA  
21-0830  
1/28/21

**SB 122-FN- FISCAL NOTE  
AS INTRODUCED**

AN ACT adopting omnibus legislation relative to certain crimes and judicial processes and procedures.

**PART I Relative to the Impaired Driver Education Program.**

No fiscal impact.

**PART II Relative to Exemptions from Prosecution for Victims of Human Trafficking.**

FISCAL IMPACT:  State  County  Local  None

STATE:	Estimated Increase / (Decrease)			
	FY 2021	FY 2022	FY 2023	FY 2024
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$0	Indeterminable	Indeterminable	Indeterminable
Expenditures	\$0	Indeterminable	Indeterminable	Indeterminable
<i>Funding Source:</i>	<input type="checkbox"/> General	<input type="checkbox"/> Education	<input type="checkbox"/> Highway	<input type="checkbox"/> Other

**METHODOLOGY:**

This bill exempts victims of human trafficking from prosecution for certain criminal offenses and establishes procedures for vacating a conviction, adjudication of delinquency, or diversion agreement resulting from human trafficking. The Judicial Branch does not identify in its system whether the defendants charged under these sections are victims of human trafficking. As a result, the Branch is unable to determine how many fewer charges would be filed or what fiscal impact, if any, would occur if victims of human trafficking are exempt from prosecution. The Branch assumes that, some previous convictions under RSA 645:1, 645:2 or 633:7 would now be subject to an exemption from prosecution, and anyone in that situation would file a motion to vacate as authorized by the bill. Each such motion would take judicial and staff resources to process and rule upon. Because the Branch is unable to determine how many cases fall within this category, the impact on expenditures is indeterminable.

The Department of Safety, Division of State Police's Criminal Records Unit indicates the proposed legislation will have no fiscal impact to the Department.

The Judicial Council indicates it is unclear how many future prosecution charges would not be brought as a result of this legislation. It is assumed that there would not be a significant decrease in the number of charged crimes. Therefore, the Council does not expect any reduction due to this legislation would have a meaningful impact on indigent defense expenditures.

It is assumed any fiscal impact will occur after July 1, 2021.

**AGENCIES CONTACTED:**

Judicial Branch, Judicial Council and Department of Safety

**PART III Relative to Bail Commissioners Fees.**

No fiscal impact.

**PART IV Relative to Guardianship by Grandparents.**

No fiscal impact.

**PART V Relative to Immunity from Arrest or Prosecution for Prostitution for Seeking Medical Assistance for Reporting Certain Crimes.**

**FISCAL IMPACT:**     State         County         Local         None

STATE:	Estimated Increase / (Decrease)			
	FY 2021	FY 2022	FY 2023	FY 2024
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	Indeterminable Decrease	Indeterminable Decrease	Indeterminable Decrease
<i>Funding Source:</i>	<input type="checkbox"/> General	<input type="checkbox"/> Education	<input type="checkbox"/> Highway	<input type="checkbox"/> Other

**COUNTY:**

Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	Indeterminable Decrease	Indeterminable Decrease	Indeterminable Decrease

**METHODOLOGY:**

This bill provides immunity from prosecution for prostitution for a person reporting to law enforcement that such person or another person is the victim of a sexual assault, incest, or assault. This bill impacts penalties that may have an impact on the New Hampshire judicial and correctional systems. There is no method to determine how many fewer charges would be brought as a result of the changes contained in this bill to determine the fiscal impact on expenditures. However, the entities impacted have provided the potential costs associated with these penalties below.

Judicial Branch	FY 2021	FY 2022
Violation Level Offense	\$53	\$53
Class B Misdemeanor	\$55	\$55
Class A Misdemeanor	\$78	\$78

Simple Criminal Case	\$309	\$309
Routine Criminal Felony Case	\$494	\$494
Appeals	Varies	Varies
It should be noted that average case cost estimates for FY 2021 and FY 2022 are based on data that is more than ten years old and does not reflect changes to the courts over that same period of time or the impact these changes may have on processing the various case types. An unspecified misdemeanor can be either class A or class B, with the presumption being a class B misdemeanor.		
Judicial Council		
Public Defender Program	Has contract with State to provide services.	Has contract with State to provide services.
Contract Attorney – Felony	\$825/Case	\$825/Case
Contract Attorney – Misdemeanor	\$300/Case	\$300/Case
Assigned Counsel – Felony	\$60/Hour up to \$4,100	\$60/Hour up to \$4,100
Assigned Counsel – Misdemeanor	\$60/Hour up to \$1,400	\$60/Hour up to \$1,400
It should be noted that a person needs to be found indigent and have the potential of being incarcerated to be eligible for indigent defense services. The majority of indigent cases (approximately 85%) are handled by the public defender program, with the remaining cases going to contract attorneys (14%) or assigned counsel (1%).		
Department of Corrections		
FY 2020 Average Cost of Incarcerating an Individual	\$47,691	\$47,691
FY 2020 Annual Marginal Cost of a General Population Inmate	\$6,407	\$6,407
FY 2020 Average Cost of Supervising an Individual on Parole/Probation	\$584	\$584
NH Association of Counties		
County Prosecution Costs	Indeterminable	Indeterminable
Estimated Average Daily Cost of Incarcerating an Individual	\$105 to \$120	\$105 to \$120

Many offenses are prosecuted by local and county prosecutors. When the Department of Justice has investigative and prosecutorial responsibility or is involved in an appeal, the Department would likely absorb the cost within its existing budget. If the Department needs to prosecute significantly less cases or handle less appeals, then costs may decrease by an indeterminable amount.

**AGENCIES CONTACTED:**

Judicial Branch, Departments of Corrections and Justice, Judicial Council, and New Hampshire Association of Counties

**PART VI Increasing the Penalty for Harming a Service Animal and Making Changes to the Membership of the Council on Autism Spectrum Disorders.**

**FISCAL IMPACT:**     State             County             Local             None

STATE:	Estimated Increase / (Decrease)			
	FY 2021	FY 2022	FY 2023	FY 2024
<b>Appropriation</b>	\$0	\$0	\$0	\$0
<b>Revenue</b>	\$0	\$0	\$0	\$0
<b>Expenditures</b>	\$0	Indeterminable	Indeterminable	Indeterminable
<b>Funding Source:</b>	<input type="checkbox"/> General	<input type="checkbox"/> Education	<input type="checkbox"/> Highway	<input type="checkbox"/> Other

**COUNTY:**

<b>Revenue</b>	\$0	\$0	\$0	\$0
<b>Expenditures</b>	\$0	Indeterminable	Indeterminable	Indeterminable

**METHODOLOGY:**

This bill changes penalties that may have an impact on the New Hampshire judicial and correctional systems. There is no method to determine how many charges would be brought as a result of the changes contained in this bill to determine the fiscal impact on expenditures. However, the entities impacted have provided the potential costs associated with these penalties below.

Judicial Branch	FY 2021	FY 2022
Class B Misdemeanor	\$53	\$53
Class A Misdemeanor	\$55	\$55
Simple Criminal Case	\$309	\$309
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Assigned Counsel – Felony	\$60/Hour up to \$4,100	\$60/Hour up to \$4,100
It should be noted that a person needs to be found indigent and have the potential of being incarcerated to be eligible for indigent defense services. The majority of indigent cases (approximately 85%) are handled by the public defender program, with the remaining cases going to contract attorneys (14%) or assigned counsel (1%).		
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Many offenses are prosecuted by local and county prosecutors. When the Department of Justice has investigative and prosecutorial responsibility or is involved in an appeal, the Department would likely absorb the cost within its existing budget. If the Department needs to prosecute significantly more cases or handle more appeals, then costs may increase by an indeterminable amount.

The change in the membership of the Council on Autism Spectrum Disorders will have no impact on State, county or local revenues and expenditures.

**AGENCIES CONTACTED:**

Judicial Branch, Departments of Corrections and Justice, Judicial Council, and New Hampshire Association of Counties



SB 122-FN - AS AMENDED BY THE SENATE

03/18/2021 0754s

2021 SESSION

21-0830

11/04

SENATE BILL **122-FN**

AN ACT adopting omnibus legislation relative to certain crimes and judicial processes and procedures.

SPONSORS: Sen. French, Dist 7

COMMITTEE: Judiciary

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AMENDED ANALYSIS

This bill adopts legislation relative to:

- I. Allowing persons charged with driving or operating under the influence of drugs or liquor to register for an impaired driving education program after attending or waiving their arraignment.
- II. Exemptions from prosecution for victims of human trafficking.
- III. Guardianship by grandparents.
- IV. Immunity from arrest or prosecution for prostitution for seeking medical assistance for reporting certain crimes.
- V. Increasing the penalty for harming a service animal and making changes to the membership of the council on autism spectrum disorders.

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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                    adopting omnibus legislation relative to certain crimes and judicial processes and procedures.

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

1            1 Sponsorship. This act consists of the following proposed legislation:

2            Part I. LSR 21-0830, relative to the impaired driver education program, sponsored by Sen.  
3 French, Prime/Dist. 7; Sen. Bradley, Dist. 3; Sen. Giuda, Dist. 2; Sen. Carson, Dist. 14.

4            Part II. LSR 21-0191, relative to exemptions from prosecution for victims of human  
5 trafficking, sponsored by Sen. Ward, Prime/Dist. 8.

6            Part III. LSR 21-0600, relative to guardianship by grandparents, sponsored by Sen. French,  
7 Prime/Dist. 7; Sen. Avard, Dist. 12; Sen. Gannon, Dist. 23; Sen. Reagan, Dist. 17; Sen. Watters, Dist.  
8 4; Sen. Whitley, Dist. 15; Sen. Hennessey, Dist. 1; Sen. Carson, Dist. 14; Sen. Kahn, Dist. 10; Sen.  
9 Sherman, Dist. 24; Sen. Prentiss, Dist. 5; Sen. Giuda, Dist. 2; Sen. D'Allesandro, Dist. 20; Sen.  
10 Bradley, Dist. 3; Sen. Cavanaugh, Dist. 16; Sen. Soucy, Dist. 18.

11            Part IV. LSR 21-0921, relative to immunity from arrest or prosecution for prostitution for  
12 seeking medical assistance for reporting certain crimes, sponsored by Sen. French, Prime/Dist. 7;  
13 Sen. Reagan, Dist. 17; Sen. Watters, Dist. 4.

14            Part V. LSR 21-0479, increasing the penalty for harming a service animal and making  
15 changes to the membership of the council on autism spectrum disorders, sponsored by Sen. Bradley,  
16 Prime/Dist. 3

17            2 Legislation Enacted. The general court hereby enacts the following legislation:

18

19

PART I

20

Relative to the Impaired Driver Education Program.

21

22

23

1 New Paragraph; Motor Vehicles; Driving or Operating Under the Influence of Drugs or Liquor;  
Penalties for Intoxication or Under Influence of Drugs Offenses. Amend RSA 265-A:18 by inserting  
after paragraph X the following new paragraph:

24

25

26

27

XI. Any person charged with violating any provision of RSA 265-A:2, 265-A:3, or 265-A:19  
who would be required to complete an IDCMP if convicted may, at his or her discretion, register for  
such a program after attending or waiving arraignment in a criminal proceeding. Such registration  
shall not be considered as evidence of his or her culpability in judicial or administrative proceedings.

28

29

2 Effective Date. Part I of this act shall take effect 60 days after its passage.

30

PART II

1 Relative to Exemptions from Prosecution for Victims of Human Trafficking.

2 1 New Paragraph; Trafficking in Persons; Definitions. Amend RSA 633:6 by inserting after  
3 paragraph VI the following new paragraph:

4 VII. "Victim of human trafficking" means:

5 (a) An individual who, at any point in time, was the victim of a trafficking in persons  
6 offense under RSA 633:7, I-III, whether or not the offense was prosecuted; or

7 (b) An individual who at any point in time was the victim of a severe form of trafficking  
8 in persons offense under 22 U.S.C. section 7102(11)(A), whether or not the offense was prosecuted.

9 2 Trafficking in Persons. RSA 633:7, VI is repealed and reenacted to read as follows:

10 VI. No victim of human trafficking shall be prosecuted for any offense, where the otherwise  
11 chargeable conduct was committed as a direct result of being trafficked, provided that the conduct  
12 chargeable did not involve an act of violence or a threat of violence as defined in RSA 625:9, VII.

13 VII. A victim of human trafficking who was under 18 years of age at the time of the offense  
14 shall not be subject to juvenile delinquency proceedings under RSA 169-B for any otherwise  
15 chargeable offense, where the conduct was committed as a direct result of being trafficked, provided  
16 that the conduct chargeable did not involve an act of violence or a threat of violence as defined in  
17 RSA 625:9, VII.

18 VIII.(a) This paragraph shall apply to:

19 (1) An individual convicted for an offense which was committed as a direct result of  
20 being trafficked;

21 (2) An individual who was under 18 years of age at the time of the offense, who was  
22 adjudicated as delinquent for an offense which was committed as a direct result of being trafficked;

23 or

24 (3) An individual who entered into a diversion agreement in lieu of further criminal  
25 proceedings for an offense which was committed as a direct result of being trafficked.

26 (b) A victim of human trafficking who was subject to adjudication as specified in VIII (a)  
27 above, may, at any time, file a motion with the circuit court, district division or superior court to  
28 vacate a conviction, adjudication of delinquency, or diversion agreement, and the related court  
29 records and arrest records, for any offense. A copy of the motion to vacate shall be provided to the  
30 agency that prosecuted the offense.

31 (c) After a hearing, the court shall grant the motion to vacate the conviction,  
32 adjudication of delinquency, or diversion agreement upon a finding by a preponderance of the  
33 evidence that the petitioner's participation in the offense underlying the conviction, delinquency  
34 adjudication, or diversion agreement was the direct result of being trafficked. A finding by the court  
35 that the petitioner was a victim of human trafficking at the time of the offense shall be a prima facie  
36 evidence that the petitioner's participation in the offense was a direct result of being trafficked.

1 (d) The petitioner shall not be required to provide any official documentation indicating  
2 that he or she was a victim of human trafficking at the time of the offense. However, if such  
3 documentation is provided, it shall be prima facie evidence that the petitioner's participation in the  
4 offense was a direct result of being trafficked. In this subparagraph, "official documentation" means:

5 (1) A copy of an official record, certification, or eligibility letter from a federal, state,  
6 tribal, or local proceeding, including an approval notice or an enforcement certification generated  
7 from a federal immigration proceeding, that shows the petitioner was a victim of human trafficking;  
8 or

9 (2) An affidavit or sworn testimony from a member of the clergy, a medical  
10 professional, a trained professional staff member of a victim services organization, or other  
11 professional from whom the petitioner has sought legal counselor other assistance in addressing the  
12 trauma and other challenges associated with being a victim of human trafficking.

13 (e) In determining whether the petitioner was a victim of human trafficking at the time  
14 of the offense, the court may consider any other evidence the court finds has sufficient credibility and  
15 probative value. Such evidence may include, but is not limited to:

16 (1) The affidavit or sworn testimony of the petitioner;

17 (2) Branding or other tattoos on the body of the petitioner that identify the petitioner  
18 as having had a trafficker;

19 (3) Photographic evidence of branding or other tattoos on the body of the petitioner  
20 that identify the petitioner as having or having had a trafficker;

21 (4) Affidavits or sworn testimony of police, police interview notes, or police reports;

22 (5) Affidavits or sworn testimony from any person with firsthand knowledge of the  
23 petitioner's involvement in the trafficking or any person who indicates that he or she was trafficked  
24 or exploited by the same individual or group of individuals who trafficked the petitioner;

25 (6) Financial records showing revenues or expenses from the trafficking;

26 (7) Internet listings, print advertisements, or business cards used to promote the  
27 petitioner for services; or

28 (8) Email, text messages, or voicemail records between the petitioner, the trafficker,  
29 or solicitors of sex that reveal aspects of the trafficking, such as examples of trafficker exerting  
30 control over the petitioner, evidence of behavior patterns of the trafficker or the petitioner, or  
31 discussion of meeting times or payments.

32 (f) Upon request of the petitioner and in lieu of the personal appearance of the petitioner  
33 in the courtroom, a hearing shall be conducted by 2-way electronic audio-video communication,  
34 between the petitioner, the judge, and any other present in the courtroom for the hearing, if the  
35 petitioner is represented by counsel and upon request of the petitioner, the petitioner's personal  
36 appearance shall be waived and counsel for petitioner shall be permitted to appear on the  
37 petitioner's behalf.

1 IX. Upon request of the petitioner, the court shall not disclose or open to public inspection  
2 any information identifying the petitioner, including any records of the motion hearing which could  
3 provide circumstantial details that may identify the petitioner. Information regarding the petitioner  
4 that is sealed pursuant to this paragraph shall be disclosed only to the following:

5 (a) The judge of the circuit court, district division or superior court and members of the  
6 staff of the court as designated by the judge;

7 (b) Parties to the proceedings and their attorneys;

8 (c) With the consent of the petitioner, any individual or public or private agency or  
9 institution providing educational, medical, or mental health service to the petitioner;

10 (d) When necessary for the discharge of official duties, law enforcement officers,  
11 prosecutors, or law enforcement or prosecution staff, or

12 (e) When authorized by court order, any other person, subject to any conditions imposed  
13 by the order, consistent with the petitioner's safety and privacy interests.

14 X.(a) An order vacating a conviction, adjudication of delinquency, or diversion agreement  
15 shall:

16 (1) Nullify the conviction, delinquency adjudication, or diversion agreement;

17 (2) Vacate the conviction, delinquency adjudication, or diversion agreement due to a  
18 substantive defect in the underlying criminal proceedings;

19 (3) Remove all civil disabilities and disqualifications imposed as a result of the  
20 conviction, delinquency adjudication, or diversion agreement; and

21 (4) Place the petitioner in the position of never having been investigated, arrested,  
22 convicted, deemed delinquent, or diverted for the offense.

23 (b) Upon a finding that the petitioner's participation in the offense underlying the  
24 conviction, delinquency adjudication, or diversion agreement was a direct result of being trafficked  
25 and an entry of an order vacating the conviction, delinquency's adjudication, or diversion agreement  
26 the court shall:

27 (1) Order the conviction, delinquency adjudication, or diversion agreement and any  
28 related court records expunged and purged from all applicable state and federal systems. The court  
29 shall enter this order regardless of whether the petitioner had any criminal record prior or  
30 subsequent to the conviction, delinquency adjudication, or diversion agreement being vacated.

31 (2) Order the division of state police to purge the conviction, delinquency  
32 adjudication, or diversion agreement, and any related court records or arrest records from the  
33 criminal history record information repository and all applicable state and federal databases. The  
34 clerk of the court shall send a certified copy of the order to the division of state police, which shall  
35 carry out the order and shall notify the following of the court's order: the Federal Bureau of  
36 Investigation, the New Hampshire department of corrections, and any other criminal justice agency

1 that may have a record of the conviction, adjudication of delinquency, or diversion agreement and  
2 related court records or arrest records.

3 (c) Upon a finding that the petitioner's participation in the offense underlying the  
4 conviction, delinquency adjudication, or diversion agreement was a direct result of being trafficked  
5 and an entry of an order vacating the conviction, delinquency adjudication, or diversion agreement,  
6 the court may, in its discretion, grant other relief to the petitioning victim in the interests of justice.

7 (d) Vacating a conviction, delinquency adjudication, or diversion agreement shall not  
8 affect any right of the person whose offense was vacated to appeal the conviction or sentence.

9 3 Effective Date. Part II of this act shall take effect upon its passage.  
10

11 PART III

12 Relative to Guardianship by Grandparents.

13 1 New Paragraph; Guardianship of Minors; Definition of Grandparent Added. Amend RSA  
14 463:2 by inserting after paragraph III the following new paragraph:

15 III-a. "Grandparent" includes a great-grandparent or great-great grandparent.

16 2 Effective Date. Part III of this act shall take effect 60 days after its passage.  
17

18 PART IV

19 Relative to Immunity from Arrest or Prosecution for

20 Prostitution for Seeking Medical Assistance for Reporting Certain Crimes.

21 1 New Paragraphs; Prostitution and Related Offenses; Immunity From Prosecution. Amend  
22 RSA 645:2 by inserting after paragraph VI the following new paragraphs:

23 VII. As used in this section, "reports being the victim of a sexual assault or other crime"  
24 means reporting the initial crime to law enforcement. It does not include further cooperation in  
25 prosecution.

26 VIII. It shall be a defense to a violation of this section that a person reports being the victim  
27 of a sexual assault as defined in RSA 632-A:2, 632-A:3, or 632-A:4. A person who reports being the  
28 victim of such an offense shall not be arrested, prosecuted, or convicted for a violation of this section  
29 if the evidence for the charge was gained as a proximate result of the person's reporting. Any victim  
30 seeking medical treatment following a sexual assault will be afforded all options of care outlined in  
31 the New Hampshire attorney general's sexual assault medical forensic exam protocol without  
32 making a report to or cooperating with law enforcement.

33 IX. Nothing in this section shall be construed to limit the admissibility of evidence in  
34 connection with the investigation or prosecution of a crime involving a person who is not protected as  
35 provided in paragraph VIII. Nothing in this section shall be construed to limit the lawful seizure of  
36 any evidence or contraband. Nothing in this section shall be construed to limit or abridge the

1 authority of a law enforcement officer to detain or place into custody a person as part of a criminal  
2 investigation who is not protected by the provisions of paragraph VIII.

3 2 Effective Date. Part IV of this act shall take effect January 1, 2021.

4  
5 PART V

6 Increasing the Penalty for Harming a Service Animal and  
7 Making Changes to the Membership of the Council on Autism Spectrum Disorders.

8 1 Penalty; Harming a Service Dog. Amend RSA 167-D:10, II to read as follows:

9 II. It is a ~~[misdemeanor]~~ **class B felony** if a person willfully causes physical injury to a  
10 service animal or willfully allows his or her animal to cause physical injury to a service animal. If  
11 the physical injury to a service animal is severe enough that a veterinarian or service animal trainer  
12 determines that the service animal is incapable of returning to service, that person shall be guilty of  
13 a ~~[class A misdemeanor]~~ **class A felony**.

14 2 Council on Autism Spectrum Disorders; Membership. RSA 171-A:32, I is repealed and  
15 reenacted to read as follows:

16 I. There is established a council on autism spectrum disorders to provide leadership in  
17 promoting comprehensive and quality education, health care, and services for individuals with  
18 autism spectrum disorders and their families. The members of the council shall be as follows:

19 (a) The governor, or designee.

20 (b) The commissioner of the department of education, or designee.

21 (c) The commissioner of the department of health and human services, or designee.

22 (d) The director of the division of public health services, department of health and  
23 human services, or designee.

24 (e) The bureau chief of the bureau of developmental services, department of health and  
25 human services, or designee.

26 (f) The bureau chief of the bureau of behavioral health, department of health and human  
27 services, or designee.

28 (g) The director of the Institute on Disability, University of New Hampshire, or  
29 designee.

30 (h) A special education director, appointed by the New Hampshire Association of Special  
31 Education Administrators, Inc.

32 (i) The president of the New Hampshire Medical Society, or designee.

33 (j) A representative of the New Hampshire Developmental Disabilities Council,  
34 appointed by the council.

35 (k) An individual who has an autism spectrum disorder, appointed by the governor.

36 (l) A family member of a person who has an autism spectrum disorder, appointed by the  
37 governor.

1 (m) A representative of the Community Support Network, Inc., appointed by such  
2 organization.

3 (n) A representative of the New Hampshire Psychological Association, appointed by the  
4 association.

5 (o) The director of the office of Medicaid business and policy, department of health and  
6 human services, or designee.

7 (p) Five additional members, appointed by the council.

8 (q) A person who has an autism spectrum disorder, appointed by the council.

9 (r) A representative of the New Hampshire Nurses' Association, appointed by the  
10 association.

11 (s) A licensed speech-language pathologist, appointed by the New Hampshire Speech-  
12 Language-Hearing Association, Inc.

13 3 Effective Date.

14 I. Section 1 of Part V of this act shall take effect January 1, 2022.

15 II. The remainder of Part V this act shall take effect upon its passage.



**SB 122-FN- FISCAL NOTE**  
 AS AMENDED BY THE SENATE (AMENDMENT #2021-0754s)

AN ACT adopting omnibus legislation relative to certain crimes and judicial processes and procedures.

**PART I Relative to the Impaired Driver Education Program.**

No fiscal impact.

**PART II Relative to Exemptions from Prosecution for Victims of Human Trafficking.**

FISCAL IMPACT:  State  County  Local  None

STATE:	Estimated Increase / (Decrease)			
	FY 2021	FY 2022	FY 2023	FY 2024
<b>Appropriation</b>	\$0	\$0	\$0	\$0
<b>Revenue</b>	\$0	Indeterminable	Indeterminable	Indeterminable
<b>Expenditures</b>	\$0	Indeterminable	Indeterminable	Indeterminable
<b>Funding Source:</b>	<input type="checkbox"/> General	<input type="checkbox"/> Education	<input type="checkbox"/> Highway	<input type="checkbox"/> Other

**METHODOLOGY:**

This bill exempts victims of human trafficking from prosecution for certain criminal offenses and establishes procedures for vacating a conviction, adjudication of delinquency, or diversion agreement resulting from human trafficking. The Judicial Branch does not identify in its system whether the defendants charged under these sections are victims of human trafficking. As a result, the Branch is unable to determine how many fewer charges would be filed or what fiscal impact, if any, would occur if victims of human trafficking are exempt from prosecution. The Branch assumes that, some previous convictions under RSA 645:1, 645:2 or 633:7 would now be subject to an exemption from prosecution, and anyone in that situation would file a motion to vacate as authorized by the bill. Each such motion would take judicial and staff resources to process and rule upon. Because the Branch is unable to determine how many cases fall within this category, the impact on expenditures is indeterminable.

The Department of Safety, Division of State Police's Criminal Records Unit indicates the proposed legislation will have no fiscal impact to the Department.

The Judicial Council indicates it is unclear how many future prosecution charges would not be brought as a result of this legislation. It is assumed that there would not be a significant decrease in the number of charged crimes. Therefore, the Council does not expect any reduction due to this legislation would have a meaningful impact on indigent defense expenditures.

It is assumed any fiscal impact will occur after July 1, 2021.

**AGENCIES CONTACTED:**

Judicial Branch, Judicial Council and Department of Safety

**PART III Relative to Guardianship by Grandparents.**

No fiscal impact.

**PART IV Relative to Immunity from Arrest or Prosecution for Prostitution for Seeking Medical Assistance for Reporting Certain Crimes.**

**FISCAL IMPACT:**     State             County             Local             None

STATE:	Estimated Increase / (Decrease)			
	FY 2021	FY 2022	FY 2023	FY 2024
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	Indeterminable Decrease	Indeterminable Decrease	Indeterminable Decrease
<i>Funding Source:</i>	<input type="checkbox"/> General	<input type="checkbox"/> Education	<input type="checkbox"/> Highway	<input type="checkbox"/> Other

**COUNTY:**

Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	Indeterminable Decrease	Indeterminable Decrease	Indeterminable Decrease

**METHODOLOGY:**

This bill provides immunity from prosecution for prostitution for a person reporting to law enforcement that such person or another person is the victim of a sexual assault, incest, or assault. This bill impacts penalties that may have an impact on the New Hampshire judicial and correctional systems. There is no method to determine how many fewer charges would be brought as a result of the changes contained in this bill to determine the fiscal impact on expenditures. However, the entities impacted have provided the potential costs associated with these penalties below.

Judicial Branch	FY 2021	FY 2022
Violation Level Offense	\$53	\$53
Class B Misdemeanor	\$55	\$55
Class A Misdemeanor	\$78	\$78
Simple Criminal Case	\$309	\$309
Routine Criminal Felony Case	\$494	\$494

Appeals	Varies	Varies
It should be noted that average case cost estimates for FY 2021 and FY 2022 are based on data that is more than ten years old and does not reflect changes to the courts over that same period of time or the impact these changes may have on processing the various case types. An unspecified misdemeanor can be either class A or class B, with the presumption being a class B misdemeanor.		
Judicial Council		
Public Defender Program	Has contract with State to provide services.	Has contract with State to provide services.
Contract Attorney – Felony	\$825/Case	\$825/Case
Contract Attorney – Misdemeanor	\$300/Case	\$300/Case
Assigned Counsel – Felony	\$60/Hour up to \$4,100	\$60/Hour up to \$4,100
Assigned Counsel – Misdemeanor	\$60/Hour up to \$1,400	\$60/Hour up to \$1,400
It should be noted that a person needs to be found indigent and have the potential of being incarcerated to be eligible for indigent defense services. The majority of indigent cases (approximately 85%) are handled by the public defender program, with the remaining cases going to contract attorneys (14%) or assigned counsel (1%).		
Department of Corrections		
FY 2020 Average Cost of Incarcerating an Individual	\$47,691	\$47,691
FY 2020 Annual Marginal Cost of a General Population Inmate	\$6,407	\$6,407
FY 2020 Average Cost of Supervising an Individual on Parole/Probation	\$584	\$584
NH Association of Counties		
County Prosecution Costs	Indeterminable	Indeterminable
Estimated Average Daily Cost of Incarcerating an Individual	\$105 to \$120	\$105 to \$120

Many offenses are prosecuted by local and county prosecutors. When the Department of Justice has investigative and prosecutorial responsibility or is involved in an appeal, the Department would likely absorb the cost within its existing budget. If the Department needs to prosecute significantly less cases or handle less appeals, then costs may decrease by an indeterminable amount.

**AGENCIES CONTACTED:**

Judicial Branch, Departments of Corrections and Justice, Judicial Council, and New Hampshire Association of Counties

**PART V Increasing the Penalty for Harming a Service Animal and Making Changes to the Membership of the Council on Autism Spectrum Disorders.**

FISCAL IMPACT:     State             County             Local             None

STATE:	Estimated Increase / (Decrease)			
	FY 2021	FY 2022	FY 2023	FY 2024
<b>Appropriation</b>	\$0	\$0	\$0	\$0
<b>Revenue</b>	\$0	\$0	\$0	\$0
<b>Expenditures</b>	\$0	Indeterminable	Indeterminable	Indeterminable
<b>Funding Source:</b>	<input type="checkbox"/> General	<input type="checkbox"/> Education	<input type="checkbox"/> Highway	<input type="checkbox"/> Other

**COUNTY:**

<b>Revenue</b>	\$0	\$0	\$0	\$0
<b>Expenditures</b>	\$0	Indeterminable	Indeterminable	Indeterminable

**METHODOLOGY:**

This bill changes penalties that may have an impact on the New Hampshire judicial and correctional systems. There is no method to determine how many charges would be brought as a result of the changes contained in this bill to determine the fiscal impact on expenditures. However, the entities impacted have provided the potential costs associated with these penalties below.

Judicial Branch	FY 2021	FY 2022
Class B Misdemeanor	\$53	\$53
Class A Misdemeanor	\$55	\$55
Simple Criminal Case	\$309	\$309
Routine Criminal Felony Case	\$494	\$494
Appeals	Varies	Varies
It should be noted that average case cost estimates for FY 2021 and FY 2022 are based on data that is more than ten years old and does not reflect changes to the courts over that same period of time or the impact these changes may have on processing the various case types. An unspecified misdemeanor can be either class A or class B, with the presumption being a class B misdemeanor.		
Judicial Council		
Public Defender Program	Has contract with State to provide services.	Has contract with State to provide services.
Contract Attorney - Misdemeanor	\$300/Case	\$300/Case
Assigned Counsel- Misdemeanor	\$60/Hour up to \$1,400	\$60/Hour up to \$1,400
Contract Attorney – Felony	\$825/Case	\$825/Case
Assigned Counsel – Felony	\$60/Hour up to \$4,100	\$60/Hour up to \$4,100

It should be noted that a person needs to be found indigent and have the potential of being incarcerated to be eligible for indigent defense services. The majority of indigent cases (approximately 85%) are handled by the public defender program, with the remaining cases going to contract attorneys (14%) or assigned counsel (1%).

Department of Corrections		
FY 2020 Average Cost of Incarcerating an Individual	\$47,691	\$47,691
FY 2020 Annual Marginal Cost of a General Population Inmate	\$6,407	\$6,407
FY 2020 Average Cost of Supervising an Individual on Parole/Probation	\$584	\$584
NH Association of Counties		
County Prosecution Costs	Indeterminable	Indeterminable
Estimated Average Daily Cost of Incarcerating an Individual	\$105 to \$120	\$105 to \$120

Many offenses are prosecuted by local and county prosecutors. When the Department of Justice has investigative and prosecutorial responsibility or is involved in an appeal, the Department would likely absorb the cost within its existing budget. If the Department needs to prosecute significantly more cases or handle more appeals, then costs may increase by an indeterminable amount.

The change in the membership of the Council on Autism Spectrum Disorders will have no impact on State, county or local revenues and expenditures.

**AGENCIES CONTACTED:**

Judicial Branch, Departments of Corrections and Justice, Judicial Council, and New Hampshire Association of Counties

SB 122-FN - AS AMENDED BY THE HOUSE

03/18/2021 0754s  
3Jun2021... 1308h

2021 SESSION

21-0830  
11/04

SENATE BILL ***122-FN***

AN ACT relative to exemptions from prosecution for victims of human trafficking, guardianship by grandparents, and making changes to the membership of the council on autism spectrum disorders.

SPONSORS: Sen. French, Dist 7

COMMITTEE: Judiciary

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AMENDED ANALYSIS

This bill exempts victims of human trafficking from prosecution, defines "grandparent" for purposes of guardianship of minors, and makes changes to the membership of the council on autism spectrum disorders.

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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 exemptions from prosecution for victims of human trafficking, guardianship by grandparents, and making changes to the membership of the council on autism spectrum disorders.

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

1 1 New Paragraph; Trafficking in Persons; Definitions. Amend RSA 633:6 by inserting after  
2 paragraph VI the following new paragraph:

3 VII. "Victim of human trafficking" means:

4 (a) An individual who, at any point in time, was the victim of a trafficking in persons  
5 offense under RSA 633:7, I-III, whether or not the offense was prosecuted; or

6 (b) An individual who at any point in time was the victim of a severe form of trafficking  
7 in persons offense under 22 U.S.C. section 7102(11)(A), whether or not the offense was prosecuted.

8 2 Trafficking in Persons. RSA 633:7, VI is repealed and reenacted to read as follows:

9 VI. No victim of human trafficking shall be prosecuted for any offense, where the otherwise  
10 chargeable conduct was committed as a direct result of being trafficked, provided that the conduct  
11 chargeable did not involve an act of violence or a threat of violence as defined in RSA 625:9, VII.

12 VII. A victim of human trafficking who was under 18 years of age at the time of the offense  
13 shall not be subject to juvenile delinquency proceedings under RSA 169-B for any otherwise  
14 chargeable offense, where the conduct was committed as a direct result of being trafficked, provided  
15 that the conduct chargeable did not involve an act of violence or a threat of violence as defined in  
16 RSA 625:9, VII.

17 VIII.(a) This paragraph shall apply to:

18 (1) An individual convicted for an offense which was committed as a direct result of  
19 being trafficked;

20 (2) An individual who was under 18 years of age at the time of the offense, who was  
21 adjudicated as delinquent for an offense which was committed as a direct result of being trafficked;  
22 or

23 (3) An individual who entered into a diversion agreement in lieu of further criminal  
24 proceedings for an offense which was committed as a direct result of being trafficked.

25 (b) A victim of human trafficking who was subject to adjudication as specified in VIII (a)  
26 above, may, at any time, file a motion with the circuit court, district division or superior court to  
27 vacate a conviction, adjudication of delinquency, or diversion agreement, and the related court  
28 records and arrest records, for any offense. A copy of the motion to vacate shall be provided to the  
29 agency that prosecuted the offense.

1 (c) After a hearing, the court shall grant the motion to vacate the conviction,  
2 adjudication of delinquency, or diversion agreement upon a finding by a preponderance of the  
3 evidence that the petitioner's participation in the offense underlying the conviction, delinquency  
4 adjudication, or diversion agreement was the direct result of being trafficked. A finding by the court  
5 that the petitioner was a victim of human trafficking at the time of the offense shall be a prima facie  
6 evidence that the petitioner's participation in the offense was a direct result of being trafficked.

7 (d) The petitioner shall not be required to provide any official documentation indicating  
8 that he or she was a victim of human trafficking at the time of the offense. However, if such  
9 documentation is provided, it shall be prima facie evidence that the petitioner's participation in the  
10 offense was a direct result of being trafficked. In this subparagraph, "official documentation" means:

11 (1) A copy of an official record, certification, or eligibility letter from a federal, state,  
12 tribal, or local proceeding, including an approval notice or an enforcement certification generated  
13 from a federal immigration proceeding, that shows the petitioner was a victim of human trafficking;  
14 or

15 (2) An affidavit or sworn testimony from a member of the clergy, a medical  
16 professional, a trained professional staff member of a victim services organization, or other  
17 professional from whom the petitioner has sought legal counsel or other assistance in addressing the  
18 trauma and other challenges associated with being a victim of human trafficking.

19 (e) In determining whether the petitioner was a victim of human trafficking at the time  
20 of the offense, the court may consider any other evidence the court finds has sufficient credibility and  
21 probative value. Such evidence may include, but is not limited to:

22 (1) The affidavit or sworn testimony of the petitioner;

23 (2) Branding or other tattoos on the body of the petitioner that identify the petitioner  
24 as having had a trafficker;

25 (3) Photographic evidence of branding or other tattoos on the body of the petitioner  
26 that identify the petitioner as having or having had a trafficker;

27 (4) Affidavits or sworn testimony of police, police interview notes, or police reports;

28 (5) Affidavits or sworn testimony from any person with firsthand knowledge of the  
29 petitioner's involvement in the trafficking or any person who indicates that he or she was trafficked  
30 or exploited by the same individual or group of individuals who trafficked the petitioner;

31 (6) Financial records showing revenues or expenses from the trafficking;

32 (7) Internet listings, print advertisements, or business cards used to promote the  
33 petitioner for services; or

34 (8) Email, text messages, or voicemail records between the petitioner, the trafficker,  
35 or solicitors of sex that reveal aspects of the trafficking, such as examples of trafficker exerting  
36 control over the petitioner, evidence of behavior patterns of the trafficker or the petitioner, or  
37 discussion of meeting times or payments.



1 (f) Upon request of the petitioner and in lieu of the personal appearance of the petitioner  
2 in the courtroom, a hearing shall be conducted by 2-way electronic audio-video communication,  
3 between the petitioner, the judge, and any other present in the courtroom for the hearing, if the  
4 petitioner is represented by counsel and upon request of the petitioner, the petitioner's personal  
5 appearance shall be waived and counsel for petitioner shall be permitted to appear on the  
6 petitioner's behalf.

7 IX. Upon request of the petitioner, the court shall not disclose or open to public inspection  
8 any information identifying the petitioner, including any records of the motion hearing which could  
9 provide circumstantial details that may identify the petitioner. Information regarding the petitioner  
10 that is sealed pursuant to this paragraph shall be disclosed only to the following:

11 (a) The judge of the circuit court, district division or superior court and members of the  
12 staff of the court as designated by the judge;

13 (b) Parties to the proceedings and their attorneys;

14 (c) With the consent of the petitioner, any individual or public or private agency or  
15 institution providing educational, medical, or mental health service to the petitioner;

16 (d) When necessary for the discharge of official duties, law enforcement officers,  
17 prosecutors, or law enforcement or prosecution staff, or

18 (e) When authorized by court order, any other person, subject to any conditions imposed  
19 by the order, consistent with the petitioner's safety and privacy interests.

20 X.(a) An order vacating a conviction, adjudication of delinquency, or diversion agreement  
21 shall:

22 (1) Nullify the conviction, delinquency adjudication, or diversion agreement;

23 (2) Vacate the conviction, delinquency adjudication, or diversion agreement due to a  
24 substantive defect in the underlying criminal proceedings;

25 (3) Remove all civil disabilities and disqualifications imposed as a result of the  
26 conviction, delinquency adjudication, or diversion agreement; and

27 (4) Place the petitioner in the position of never having been investigated, arrested,  
28 convicted, deemed delinquent, or diverted for the offense.

29 (b) Upon a finding that the petitioner's participation in the offense underlying the  
30 conviction, delinquency adjudication, or diversion agreement was a direct result of being trafficked  
31 and an entry of an order vacating the conviction, delinquency's adjudication, or diversion agreement  
32 the court shall:

33 (1) Order the conviction, delinquency adjudication, or diversion agreement and any  
34 related court records expunged and purged from all applicable state and federal systems. The court  
35 shall enter this order regardless of whether the petitioner had any criminal record prior or  
36 subsequent to the conviction, delinquency adjudication, or diversion agreement being vacated.

1           (2) Order the division of state police to purge the conviction, delinquency  
2 adjudication, or diversion agreement, and any related court records or arrest records from the  
3 criminal history record information repository and all applicable state and federal databases. The  
4 clerk of the court shall send a certified copy of the order to the division of state police, which shall  
5 carry out the order and shall notify the following of the court's order: the Federal Bureau of  
6 Investigation, the New Hampshire department of corrections, and any other criminal justice agency  
7 that may have a record of the conviction, adjudication of delinquency, or diversion agreement and  
8 related court records or arrest records.

9           (c) Upon a finding that the petitioner's participation in the offense underlying the  
10 conviction, delinquency adjudication, or diversion agreement was a direct result of being trafficked  
11 and an entry of an order vacating the conviction, delinquency adjudication, or diversion agreement,  
12 the court may, in its discretion, grant other relief to the petitioning victim in the interests of justice.

13           (d) Vacating a conviction, delinquency adjudication, or diversion agreement shall not  
14 affect any right of the person whose offense was vacated to appeal the conviction or sentence.

15           3 New Paragraph; Guardianship of Minors; Definition of Grandparent Added. Amend RSA  
16 463:2 by inserting after paragraph III the following new paragraph:

17           III-a. "Grandparent" includes a great-grandparent or great-great grandparent.

18           4 Council on Autism Spectrum Disorders; Membership. RSA 171-A:32, I is repealed and  
19 reenacted to read as follows:

20           I. There is established a council on autism spectrum disorders to provide leadership in  
21 promoting comprehensive and quality education, health care, and services for individuals with  
22 autism spectrum disorders and their families. The members of the council shall be as follows:

23           (a) The governor, or designee.

24           (b) The commissioner of the department of education, or designee.

25           (c) The commissioner of the department of health and human services, or designee.

26           (d) The director of the division of public health services, department of health and  
27 human services, or designee.

28           (e) The bureau chief of the bureau of developmental services, department of health and  
29 human services, or designee.

30           (f) The bureau chief of the bureau of behavioral health, department of health and human  
31 services, or designee.

32           (g) The director of the Institute on Disability, University of New Hampshire, or  
33 designee.

34           (h) A special education director, appointed by the New Hampshire Association of Special  
35 Education Administrators, Inc.

36           (i) The president of the New Hampshire Medical Society, or designee.

SB 122-FN - AS AMENDED BY THE HOUSE

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1 (j) A representative of the New Hampshire Developmental Disabilities Council,  
2 appointed by the council.

3 (k) An individual who has an autism spectrum disorder, appointed by the governor.

4 (l) A family member of a person who has an autism spectrum disorder, appointed by the  
5 governor.

6 (m) A representative of the Community Support Network, Inc., appointed by such  
7 organization.

8 (n) A representative of the New Hampshire Psychological Association, appointed by the  
9 association.

10 (o) The director of the office of Medicaid business and policy, department of health and  
11 human services, or designee.

12 (p) Five additional members, appointed by the council.

13 (q) A person who has an autism spectrum disorder, appointed by the council.

14 (r) A representative of the New Hampshire Nurses' Association, appointed by the  
15 association.

16 (s) A licensed speech-language pathologist, appointed by the New Hampshire Speech-  
17 Language-Hearing Association, Inc.

18 5 Effective Date. This act shall take effect upon its passage.

**SB 122-FN- FISCAL NOTE**  
 AS AMENDED BY THE HOUSE (AMENDMENT #2021-1308h)

AN ACT relative to exemptions from prosecution for victims of human trafficking, guardianship by grandparents, and making changes to the membership of the council on autism spectrum disorders.

FISCAL IMPACT:     State             County             Local             None

STATE:	Estimated Increase / (Decrease)			
	FY 2021	FY 2022	FY 2023	FY 2024
<b>Appropriation</b>	\$0	\$0	\$0	\$0
<b>Revenue</b>	\$0	Indeterminable	Indeterminable	Indeterminable
<b>Expenditures</b>	\$0	Indeterminable	Indeterminable	Indeterminable
<b>Funding Source:</b>	<input type="checkbox"/> General	<input type="checkbox"/> Education	<input type="checkbox"/> Highway	<input type="checkbox"/> Other

**METHODOLOGY:**

This bill exempts victims of human trafficking from prosecution, defines "grandparent" for purposes of guardianship of minors, and makes changes to the membership of the council on autism spectrum disorders.

The Judicial Branch does not identify in its system whether the defendants charged under these sections are victims of human trafficking. As a result, the Branch is unable to determine how many fewer charges would be filed or what fiscal impact, if any, would occur if victims of human trafficking are exempt from prosecution. The Branch assumes that, some previous convictions under RSA 645:1, 645:2 or 633:7 would now be subject to an exemption from prosecution, and anyone in that situation would file a motion to vacate as authorized by the bill. Each such motion would take judicial and staff resources to process and rule upon. Because the Branch is unable to determine how many cases fall within this category, the impact on expenditures is indeterminable.

The Department of Safety, Division of State Police's Criminal Records Unit indicates the proposed legislation will have no fiscal impact to the Department.

The Judicial Council indicates it is unclear how many future prosecution charges would not be brought as a result of this legislation. It is assumed that there would not be a significant decrease in the number of charged crimes. Therefore, the Council does not expect any reduction due to this legislation would have a meaningful impact on indigent defense expenditures.

Sections 3 and 4 of the bill relative to guardianship by grandparents, and the membership of the council on autism spectrum disorders have no fiscal impact.

It is assumed any fiscal impact will occur after July 1, 2021.

**AGENCIES CONTACTED:**

Judicial Branch, Judicial Council and Department of Safety

# Amendments

Sen. French, Dist 7  
February 8, 2021  
2021-0279s  
11/08

Amendment to SB 122-FN

1 Amend the bill by replacing sections 1-2 of part V of the bill with the following:

2

3 1 New Paragraphs; Prostitution and Related Offenses; Immunity From Prosecution. Amend  
4 RSA 645:2 by inserting after paragraph VI the following new paragraphs:

5 VII. As used in this section, "reports being the victim of a sexual assault or other crime"  
6 means reporting the initial crime to law enforcement. It does not include further cooperation in  
7 prosecution.

8 VIII. It shall be a defense to a violation of this section that a person reports being the victim  
9 of a sexual assault as defined in RSA 632-A:2, 632-A:3, or 632-A:4. A person who reports being the  
10 victim of such an offense shall not be arrested, prosecuted, or convicted for a violation of this section  
11 if the evidence for the charge was gained as a proximate result of the person's reporting. Any victim  
12 seeking medical treatment following a sexual assault will be afforded all options of care outlined in  
13 the New Hampshire attorney general's sexual assault medical forensic exam protocol without  
14 making a report to or cooperating with law enforcement.

15 IX. Nothing in this section shall be construed to limit the admissibility of evidence in  
16 connection with the investigation or prosecution of a crime involving a person who is not protected as  
17 provided in paragraph VIII. Nothing in this section shall be construed to limit the lawful seizure of  
18 any evidence or contraband. Nothing in this section shall be construed to limit or abridge the  
19 authority of a law enforcement officer to detain or place into custody a person as part of a criminal  
20 investigation who is not protected by the provisions of paragraph VIII.

21 2 Effective Date. Part V of this act shall take effect January 1, 2021.

Amendment to SB 122-FN

1 Amend Part II of section 2 of the bill by replacing section 2 with the following:

2  
3 2 Trafficking in Persons. RSA 633:7, VI is repealed and reenacted to read as follows:

4 VI. No victim of human trafficking shall be prosecuted for any offense, where the otherwise  
5 chargeable conduct was committed as a direct result of being trafficked, provided that the conduct  
6 chargeable did not involve an act of violence or a threat of violence as defined in RSA 625:9, VII.

7 VII. A victim of human trafficking who was under 18 years of age at the time of the offense  
8 shall not be subject to juvenile delinquency proceedings under RSA 169-B for any otherwise  
9 chargeable offense, where the conduct was committed as a direct result of being trafficked, provided  
10 that the conduct chargeable did not involve an act of violence or a threat of violence as defined in  
11 RSA 625:9, VII.

12 VIII.(a) This paragraph shall apply to:

13 (1) An individual convicted for an offense which was committed as a direct result of  
14 being trafficked;

15 (2) An individual who was under 18 years of age at the time of the offense, who was  
16 adjudicated as delinquent for an offense which was committed as a direct result of being trafficked;  
17 or

18 (3) An individual who entered into a diversion agreement in lieu of further criminal  
19 proceedings for an offense which was committed as a direct result of being trafficked.

20 (b) A victim of human trafficking who was subject to adjudication as specified in VIII (a)  
21 above, may, at any time, file a motion with the circuit court, district division or superior court to  
22 vacate a conviction, adjudication of delinquency, or diversion agreement, and the related court  
23 records and arrest records, for any offense. A copy of the motion to vacate shall be provided to the  
24 agency that prosecuted the offense.

25 (c) After a hearing, the court shall grant the motion to vacate the conviction,  
26 adjudication of delinquency, or diversion agreement upon a finding by a preponderance of the  
27 evidence that the petitioner's participation in the offense underlying the conviction, delinquency  
28 adjudication, or diversion agreement was the direct result of being trafficked. A finding by the court  
29 that the petitioner was a victim of human trafficking at the time of the offense shall be a prima facie  
30 evidence that the petitioner's participation in the offense was a direct result of being trafficked.

31 (d) The petitioner shall not be required to provide any official documentation indicating  
32 that he or she was a victim of human trafficking at the time of the offense. However, if such



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1 documentation is provided, it shall be prima facie evidence that the petitioner's participation in the  
2 offense was a direct result of being trafficked. In this subparagraph, "official documentation" means:

3 (1) A copy of an official record, certification, or eligibility letter from a federal, state,  
4 tribal, or local proceeding, including an approval notice or an enforcement certification generated  
5 from a federal immigration proceeding, that shows the petitioner was a victim of human trafficking;  
6 or

7 (2) An affidavit or sworn testimony from a member of the clergy, a medical  
8 professional, a trained professional staff member of a victim services organization, or other  
9 professional from whom the petitioner has sought legal counsel or other assistance in addressing the  
10 trauma and other challenges associated with being a victim of human trafficking.

11 (e) In determining whether the petitioner was a victim of human trafficking at the time  
12 of the offense, the court may consider any other evidence the court finds has sufficient credibility and  
13 probative value. Such evidence may include, but is not limited to:

14 (1) The affidavit or sworn testimony of the petitioner;

15 (2) Branding or other tattoos on the body of the petitioner that identify the petitioner  
16 as having had a trafficker;

17 (3) Photographic evidence of branding or other tattoos on the body of the petitioner  
18 that identify the petitioner as having or having had a trafficker;

19 (4) Affidavits or sworn testimony of police, police interview notes, or police reports;

20 (5) Affidavits or sworn testimony from any person with firsthand knowledge of the  
21 petitioner's involvement in the trafficking or any person who indicates that he or she was trafficked  
22 or exploited by the same individual or group of individuals who trafficked the petitioner;

23 (6) Financial records showing revenues or expenses from the trafficking;

24 (7) Internet listings, print advertisements, or business cards used to promote the  
25 petitioner for services; or

26 (8) Email, text messages, or voicemail records between the petitioner, the trafficker,  
27 or solicitors of sex that reveal aspects of the trafficking, such as examples of trafficker exerting  
28 control over the petitioner, evidence of behavior patterns of the trafficker or the petitioner, or  
29 discussion of meeting times or payments.

30 (f) Upon request of the petitioner and in lieu of the personal appearance of the petitioner  
31 in the courtroom, a hearing shall be conducted by 2-way electronic audio-video communication,  
32 between the petitioner, the judge, and any other present in the courtroom for the hearing, if the  
33 petitioner is represented by counsel and upon request of the petitioner, the petitioner's personal  
34 appearance shall be waived and counsel for petitioner shall be permitted to appear on the  
35 petitioner's behalf.

36 IX. Upon request of the petitioner, the court shall not disclose or open to public inspection  
37 any information identifying the petitioner, including any records of the motion hearing which could

Amendment to SB 122-FN

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1 provide circumstantial details that may identify the petitioner. Information regarding the petitioner  
2 that is sealed pursuant to this paragraph shall be disclosed only to the following:

3 (a) The judge of the circuit court, district division or superior court and members of the  
4 staff of the court as designated by the judge;

5 (b) Parties to the proceedings and their attorneys;

6 (c) With the consent of the petitioner, any individual or public or private agency or  
7 institution providing educational, medical, or mental health service to the petitioner;

8 (d) When necessary for the discharge of official duties, law enforcement officers,  
9 prosecutors, or law enforcement or prosecution staff, or

10 (e) When authorized by court order, any other person, subject to any conditions imposed  
11 by the order, consistent with the petitioner's safety and privacy interests.

12 X.(a) An order vacating a conviction, adjudication of delinquency, or diversion agreement  
13 shall:

14 (1) Nullify the conviction, delinquency adjudication, or diversion agreement;

15 (2) Vacate the conviction, delinquency adjudication, or diversion agreement due to a  
16 substantive defect in the underlying criminal proceedings;

17 (3) Remove all civil disabilities and disqualifications imposed as a result of the  
18 conviction, delinquency adjudication, or diversion agreement; and

19 (4) Place the petitioner in the position of never having been investigated, arrested,  
20 convicted, deemed delinquent, or diverted for the offense.

21 (b) Upon a finding that the petitioner's participation in the offense underlying the  
22 conviction, delinquency adjudication, or diversion agreement was a direct result of being trafficked  
23 and an entry of an order vacating the conviction, delinquency's adjudication, or diversion agreement  
24 the court shall:

25 (1) Order the conviction, delinquency adjudication, or diversion agreement and any  
26 related court records expunged and purged from all applicable state and federal systems. The court  
27 shall enter this order regardless of whether the petitioner had any criminal record prior or  
28 subsequent to the conviction, delinquency adjudication, or diversion agreement being vacated.

29 (2) Order the division of state police to purge the conviction, delinquency  
30 adjudication, or diversion agreement, and any related court records or arrest records from the  
31 criminal history record information repository and all applicable state and federal databases. The  
32 clerk of the court shall send a certified copy of the order to the division of state police, which shall  
33 carry out the order and shall notify the following of the court's order: the Federal Bureau of  
34 Investigation, the New Hampshire department of corrections, and any other criminal justice agency  
35 that may have a record of the conviction, adjudication of delinquency, or diversion agreement and  
36 related court records or arrest records.

1           (c) Upon a finding that the petitioner's participation in the offense underlying the  
2 conviction, delinquency adjudication, or diversion agreement was a direct result of being trafficked  
3 and an entry of an order vacating the conviction, delinquency adjudication, or diversion agreement,  
4 the court may, in its discretion, grant other relief to the petitioning victim in the interests of justice.

5           (d) Vacating a conviction, delinquency adjudication, or diversion agreement shall not  
6 affect any right of the person whose offense was vacated to appeal the conviction or sentence.

UNAPPROVED

Amendment to SB 122-FN

1 Amend the bill by replacing all after the enacting clause with the following:

2

3 1 Sponsorship. This act consists of the following proposed legislation:

4 Part I. LSR 21-0830, relative to the impaired driver education program, sponsored by Sen.  
5 French, Prime/Dist. 7; Sen. Bradley, Dist. 3; Sen. Giuda, Dist. 2; Sen. Carson, Dist. 14.

6 Part II. LSR 21-0191, relative to exemptions from prosecution for victims of human  
7 trafficking, sponsored by Sen. Ward, Prime/Dist. 8.

8 Part III. LSR 21-0600, relative to guardianship by grandparents, sponsored by Sen. French,  
9 Prime/Dist. 7; Sen. Avard, Dist. 12; Sen. Gannon, Dist. 23; Sen. Reagan, Dist. 17; Sen. Watters, Dist.  
10 4; Sen. Whitley, Dist. 15; Sen. Hennessey, Dist. 1; Sen. Carson, Dist. 14; Sen. Kahn, Dist. 10; Sen.  
11 Sherman, Dist. 24; Sen. Prentiss, Dist. 5; Sen. Giuda, Dist. 2; Sen. D'Allesandro, Dist. 20; Sen.  
12 Bradley, Dist. 3; Sen. Cavanaugh, Dist. 16; Sen. Soucy, Dist. 18.

13 Part IV. LSR 21-0921, relative to immunity from arrest or prosecution for prostitution for  
14 seeking medical assistance for reporting certain crimes, sponsored by Sen. French, Prime/Dist. 7;  
15 Sen. Reagan, Dist. 17; Sen. Watters, Dist. 4.

16 Part V. LSR 21-0479, increasing the penalty for harming a service animal and making  
17 changes to the membership of the council on autism spectrum disorders, sponsored by Sen. Bradley,  
18 Prime/Dist. 3

19 2 Legislation Enacted. The general court hereby enacts the following legislation:

20

21

PART I

22

Relative to the Impaired Driver Education Program.

23

24

25

1 New Paragraph; Motor Vehicles; Driving or Operating Under the Influence of Drugs or Liquor;  
Penalties for Intoxication or Under Influence of Drugs Offenses. Amend RSA 265-A:18 by inserting  
after paragraph X the following new paragraph:

26

27

28

29

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31

32

XI. Any person charged with violating any provision of RSA 265-A:2, 265-A:3, or 265-A:19  
who would be required to complete an IDCMP if convicted may, at his or her discretion, register for  
such a program after attending or waiving arraignment in a criminal proceeding. Such registration  
shall not be considered as evidence of his or her culpability in judicial or administrative proceedings.

2 Effective Date. Part I of this act shall take effect 60 days after its passage.

PART II

Amendment to SB 122-FN

- Page 2 -

1 Relative to Exemptions from Prosecution for Victims of Human Trafficking.

2 1 New Paragraph; Trafficking in Persons; Definitions. Amend RSA 633:6 by inserting after  
3 paragraph VI the following new paragraph:

4 VII. "Victim of human trafficking" means:

5 (a) An individual who, at any point in time, was the victim of a trafficking in persons  
6 offense under RSA 633:7, I-III, whether or not the offense was prosecuted; or

7 (b) An individual who at any point in time was the victim of a severe form of trafficking  
8 in persons offense under 22 U.S.C. section 7102(11)(A), whether or not the offense was prosecuted.

9 2 Trafficking in Persons. RSA 633:7, VI is repealed and reenacted to read as follows:

10 VI. No victim of human trafficking shall be prosecuted for any offense, where the otherwise  
11 chargeable conduct was committed as a direct result of being trafficked, provided that the conduct  
12 chargeable did not involve an act of violence or a threat of violence as defined in RSA 625:9, VII.

13 VII. A victim of human trafficking who was under 18 years of age at the time of the offense  
14 shall not be subject to juvenile delinquency proceedings under RSA 169-B for any otherwise  
15 chargeable offense, where the conduct was committed as a direct result of being trafficked, provided  
16 that the conduct chargeable did not involve an act of violence or a threat of violence as defined in  
17 RSA 625:9, VII.

18 VIII.(a) This paragraph shall apply to:

19 (1) An individual convicted for an offense which was committed as a direct result of  
20 being trafficked;

21 (2) An individual who was under 18 years of age at the time of the offense, who was  
22 adjudicated as delinquent for an offense which was committed as a direct result of being trafficked;  
23 or

24 (3) An individual who entered into a diversion agreement in lieu of further criminal  
25 proceedings for an offense which was committed as a direct result of being trafficked.

26 (b) A victim of human trafficking who was subject to adjudication as specified in VIII (a)  
27 above, may, at any time, file a motion with the circuit court, district division or superior court to  
28 vacate a conviction, adjudication of delinquency, or diversion agreement, and the related court  
29 records and arrest records, for any offense. A copy of the motion to vacate shall be provided to the  
30 agency that prosecuted the offense.

31 (c) After a hearing, the court shall grant the motion to vacate the conviction,  
32 adjudication of delinquency, or diversion agreement upon a finding by a preponderance of the  
33 evidence that the petitioner's participation in the offense underlying the conviction, delinquency  
34 adjudication, or diversion agreement was the direct result of being trafficked. A finding by the court  
35 that the petitioner was a victim of human trafficking at the time of the offense shall be a prima facie  
36 evidence that the petitioner's participation in the offense was a direct result of being trafficked.

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1 (d) The petitioner shall not be required to provide any official documentation indicating  
2 that he or she was a victim of human trafficking at the time of the offense. However, if such  
3 documentation is provided, it shall be prima facie evidence that the petitioner's participation in the  
4 offense was a direct result of being trafficked. In this subparagraph, "official documentation" means:

5 (1) A copy of an official record, certification, or eligibility letter from a federal, state,  
6 tribal, or local proceeding, including an approval notice or an enforcement certification generated  
7 from a federal immigration proceeding, that shows the petitioner was a victim of human trafficking;  
8 or

9 (2) An affidavit or sworn testimony from a member of the clergy, a medical  
10 professional, a trained professional staff member of a victim services organization, or other  
11 professional from whom the petitioner has sought legal counsel or other assistance in addressing the  
12 trauma and other challenges associated with being a victim of human trafficking;

13 (e) In determining whether the petitioner was a victim of human trafficking at the time  
14 of the offense, the court may consider any other evidence the court finds has sufficient credibility and  
15 probative value. Such evidence may include, but is not limited to:

16 (1) The affidavit or sworn testimony of the petitioner;

17 (2) Branding or other tattoos on the body of the petitioner that identify the petitioner  
18 as having had a trafficker;

19 (3) Photographic evidence of branding or other tattoos on the body of the petitioner  
20 that identify the petitioner as having or having had a trafficker;

21 (4) Affidavits or sworn testimony of police, police interview notes, or police reports;

22 (5) Affidavits or sworn testimony from any person with firsthand knowledge of the  
23 petitioner's involvement in the trafficking or any person who indicates that he or she was trafficked  
24 or exploited by the same individual or group of individuals who trafficked the petitioner;

25 (6) Financial records showing revenues or expenses from the trafficking;

26 (7) Internet listings, print advertisements, or business cards used to promote the  
27 petitioner for services; or

28 (8) Email, text messages, or voicemail records between the petitioner, the trafficker,  
29 or solicitors of sex that reveal aspects of the trafficking, such as examples of trafficker exerting  
30 control over the petitioner, evidence of behavior patterns of the trafficker or the petitioner, or  
31 discussion of meeting times or payments.

32 (f) Upon request of the petitioner and in lieu of the personal appearance of the petitioner  
33 in the courtroom, a hearing shall be conducted by 2-way electronic audio-video communication,  
34 between the petitioner, the judge, and any other present in the courtroom for the hearing, if the  
35 petitioner is represented by counsel and upon request of the petitioner, the petitioner's personal  
36 appearance shall be waived and counsel for petitioner shall be permitted to appear on the  
37 petitioner's behalf.

1 IX. Upon request of the petitioner, the court shall not disclose or open to public inspection  
2 any information identifying the petitioner, including any records of the motion hearing which could  
3 provide circumstantial details that may identify the petitioner. Information regarding the petitioner  
4 that is sealed pursuant to this paragraph shall be disclosed only to the following:

5 (a) The judge of the circuit court, district division or superior court and members of the  
6 staff of the court as designated by the judge;

7 (b) Parties to the proceedings and their attorneys;

8 (c) With the consent of the petitioner, any individual or public or private agency or  
9 institution providing educational, medical, or mental health service to the petitioner;

10 (d) When necessary for the discharge of official duties, law enforcement officers,  
11 prosecutors, or law enforcement or prosecution staff, or

12 (e) When authorized by court order, any other person, subject to any conditions imposed  
13 by the order, consistent with the petitioner's safety and privacy interests.

14 X.(a) An order vacating a conviction, adjudication of delinquency, or diversion agreement  
15 shall:

16 (1) Nullify the conviction, delinquency adjudication, or diversion agreement;

17 (2) Vacate the conviction, delinquency adjudication, or diversion agreement due to a  
18 substantive defect in the underlying criminal proceedings;

19 (3) Remove all civil disabilities and disqualifications imposed as a result of the  
20 conviction, delinquency adjudication, or diversion agreement; and

21 (4) Place the petitioner in the position of never having been investigated, arrested,  
22 convicted, deemed delinquent, or diverted for the offense.

23 (b) Upon a finding that the petitioner's participation in the offense underlying the  
24 conviction, delinquency adjudication, or diversion agreement was a direct result of being trafficked  
25 and an entry of an order vacating the conviction, delinquency's adjudication, or diversion agreement  
26 the court shall:

27 (1) Order the conviction, delinquency adjudication, or diversion agreement and any  
28 related court records expunged and purged from all applicable state and federal systems. The court  
29 shall enter this order regardless of whether the petitioner had any criminal record prior or  
30 subsequent to the conviction, delinquency adjudication, or diversion agreement being vacated.

31 (2) Order the division of state police to purge the conviction, delinquency  
32 adjudication, or diversion agreement, and any related court records or arrest records from the  
33 criminal history record information repository and all applicable state and federal databases. The  
34 clerk of the court shall send a certified copy of the order to the division of state police, which shall  
35 carry out the order and shall notify the following of the court's order: the Federal Bureau of  
36 Investigation, the New Hampshire department of corrections, and any other criminal justice agency

1 that may have a record of the conviction, adjudication of delinquency, or diversion agreement and  
2 related court records or arrest records.

3 (c) Upon a finding that the petitioner's participation in the offense underlying the  
4 conviction, delinquency adjudication, or diversion agreement was a direct result of being trafficked  
5 and an entry of an order vacating the conviction, delinquency adjudication, or diversion agreement,  
6 the court may, in its discretion, grant other relief to the petitioning victim in the interests of justice.

7 (d) Vacating a conviction, delinquency adjudication, or diversion agreement shall not  
8 affect any right of the person whose offense was vacated to appeal the conviction or sentence.

9 3 Effective Date. Part II of this act shall take effect upon its passage.

10  
11 PART III

12 Relative to Guardianship by Grandparents.

13 1 New Paragraph; Guardianship of Minors; Definition of Grandparent Added. Amend RSA  
14 463:2 by inserting after paragraph III the following new paragraph:

15 III-a. "Grandparent" includes a great-grandparent or great-great grandparent.

16 2 Effective Date. Part III of this act shall take effect 60 days after its passage.

17  
18 PART IV

19 Relative to Immunity from Arrest or Prosecution for

20 Prostitution for Seeking Medical Assistance for Reporting Certain Crimes.

21 1 New Paragraphs; Prostitution and Related Offenses; Immunity From Prosecution. Amend  
22 RSA 645:2 by inserting after paragraph VI the following new paragraphs:

23 VII. As used in this section, "reports being the victim of a sexual assault or other crime"  
24 means reporting the initial crime to law enforcement. It does not include further cooperation in  
25 prosecution.

26 VIII. It shall be a defense to a violation of this section that a person reports being the victim  
27 of a sexual assault as defined in RSA 632-A:2, 632-A:3, or 632-A:4. A person who reports being the  
28 victim of such an offense shall not be arrested, prosecuted, or convicted for a violation of this section  
29 if the evidence for the charge was gained as a proximate result of the person's reporting. Any victim  
30 seeking medical treatment following a sexual assault will be afforded all options of care outlined in  
31 the New Hampshire attorney general's sexual assault medical forensic exam protocol without  
32 making a report to or cooperating with law enforcement.

33 IX. Nothing in this section shall be construed to limit the admissibility of evidence in  
34 connection with the investigation or prosecution of a crime involving a person who is not protected as  
35 provided in paragraph VIII. Nothing in this section shall be construed to limit the lawful seizure of  
36 any evidence or contraband. Nothing in this section shall be construed to limit or abridge the



1 authority of a law enforcement officer to detain or place into custody a person as part of a criminal  
2 investigation who is not protected by the provisions of paragraph VIII.

3 2 Effective Date. Part IV of this act shall take effect January 1, 2021.  
4

5 PART V

6 Increasing the Penalty for Harming a Service Animal and

7 Making Changes to the Membership of the Council on Autism Spectrum Disorders.

8 1 Penalty; Harming a Service Dog. Amend RSA 167-D:10, II to read as follows:

9 II. It is a [~~misdemeanor~~] **class B felony** if a person willfully causes physical injury to a  
10 service animal or willfully allows his or her animal to cause physical injury to a service animal. If  
11 the physical injury to a service animal is severe enough that a veterinarian or service animal trainer  
12 determines that the service animal is incapable of returning to service, that person shall be guilty of  
13 a [~~class A misdemeanor~~] **class A felony**.

14 2 Council on Autism Spectrum Disorders; Membership. RSA 171-A:32, I is repealed and  
15 reenacted to read as follows:

16 I. There is established a council on autism spectrum disorders to provide leadership in  
17 promoting comprehensive and quality education, health care, and services for individuals with  
18 autism spectrum disorders and their families. The members of the council shall be as follows:

- 19 (a) The governor, or designee.  
20 (b) The commissioner of the department of education, or designee.  
21 (c) The commissioner of the department of health and human services, or designee.  
22 (d) The director of the division of public health services, department of health and  
23 human services, or designee.  
24 (e) The bureau chief of the bureau of developmental services, department of health and  
25 human services, or designee.  
26 (f) The bureau chief of the bureau of behavioral health, department of health and human  
27 services, or designee.  
28 (g) The director of the Institute on Disability, University of New Hampshire, or  
29 designee.  
30 (h) A special education director, appointed by the New Hampshire Association of Special  
31 Education Administrators, Inc.  
32 (i) The president of the New Hampshire Medical Society, or designee.  
33 (j) A representative of the New Hampshire Developmental Disabilities Council,  
34 appointed by the council.  
35 (k) An individual who has an autism spectrum disorder, appointed by the governor.  
36 (l) A family member of a person who has an autism spectrum disorder, appointed by the  
37 governor.

Amendment to SB 122-FN

- Page 7 -

1 (m) A representative of the Community Support Network, Inc., appointed by such  
2 organization.

3 (n) A representative of the New Hampshire Psychological Association, appointed by the  
4 association.

5 (o) The director of the office of Medicaid business and policy, department of health and  
6 human services, or designee.

7 (p) Five additional members, appointed by the council.

8 (q) A person who has an autism spectrum disorder, appointed by the council.

9 (r) A representative of the New Hampshire Nurses' Association, appointed by the  
10 association.

11 (s) A licensed speech-language pathologist, appointed by the New Hampshire Speech-  
12 Language-Hearing Association, Inc.

13 3 Effective Date.

14 I. Section 1 of Part V of this act shall take effect January 1, 2022.

15 II. The remainder of Part V this act shall take effect upon its passage.

UNAPPROVED

2021-0671s

AMENDED ANALYSIS

This bill adopts legislation relative to:

I. Allowing persons charged with driving or operating under the influence of drugs or liquor to register for an impaired driving education program after attending or waiving their arraignment.

II. Exemptions from prosecution for victims of human trafficking.

III. Guardianship by grandparents.

IV. Immunity from arrest or prosecution for prostitution for seeking medical assistance for reporting certain crimes.

V. Increasing the penalty for harming a service animal and making changes to the membership of the council on autism spectrum disorders.

UNAPPROVED

Amendment to SB 122-FN

1 Amend the bill by replacing all after the enacting clause with the following:

2

3 1 Sponsorship. This act consists of the following proposed legislation:

4 Part I. LSR 21-0830, relative to the impaired driver education program, sponsored by Sen.  
5 French, Prime/Dist. 7; Sen. Bradley, Dist. 3; Sen. Giuda, Dist. 2; Sen. Carson, Dist. 14.

6 Part II. LSR 21-0191, relative to exemptions from prosecution for victims of human  
7 trafficking, sponsored by Sen. Ward, Prime/Dist. 8.

8 Part III. LSR 21-0600, relative to guardianship by grandparents, sponsored by Sen. French,  
9 Prime/Dist. 7; Sen. Avard, Dist. 12; Sen. Gannon, Dist. 23; Sen. Reagan, Dist. 17; Sen. Watters, Dist.  
10 4; Sen. Whitley, Dist. 15; Sen. Hennessey, Dist. 1; Sen. Carson, Dist. 14; Sen. Kahn, Dist. 10; Sen.  
11 Sherman, Dist. 24; Sen. Prentiss, Dist. 5; Sen. Giuda, Dist. 2; Sen. D'Allesandro, Dist. 20; Sen.  
12 Bradley, Dist. 3; Sen. Cavanaugh, Dist. 16; Sen. Soucy, Dist. 18.

13 Part IV. LSR 21-0921, relative to immunity from arrest or prosecution for prostitution for  
14 seeking medical assistance for reporting certain crimes, sponsored by Sen. French, Prime/Dist. 7;  
15 Sen. Reagan, Dist. 17; Sen. Watters, Dist. 4.

16 Part V. LSR 21-0479, increasing the penalty for harming a service animal and making  
17 changes to the membership of the council on autism spectrum disorders, sponsored by Sen. Bradley,  
18 Prime/Dist. 3

19 2 Legislation Enacted. The general court hereby enacts the following legislation:

20

21

PART I

22

Relative to the Impaired Driver Education Program.

23 1 New Paragraph; Motor Vehicles; Driving or Operating Under the Influence of Drugs or Liquor;  
24 Penalties for Intoxication or Under Influence of Drugs Offenses. Amend RSA 265-A:18 by inserting  
25 after paragraph X the following new paragraph:

26 XI. Any person charged with violating any provision of RSA 265-A:2, 265-A:3, or 265-A:19  
27 who would be required to complete an IDCMP if convicted may, at his or her discretion, register for  
28 such a program after attending or waiving arraignment in a criminal proceeding. Such registration  
29 shall not be considered as evidence of his or her culpability in judicial or administrative proceedings.

30 2 Effective Date. Part I of this act shall take effect 60 days after its passage.

31

32

PART II

Amendment to SB 122-FN

- Page 2 -

1 Relative to Exemptions from Prosecution for Victims of Human Trafficking.

2 1 New Paragraph; Trafficking in Persons; Definitions. Amend RSA 633:6 by inserting after  
3 paragraph VI the following new paragraph:

4 VII. "Victim of human trafficking" means:

5 (a) An individual who, at any point in time, was the victim of a trafficking in persons  
6 offense under RSA 633:7, I-III, whether or not the offense was prosecuted; or

7 (b) An individual who at any point in time was the victim of a severe form of trafficking  
8 in persons offense under 22 U.S.C. section 7102(11)(A), whether or not the offense was prosecuted.

9 2 Trafficking in Persons. RSA 633:7, VI is repealed and reenacted to read as follows:

10 VI. No victim of human trafficking shall be prosecuted for any offense, where the otherwise  
11 chargeable conduct was committed as a direct result of being trafficked, provided that the conduct  
12 chargeable did not involve an act of violence or a threat of violence as defined in RSA 625:9, VII.

13 VII. A victim of human trafficking who was under 18 years of age at the time of the offense  
14 shall not be subject to juvenile delinquency proceedings under RSA 169-B for any otherwise  
15 chargeable offense, where the conduct was committed as a direct result of being trafficked, provided  
16 that the conduct chargeable did not involve an act of violence or a threat of violence as defined in  
17 RSA 625:9, VII.

18 VIII.(a) This paragraph shall apply to:

19 (1) An individual convicted for an offense which was committed as a direct result of  
20 being trafficked;

21 (2) An individual who was under 18 years of age at the time of the offense, who was  
22 adjudicated as delinquent for an offense which was committed as a direct result of being trafficked;  
23 or

24 (3) An individual who entered into a diversion agreement in lieu of further criminal  
25 proceedings for an offense which was committed as a direct result of being trafficked.

26 (b) A victim of human trafficking who was subject to adjudication as specified in VIII (a)  
27 above, may, at any time, file a motion with the circuit court, district division or superior court to  
28 vacate a conviction, adjudication of delinquency, or diversion agreement, and the related court  
29 records and arrest records, for any offense. A copy of the motion to vacate shall be provided to the  
30 agency that prosecuted the offense.

31 (c) After a hearing, the court shall grant the motion to vacate the conviction,  
32 adjudication of delinquency, or diversion agreement upon a finding by a preponderance of the  
33 evidence that the petitioner's participation in the offense underlying the conviction, delinquency  
34 adjudication, or diversion agreement was the direct result of being trafficked. A finding by the court  
35 that the petitioner was a victim of human trafficking at the time of the offense shall be a prima facie  
36 evidence that the petitioner's participation in the offense was a direct result of being trafficked.

Amendment to SB 122-FN

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1 (d) The petitioner shall not be required to provide any official documentation indicating  
2 that he or she was a victim of human trafficking at the time of the offense. However, if such  
3 documentation is provided, it shall be prima facie evidence that the petitioner's participation in the  
4 offense was a direct result of being trafficked. In this subparagraph, "official documentation" means:

5 (1) A copy of an official record, certification, or eligibility letter from a federal, state,  
6 tribal, or local proceeding, including an approval notice or an enforcement certification generated  
7 from a federal immigration proceeding, that shows the petitioner was a victim of human trafficking;  
8 or

9 (2) An affidavit or sworn testimony from a member of the clergy, a medical  
10 professional, a trained professional staff member of a victim services organization, or other  
11 professional from whom the petitioner has sought legal counselor other assistance in addressing the  
12 trauma and other challenges associated with being a victim of human trafficking.

13 (e) In determining whether the petitioner was a victim of human trafficking at the time  
14 of the offense, the court may consider any other evidence the court finds has sufficient credibility and  
15 probative value. Such evidence may include, but is not limited to:

16 (1) The affidavit or sworn testimony of the petitioner;

17 (2) Branding or other tattoos on the body of the petitioner that identify the petitioner  
18 as having had a trafficker;

19 (3) Photographic evidence of branding or other tattoos on the body of the petitioner  
20 that identify the petitioner as having or having had a trafficker;

21 (4) Affidavits or sworn testimony of police, police interview notes, or police reports;

22 (5) Affidavits or sworn testimony from any person with firsthand knowledge of the  
23 petitioner's involvement in the trafficking or any person who indicates that he or she was trafficked  
24 or exploited by the same individual or group of individuals who trafficked the petitioner;

25 (6) Financial records showing revenues or expenses from the trafficking;

26 (7) Internet listings, print advertisements, or business cards used to promote the  
27 petitioner for services; or

28 (8) Email, text messages, or voicemail records between the petitioner, the trafficker,  
29 or solicitors of sex that reveal aspects of the trafficking, such as examples of trafficker exerting  
30 control over the petitioner, evidence of behavior patterns of the trafficker or the petitioner, or  
31 discussion of meeting times or payments.

32 (f) Upon request of the petitioner and in lieu of the personal appearance of the petitioner  
33 in the courtroom, a hearing shall be conducted by 2-way electronic audio-video communication,  
34 between the petitioner, the judge, and any other present in the courtroom for the hearing, if the  
35 petitioner is represented by counsel and upon request of the petitioner, the petitioner's personal  
36 appearance shall be waived and counsel for petitioner shall be permitted to appear on the  
37 petitioner's behalf.

Amendment to SB 122-FN

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1 IX. Upon request of the petitioner, the court shall not disclose or open to public inspection  
2 any information identifying the petitioner, including any records of the motion hearing which could  
3 provide circumstantial details that may identify the petitioner. Information regarding the petitioner  
4 that is sealed pursuant to this paragraph shall be disclosed only to the following:

5 (a) The judge of the circuit court, district division or superior court and members of the  
6 staff of the court as designated by the judge;

7 (b) Parties to the proceedings and their attorneys;

8 (c) With the consent of the petitioner, any individual or public or private agency or  
9 institution providing educational, medical, or mental health service to the petitioner;

10 (d) When necessary for the discharge of official duties, law enforcement officers,  
11 prosecutors, or law enforcement or prosecution staff, or

12 (e) When authorized by court order, any other person, subject to any conditions imposed  
13 by the order, consistent with the petitioner's safety and privacy interests.

14 X.(a) An order vacating a conviction, adjudication of delinquency, or diversion agreement  
15 shall:

16 (1) Nullify the conviction, delinquency adjudication, or diversion agreement;

17 (2) Vacate the conviction, delinquency adjudication, or diversion agreement due to a  
18 substantive defect in the underlying criminal proceedings;

19 (3) Remove all civil disabilities and disqualifications imposed as a result of the  
20 conviction, delinquency adjudication, or diversion agreement; and

21 (4) Place the petitioner in the position of never having been investigated, arrested,  
22 convicted, deemed delinquent, or diverted for the offense.

23 (b) Upon a finding that the petitioner's participation in the offense underlying the  
24 conviction, delinquency adjudication, or diversion agreement was a direct result of being trafficked  
25 and an entry of an order vacating the conviction, delinquency's adjudication, or diversion agreement  
26 the court shall:

27 (1) Order the conviction, delinquency adjudication, or diversion agreement and any  
28 related court records expunged and purged from all applicable state and federal systems. The court  
29 shall enter this order regardless of whether the petitioner had any criminal record prior or  
30 subsequent to the conviction, delinquency adjudication, or diversion agreement being vacated.

31 (2) Order the division of state police to purge the conviction, delinquency  
32 adjudication, or diversion agreement, and any related court records or arrest records from the  
33 criminal history record information repository and all applicable state and federal databases. The  
34 clerk of the court shall send a certified copy of the order to the division of state police, which shall  
35 carry out the order and shall notify the following of the court's order: the Federal Bureau of  
36 Investigation, the New Hampshire department of corrections, and any other criminal justice agency

1 that may have a record of the conviction, adjudication of delinquency, or diversion agreement and  
2 related court records or arrest records.

3 (c) Upon a finding that the petitioner's participation in the offense underlying the  
4 conviction, delinquency adjudication, or diversion agreement was a direct result of being trafficked  
5 and an entry of an order vacating the conviction, delinquency adjudication, or diversion agreement,  
6 the court may, in its discretion, grant other relief to the petitioning victim in the interests of justice.

7 (d) Vacating a conviction, delinquency adjudication, or diversion agreement shall not  
8 affect any right of the person whose offense was vacated to appeal the conviction or sentence.

9 3 Effective Date. Part II of this act shall take effect upon its passage.

10  
11 PART III

12 Relative to Guardianship by Grandparents.

13 1 New Paragraph; Guardianship of Minors; Definition of Grandparent Added. Amend RSA  
14 463:2 by inserting after paragraph III the following new paragraph:

15 III-a. "Grandparent" includes a great-grandparent or great-great grandparent.

16 2 Effective Date. Part III of this act shall take effect 60 days after its passage.

17  
18 PART IV

19 Relative to Immunity from Arrest or Prosecution for

20 Prostitution for Seeking Medical Assistance for Reporting Certain Crimes.

21 1 New Paragraphs; Prostitution and Related Offenses; Immunity From Prosecution. Amend  
22 RSA 645:2 by inserting after paragraph VI the following new paragraphs:

23 VII. As used in this section, "reports being the victim of a sexual assault or other crime"  
24 means reporting the initial crime to law enforcement. It does not include further cooperation in  
25 prosecution.

26 VIII. It shall be a defense to a violation of this section that a person reports being the victim  
27 of a sexual assault as defined in RSA 632-A:2, 632-A:3, or 632-A:4. A person who reports being the  
28 victim of such an offense shall not be arrested, prosecuted, or convicted for a violation of this section  
29 if the evidence for the charge was gained as a proximate result of the person's reporting. Any victim  
30 seeking medical treatment following a sexual assault will be afforded all options of care outlined in  
31 the New Hampshire attorney general's sexual assault medical forensic exam protocol without  
32 making a report to or cooperating with law enforcement.

33 IX. Nothing in this section shall be construed to limit the admissibility of evidence in  
34 connection with the investigation or prosecution of a crime involving a person who is not protected as  
35 provided in paragraph VIII. Nothing in this section shall be construed to limit the lawful seizure of  
36 any evidence or contraband. Nothing in this section shall be construed to limit or abridge the



1 authority of a law enforcement officer to detain or place into custody a person as part of a criminal  
2 investigation who is not protected by the provisions of paragraph VIII.

3 2 Effective Date. Part IV of this act shall take effect January 1, 2021.  
4

5 PART V

6 Increasing the Penalty for Harming a Service Animal and

7 Making Changes to the Membership of the Council on Autism Spectrum Disorders.

8 1 Penalty; Harming a Service Dog. Amend RSA 167-D:10, II to read as follows:

9 II. It is a [~~misdemeanor~~] **class B felony** if a person willfully causes physical injury to a  
10 service animal or willfully allows his or her animal to cause physical injury to a service animal. If  
11 the physical injury to a service animal is severe enough that a veterinarian or service animal trainer  
12 determines that the service animal is incapable of returning to service, that person shall be guilty of  
13 a [~~class A misdemeanor~~] **class A felony**.

14 2 Council on Autism Spectrum Disorders; Membership. RSA 171-A:32, I is repealed and  
15 reenacted to read as follows:

16 I. There is established a council on autism spectrum disorders to provide leadership in  
17 promoting comprehensive and quality education, health care, and services for individuals with  
18 autism spectrum disorders and their families. The members of the council shall be as follows:

19 (a) The governor, or designee.

20 (b) The commissioner of the department of education, or designee.

21 (c) The commissioner of the department of health and human services, or designee.

22 (d) The director of the division of public health services, department of health and  
23 human services, or designee.

24 (e) The bureau chief of the bureau of developmental services, department of health and  
25 human services, or designee.

26 (f) The bureau chief of the bureau of behavioral health, department of health and human  
27 services, or designee.

28 (g) The director of the Institute on Disability, University of New Hampshire, or  
29 designee.

30 (h) A special education director, appointed by the New Hampshire Association of Special  
31 Education Administrators, Inc.

32 (i) The president of the New Hampshire Medical Society, or designee.

33 (j) A representative of the New Hampshire Developmental Disabilities Council,  
34 appointed by the council.

35 (k) An individual who has an autism spectrum disorder, appointed by the governor.

36 (l) A family member of a person who has an autism spectrum disorder, appointed by the  
37 governor.

Amendment to SB 122-FN

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1           (m) A representative of the Community Support Network, Inc., appointed by such  
2 organization.

3           (n) A representative of the New Hampshire Psychological Association, appointed by the  
4 association.

5           (o) The director of the office of Medicaid business and policy, department of health and  
6 human services, or designee.

7           (p) Five additional members, appointed by the council.

8           (q) A person who has an autism spectrum disorder, appointed by the council.

9           (r) A representative of the New Hampshire Nurses' Association, appointed by the  
10 association.

11           (s) A licensed speech-language pathologist, appointed by the New Hampshire Speech-  
12 Language-Hearing Association, Inc.

13       3 Effective Date.

14           I. Section 1 of Part V of this act shall take effect January 1, 2022.

15           II. The remainder of Part V this act shall take effect upon its passage.

2021-0754s

AMENDED ANALYSIS

This bill adopts legislation relative to:

I. Allowing persons charged with driving or operating under the influence of drugs or liquor to register for an impaired driving education program after attending or waiving their arraignment.

II. Exemptions from prosecution for victims of human trafficking.

III. Guardianship by grandparents.

IV. Immunity from arrest or prosecution for prostitution for seeking medical assistance for reporting certain crimes.

V. Increasing the penalty for harming a service animal and making changes to the membership of the council on autism spectrum disorders.

# Committee Minutes

# SENATE CALENDAR NOTICE

## Judiciary

Sen Sharon Carson, Chair  
Sen Bill Gannon, Vice Chair  
Sen Harold French, Member  
Sen Rebecca Whitley, Member  
Sen Jay Kahn, Member

Date: February 3, 2021

### HEARINGS

Tuesday

02/09/2021

(Day)

(Date)

Judiciary

REMOTE

1:00 p.m.

(Name of Committee)

(Place)

(Time)

1:00 p.m.	<b>SB 110</b>	relative to animals in motor vehicles.
1:15 p.m.	<b>SB 60-FN</b>	prohibiting the transport of an open container of marijuana in a motor vehicle or OHRV.
1:30 p.m.	<b>SB 122-FN</b>	adopting omnibus legislation relative to certain crimes and judicial processes and procedures.

Committee members will receive secure Zoom invitations via email.

Members of the public may attend using the following links:

1. Link to Zoom Webinar: <https://www.zoom.us/j/94574864164>
2. To listen via telephone: Dial (for higher quality, dial a number based on your current location): 1-301-715-8592, or 1-312-626-6799 or 1-929-205-6099, or 1-253-215-8782, or 1-346-248-7799, or 1-669-900-6833
3. Or iPhone one-tap: US: +16465588656,,94574864164# or +13017158592,,94574864164#
4. Webinar ID: [945 7486 4164](https://www.zoom.us/j/94574864164)
5. To view/listen to this hearing on YouTube, use this link: <https://www.youtube.com/channel/UCjBZdtrjRnQdmg-2MPMiWrA>
6. To sign in to speak, register your position on a bill and/or submit testimony, use this link: <http://gencourt.state.nh.us/remotecommittee/senate.aspx>

The following email will be monitored throughout the meeting by someone who can assist with and alert the committee to any technical issues: [remotesenate@leg.state.nh.us](mailto:remotesenate@leg.state.nh.us) or call (603-271-6931).

### EXECUTIVE SESSION MAY FOLLOW

#### **Sponsors:**

#### **SB 110**

Sen. Sherman  
Sen. Reagan

Sen. Watters  
Rep. Read

Sen. Gannon  
Rep. K. Murray

Sen. Carson

**SB 60-FN**  
Sen. Gannon  
**SB 122-FN**  
Sen. French

Rep. M. Pearson

Sen. Prentiss

Jennifer Horgan 271-7875

Sharon M Carson  
Chairman

**Senate Judiciary Committee**  
*Jennifer Horgan 271-7875*

**SB 122-FN**, adopting omnibus legislation relative to certain crimes and judicial processes and procedures.

**Hearing Date:** February 9, 2021

**Time Opened:** 1:43 p.m.

**Time Closed:** 2:41 p.m.

**Members of the Committee Present:** Senators Carson, Gannon, French, Whitley and Kahn

**Members of the Committee Absent :** None

**Bill Analysis:** This bill adopts legislation relative to:

I. Allowing persons charged with driving or operating under the influence of drugs or liquor to register for an impaired driving education program after attending or waiving their arraignment.

II. Exemptions from prosecution for victims of human trafficking.

III. Bail commissioners fees.

IV. Guardianship by grandparents.

V. Immunity from arrest or prosecution for prostitution for seeking medical assistance for reporting certain crimes.

VI. Increasing the penalty for harming a service animal and making changes to the membership of the council on autism spectrum disorders.

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**Sponsors:**  
Sen. French

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**Who supports the bill:** Senator Bradley; Senator French; Senator Ward; Senator Carson; Rep. Sherry Frost; Honorable Joe Hannon; Melissa Broudo; Trisha Newalu; Jeff Dickinson, Granite State Independent Living; Lisabritt Solsky, Granite State Independent Living; Melissa Allman, The Seeing Eye, Inc.; Laura Aronson; Mark Morrison, NHPA; Alexandra Mennella; Nicole Fordey; Dubuque Carol; Mindy Golden; Leanne Wilkins; Ruth Larson; Stacey Ober, The American Kennel Club; Bob Dunn, Roman Catholic Bishop of Manchester; Richard DeMark

**Who opposes the bill:** Paul Leary; Lyn Schollett, NHCADSV; Elizabeth Sargent, NH Association of Chiefs of Police; Vinnie Baiocchetti; Trixie Lefebvre; Nancy Holmes

**Who is neutral on the bill:** Brian Strong, NH State Police; Brittany Shute, DMV

**Summary of testimony presented in support:**

**Senator French**

- Speaking to Part I.
- This part was brought forward last year and got delayed by COVID.
- The Merrimack County Attorney asked him to bring this bill forward again.
- Any person charged with violating any provision of RSA 265-A:2, 265-A:3, or 265-A:19 who would be required to complete an IDCMP, a certified drivers training program; if convicted of DWI or DUI they may register for such a program after attending or waiving arraignment in a criminal proceeding.
- As a part of any sentence for DWI individuals have to take classes and often the trial takes a long time to occur.
- This would speed up the time for them to get their license back after the revocation the state imposes.
- Speaking to Part IV.
- This part deals with guardianship by grandparents by extending it to also include great and great-great grandparents.
- If guardianship is needed for young children, it is best to keep it within the family in most instances.
- Speaking to Part V.
- This part deals with immunity from arrest or prosecution for prostitution for seeking medical assistance or reporting certain crimes.
- Heard a lot of testimony over the years that women and men forced into prostitution often worry about reporting crimes due to fear of prosecution.
- This bill will open it up, so these men and women who are put into this trade have an avenue for seeking help without fear of prosecution.
- Has an amendment for this part.

**Senator Ward (submitted written testimony)**

- Speaking to Part II
- The purpose of this is to provide exemptions from prosecution for victims of human trafficking.
- If a victim is under 18 years of age and is a direct victim of human trafficking, they shall not be subject to juvenile delinquency proceedings under RSA 160-B for any otherwise chargeable offense.
- These chargeable offenses include indecent exposure, prostitution, trafficking of persons, and chargeable as attempt, conspiracy, criminal solicitation, being an accessory to, or aiding and abetting any of those offenses.
- The rest of the bill goes into how the courts shall handle these cases.
- Presented a replace all Amendment 0277s.



- Worked with the Coalition Against Sexual and Domestic Violence and the NH Voters Against Human Trafficking on this amendment.
- The amendment amends the bill to have it apply only to very specific offenses that were a direct result of being trafficked and does not involve violence or a threat of violence.
- A couple of people were concerned about violent offenses being covered under this.
- More serious offenses do need to be addressed differently.

#### **Senator Gannon**

- Part III deals with payments to bail commissioners.
- Brought this forward on behalf of some of his bail commissioners.
- The pay for bail commissioners has been \$40 per case for a long time.
- Bail commissioners can get 2-3 calls a night and they do not always get paid for going to these calls.
- Knows there are a couple of solutions to address this floating around, like a gas fee.
- Believes the simplest way to address this is to increase the fee to \$65.
- Senator Carson noted that there are a few bail commissioner bills moving through the legislature.

#### **Senator Bradley**

- Part VI addresses service animals.
- This bill will treat service animals if they are harmed in the same way a police canine is treated.
- This moves the charge from a misdemeanor to a Class B or Class A felony depending on the severity.
- The bill also addresses the Autism Council at the request of a number of individuals in the autism community.

#### **Melissa Broudo**

- Speaking on Part II.
- Filed and won the first vacatur motion in the country in 2010.
- NY was the first state to have a vacatur statute.
- This will allow all survivors of trafficking to vacate all convictions that rose as a result of being trafficked.
- Has worked with survivors who were forced to engage in a wide variety of crimes.
- This bill will put NH as a leader for aiding and supporting victims of trafficking.

#### **Trisha Newalu**

- Speaking to Part V.
- Founding member of a support group for sex workers in NH.
- When a victim shows up at the emergency room, they end up getting arrested for prostitution.
- People in her community fear that they will not be able to seek emergency medical assistance without being arrested.

- Some people have shared with her stories of being arrested while trying to get care or not getting care out of fear from being arrested.
- Indiana, South Dakota and Maine all have similar statutes.
- This is not about prostitution but rather about how victims deserve health care.

#### **Honorable Joe Hannon**

- Supports the entirety of the bill but specifically Parts I, II, and V.
- Works for a lot of nonprofits that work with women and those dealing substance misuse.
- Speaking to Part I.
- Is in long term recovery and has a lot of experience with people charged with DWIs.
- Having the education program available immediately without consequences to someone's copiability is very important; getting someone treatment is more important when they ready to get it rather than later.
- Speaking to Part II.
- Has worked with a lot of young women and men who have been in situations where they are afraid to report crimes because of the situations they were involved in.
- It is important to have these exemptions.
- Speaking to Part V.
- There should not be a separate class of individuals who are afraid to come forward just because they are afraid of getting arrested for something that is obviously not as serious as being assaulted or injured.
- His wife is an emergency room physician, who was a director of a sexual assault unit in a very large city; and she saw hundreds of victims that came in for sexual assault and rape. The thing that bothered her the most was the people that would come in but would not report who did it, what happened or where because of the fear of getting arrested.

#### **Jennifer Crowell**

- Speaking to Part VI.
- Works for Granite State Independent Living.
- 12 years ago, had an accident that paralyzed her, and she has a service dog named Journey.
- Shared that Journey has been there for her emotionally and physically.
- Explained the costs of training a service dog.
- Does not believe she would be able to work or able to live on her own without Journey.
- Service dogs are just as important as law enforcement and military dogs.

#### **Jeff Dickinson (Granite State Independent Living)**

- Speaking to Part VI
- Spoke to the service dogs he has had over the years, including Peaches and Aspen.

- Has spoken to many individuals who have service animals who have had their dogs harassed or harmed to the point that the dog is unable to work again due to the physical or emotional damage done to the dog.
- These dogs make it possible for people with disabilities to be able to function and be out in the community.
- Asked this bill to be brought forward when they realized these dogs did not have enhanced protections.
- These dogs represent a large financial expenditure, whether it be by an organization or by an individual.
- The cost can be around \$20,000.
- The language in the bill talks about someone who willfully causes harm to an animal, which helps to alleviate the concern of a random altercation between dogs.
- A person cannot ask a lot of details about someone's disability or service animal, but they are able to ask if a person has a disability and if the dog is trained to assist them..
- The ADA allows employers and places of public accommodations a way to exclude service animals that are not acting appropriately.
- Senator French asked if there is a formal registration for service dogs.
  - There is not a national or state registration. There are organizations that train dogs to standards set by the International Assistance Dog Association, but it is possible to train your own service animal, and that animal may or may not fit all the criteria of the IADA.
- Senator French asked if it would be at the owner's opinion whether their dog is a service dog or not.
  - Would disagree with that. There is a definition under the Americans with Disabilities Act. We can discuss whether it is specific enough. An individual cannot just claim their dog is a service animal if they are not trained to perform a task to assist them.

**Summary of testimony presented in opposition:**

**Lynn Schollet (NHCADSV) (provided written testimony)**

- Speaking to Parts II and V of the bill, especially if the bill is amended as the sponsors have requested.
- The current trafficking statute ensures individuals who are trafficked have an opportunity to vacate convictions that are a direct result of being trafficked.
- The bill as originally drafted removed that, but Amendment 0277s puts back in the requirement that the offense must be directly linked to human trafficking.
- Importance of putting that link back in is because as drafted this bill would allow an individual who is trafficked and commits a crime to vacate that crime regardless of whether there is any connection between their trafficking and the crime.

- The amendment limits the scope of crimes that can be vacated to ones that are directly linked to trafficking.
- The amendment also provides that individuals who are trafficked do not receive blanket immunity and instead are provided immunity for nonviolent crimes only.
- Senator Kahn pointed out that on page 5, line 6 it requires the notification of several bureaus in the event of charges or convictions being vacated. Asked if it would be helpful to add the OPLC and the Department of Education to that.
  - Would be happy to take it back to the group that collaborated on this.
- Speaking to Part V.
- Amendment 0279s ensures that this bill is compliant with federal law.
- This amendment removes the language that requires that a victim who is seeking help or healthcare services assist law enforcement in identifying the alleged perpetrator.
- The Violence Against Women Act grants rights and protections to victims, and grants for states to respond to victims of gender-based violence.
- The Violence Against Women Act requires that states may not require a victim of sexual assault to participate in the criminal justice system or cooperate with law enforcement in order to be provided with a forensic medical exam, reimbursed for charges incurred from such exam, or both.
- The goal is to ensure victims have access to medical care and forensic evidence collection regardless of whether they come forward or talk to police or participate in the criminal justice system in any way.
- This bill as written would violate that federal law; the amendment addresses this.

**Paul Leary**

- Speaking to Part III.
- Is a bail commissioner.
- Many of the people he sets bail for struggle to pay the \$40.
- Consistently does not get paid 32-38% of the time and is owed roughly \$34,000.
- If these individuals are already struggling to pay the \$40, how will they afford the \$65, meaning that this increase will likely result in even fewer people paying.
- The bail commissioners are the only ones in the system that do not get regularly paid.
- The easiest way to deal with this is allow bail commissioners to remain as independent contractors paid by the courts and have the costs are collected by the courts.
- Senator Kahn asked if he wears a uniform when delivering a notice to a household.
  - Does not wear a uniform or deliver notices. Normally goes to the police station or jail, but with COVID they are doing bails virtually.

**Trixie Lefebvre**

- Speaking to Part III.
- Is a bail commissioner.
- Echoes Bail Commissioner Leary's comments.
- Appreciates the thought behind it, but hopes the legislature will focus more on ensuring commissioners are paid and then down the road the fee amount could be examined.

**Nancy Holmes** (submitted written testimony)

- Speaking to Part VI.
- Does not think you can equate a service dog to a police dog.
- Police dogs are very highly tested for their temperament and are highly trained; they also go through continuous training during their time of service.
- Service dogs can be highly trained, but many of them are not.
- A person cannot legally ask about the training of a service dog or ask what they do for the owner under federal rules.
- Does not believe service dogs are always training to the same level as police canines.
- Spoke about her past helper dog.
- There are no certifications for service dogs.
- Spoke to how a guide service dog once attacked a dog she was walking.
- Until there is method of determining that a dog is trained and temperamentally suited to be out in public in all circumstances does not think this should go up to the same level as a police dog.
- Under the law on police dogs, the person has to know the dog in question is a police canine.
- A person cannot tell that in all instances for a service dog because not all service dogs wear identifiers.
- Believes it is illegal to require service dogs to wear identification.

**Neutral Information Presented:**

**Lt. Brian Strong** (State Police)

- Speaking to Part II.
- Is the Commander of the Special Investigations Unit that investigates human trafficking cases.
- Has two areas of concern, but believes Senator Ward may have addressed those concerns with her amendment.
- Concerned with removing the word 'direct'.
- Concerned that this bill would give individuals blanket immunity for violent crimes if they were victims of human trafficking.
- Under the current statute, human trafficking victims can already vacate nonviolent crimes.

# Speakers

**Judiciary Committee Testify List for Bill SB122 on 2021-02-09**

**Support: 23 Oppose: 6 Neutral: 2 Total to Testify: 10**

<b>Name</b>	<b>Title</b>	<b>Representing</b>	<b>Position</b>	<b>Testifying</b>	<b>Signed Up</b>
Bradley Jeb	An Elected Official	Myself SD 3 PART VI	Support	Yes	2/5/2021 13:37
French Senator Harold	An Elected Official	Senate District 7	Support	Yes	2/7/2021 10:23
Broudo Melissa	A Member of the Public	Myself	Support	Yes	2/8/2021 19:29
Ward Senator Ruth	An Elected Official	Senate District 8 (Supporting Parts II PRIME)	Support	Yes	2/4/2021 8:53
Newalu Trisha	A Member of the Public	Myself	Support	Yes	2/8/2021 23:44
Strong Brian	State Agency Staff	NH State Police	Neutral	Yes	2/9/2021 12:31
Dickinson Jeff	A Member of the Public	Myself & GSIL	Support	Yes	2/9/2021 13:05
Hannon Joe	A Member of the Public	Myself	Support	Yes	2/9/2021 13:24
Leary Paul	A Member of the Public	Myself	Oppose	Yes	2/9/2021 10:02
Schollett Lyn	A Lobbyist	NHCADSV	Oppose	Yes	2/9/2021 11:28
Baiocchetti Vinnie	A Member of the Public	Myself	Oppose	No	2/9/2021 12:18
SHUTE BRITTANY	State Agency Staff	DMV	Neutral	No	2/9/2021 13:27
Sargent Elizabeth	A Lobbyist	NH Association of Chiefs of Police	Oppose	No	2/9/2021 13:43
Eneguess Katharine	A Member of the Public	Myself	Support	No	2/16/2021 11:53
Lefebvre Trixie	A Member of the Public	Myself	Oppose	No	2/9/2021 13:06
Solsky Lisabritt	A Lobbyist	Granite State Independent Living	Support	No	2/9/2021 13:11
Allman Melissa	A Member of the Public	The Seeing Eye Inc.	Support	No	2/9/2021 9:44
Carson Sharon	An Elected Official	Senate District 14; Parts I III IV	Support	No	2/4/2021 12:12
Aronson Laura	A Member of the Public	Myself	Support	No	2/8/2021 22:39
Morrison Mark	A Member of the Public	NHPA	Support	No	2/8/2021 22:40
Mennella Alexandra	A Member of the Public	Myself	Support	No	2/9/2021 7:31
Fordey Nicole	A Member of the Public	Myself	Support	No	2/7/2021 11:12
Holmes Nancy	A Member of the Public	Myself	Oppose	No	2/7/2021 17:03
Carol Dubuque	A Member of the Public	Myself	Support	No	2/7/2021 19:46
golden mindy	A Member of the Public	Myself	Support	No	2/7/2021 19:59
Wilkins Leanne	A Member of the Public	Myself	Support	No	2/7/2021 20:12

Larson Ruth	A Member of the Public	Myself	Support	No	2/8/2021 1:08
Frost Sherry	An Elected Official	Myself	Support	No	2/8/2021 10:21
Ober Stacey	A Lobbyist	The American Kennel Club	Support	No	2/8/2021 10:55
Dunn Bob	A Lobbyist	Roman Catholic Bishop of Manchester	Support	No	2/8/2021 13:08
DeMark Richard	A Member of the Public	Myself	Support	No	2/8/2021 13:55



# Testimony

**Senate Commerce Committee 02-09-21**

**SB122, Adopting Omnibus Legislation Relative to Certain Crimes and Judicial Processes and Procedures**

Testimony of Lt. Brian Strong

New Hampshire State Police, Commander of the Special Investigations Unit

Good afternoon Madam Chair and members of the committee. My name is Brian Strong and I am a Lieutenant with the New Hampshire State Police and Commander of the Special Investigations Unit. One of our Unit's responsibilities is to investigate Human Trafficking Cases. We currently have a member of our Unit assigned to the Homeland Security Human Trafficking Task Force.

While reviewing the proposed bill, SB122 there appear to be 2 areas of concerns that I believe are addressed in RSA 633:7 (Trafficking in Persons).

- The first area of concern with this bill, is it looks to remove the word "direct" from direct result to just result of being trafficked as noted in section 2, paragraph VI.
- The second area of concern with this bill, it looks like this bill would give blanket immunity to individuals who commit violent crimes even if they are victims of human trafficking. This is something that law enforcement can't stand behind to give or allow an individual blanket immunity to commit violent crimes against a person. Under the current statute, human trafficking victims can already vacate non-violent crimes. I don't believe that this bill should allow victims to vacate violent crimes against a person(s), as outlined in RSA 625:9, VII.

**New Hampshire Senate Judiciary Committee**

Hearing RE: SB 122-FN

Testimony of Melissa Broudo, JD, MPH

T: 914-450-7137

[mbroudo@soarinstitute.org](mailto:mbroudo@soarinstitute.org)

**Tuesday, February 8, 2021**

I am attorney and advocate for survivors of human trafficking. I appreciate your thoughtful consideration of policies aimed to support survivors. I was a part of the team that drafted and supported passage of the first vacating convictions act in the nation. I strongly support passage of SB 122-FN, and will be writing below supporting Part II [expansion of vacatur] and Part V [immunity from prosecution in seeking medical care after being a victim of a crime].

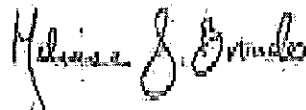
Vacatur: I have filed and won many vacatur motions in New York, including the first case in the nation, *People v GM* ( 2011 NY Slip Op 21176), whereby I was able to help a survivor who had numerous convictions as a result of being trafficked, including prostitution, criminal trespass, and drug possession. I have advised numerous other lawyers and legislators on passage and implementation of vacatur, and am honored to be here today to support this law.

The Polaris Project, a prominent national anti-trafficking organization, and Brooklyn Law School and the University of Baltimore School of Law conducted an extensive grading system of each state's vacatur laws in March of 2019. New Hampshire received an F due to the restrictiveness of its current vacating laws. The report advised numerous changes to strengthen the state's laws, including: providing confidentiality of all motions pursuant to vacatur; expanding the relief to encompass all convictions that arose as a result of trafficking; and removing the need for survivors to appear in person in court. This bill would accomplish all of these changes, bringing New Hampshire in line with the experts' recommendations.

Human trafficking is a horrific human rights violation, and survivors often face an uphill battle well after they escape their traffickers. Not only do they have to grapple with the emotional and physical scars, but many are also saddled with arrest records, making it that much harder to move forward with their lives. I have seen firsthand how difficult it can be for survivors to get jobs, apply for visas, or even get public housing due to their record. The shame of having to disclose over and over again your history can be crippling – even if an employer were to be sensitive to the issue, it is still immensely traumatic to have to share that you have a criminal record and why. Survivors should not have to bear this burden throughout their lives.

Immunity: It is imperative that all people in the sex trade are able to seek proper care after being raped, assaulted, or victim of any other crime. What this care may look like varies – for some, it may be reporting the crime to law enforcement; to others, it may be seeking medical treatment without being forced to file a report. All victims should be able to seek proper care without fear of arrest or prosecution. I have had to accompany many clients to precincts to report crimes committed against them because they feared being arrested for prostitution – I hope that all victims can feel comfortable seeking proper services without feeling the need to bring their lawyer with them out of fear.

I went to law school with the specific goal of supporting the rights, safety, and health of women in the sex industry, whether they be there by choice, circumstance, or coercion. I also obtained my Masters in Public Health, during which I focused on public health impact of criminalization on female sex workers. I have seen firsthand the immense (and often unintended) consequences of criminalization – victims of trafficking who had dozens of arrests during the period they were trafficked, unable to obtain a job, denied citizenship, pained by stigma and shame, and generally unable to move forward with their lives because of their record. I have also seen how people in the sex trade who wish to seek medical or social service support after being assaulted did not due to fear of arrest and judgment. Passage of this bill would be an immense step in the right direction for survivors, and would make New Hampshire a leader in supporting victims of trafficking. Thank you for your time and consideration of this critical issue.



Melissa S. Broudo, JD, MPH  
Co-Director, SOAR Institute

## Jennifer Horgan

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**From:** NEH <fmkaffen@ix.netcom.com>  
**Sent:** Sunday, February 7, 2021 5:25 PM  
**To:** Sharon Carson; William Gannon; Harold French; Becky Whitley; Jay Kahn; Jennifer Horgan  
**Subject:** Opposition to SB122

Feb 7, 2021

Dear Madame Chair and Members of the Senate Judiciary Committee,

I am writing today in opposition to the section on service animals in omnibus bill SB122

Interestingly the SB122 section on service dogs says nothing about a service animal starting a fight with another animal. This can happen. Nor does it say anything about the person knowing a particular dog is a service animal.

While crossing a street in Boston I watched a working guide dog drag its owner halfway across Government Center to go after the Great Dane I was walking. The owner of the guide dog was not intentionally going towards me at all. In the attempt to stop any retaliation by my dog against the service dog I got bitten. Had I not been fast enough and in control enough of my dog the service animal would have been injured. The owner of the service dog immediately left the area without a word to me. If this was in NH then the law as written and as changed in SB122 would have put me at fault had my dog injured the service dog and SB122 elevates that fault to a felony which I feel is inappropriate.

Given the number of people walking around with animals that are not qualified by any identifiable selection or training process to be service dogs, and the inability for a pet owner to determine that any particular dog is a service animal, a penalty for animals defending themselves against attack by a service dog seems a bit one sided. Making that a felony in my view does not improve the law.

There is by law no requirement for a service dog to be identified as such. It is impossible for an average owner to know for sure if any particular animal out in public is a service animal. There is no way to know what quality of training or what temperament testing was done to produce this service dog. Turning a he said she said into a felony charge without that knowledge seems excessive.

This bill does make a randomly trained and controlled service dog into the equivalent of a highly trained and well identified police animal as seen in 644:8-d as far as penalties go. In the section of code on police animals it also requires that the person charged know that the animal in question "is owned or employed by or on behalf of a law enforcement agency". There is no such requirement in 167-D:10 or SB122 to require that the person charged know that the dog is a service animal. I do not believe the standards of training are equivalent in all animals called service animals while I do know there is careful selection and continuing training for police dogs. I feel the circumstances and the laws are different enough to leave the service animal issue as a misdemeanor.

While I know that a service dog can provide invaluable support to its owner, I feel it is inappropriate to pass SB122 section on service dogs into law and elevate a dog fight into a felony.

Sincerely,

Nancy Holmes New Boston, NH

Please feel free to email me with any questions at [fmkaffen@ix.netcom.com](mailto:fmkaffen@ix.netcom.com)

## Jennifer Horgan

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**From:** Pamela Keilig <pkeilig@nhcadsv.org>  
**Sent:** Tuesday, March 2, 2021 9:30 AM  
**To:** Sharon Carson; William Gannon; Harold French; Jay Kahn; Becky Whitley; Deborah Chroniak; Tricia Melillo; Jessica Bourque; Kathryn Cummings  
**Cc:** Jennifer Horgan  
**Subject:** Senate Judiciary Executive Session | SB122  
**Attachments:** SB 122 - 2021-0277s\_vacatur.pdf; SB 122 - 2021-0279s\_immunity.pdf

Good Morning,

I hope everyone is doing well.

Ahead of this afternoon's Senate Judiciary Executive Session, the Coalition wanted to share our support for the attached amendments introduced during the Public Hearing on SB122, adopting omnibus legislation relative to certain crimes and judicial processes and procedures. The amendments refer to Parts II and V of the bill respectively.

Please feel free to reach out with any questions that you might have regarding this legislation or the amendments.

Thank you so much,

Pamela



**Pamela Keilig** *she/her*

**Public Policy Specialist**

NH Coalition Against Domestic & Sexual Violence

100 North Main Street, Suite 300

Concord, NH 03301

Direct Line: (603) 715-8789 | Cell: (603) 219-8474

[nhcadsv.org](http://nhcadsv.org)



**PROPOSED AMENDMENT – February 4, 2021**

Judiciary  
February 4, 2021  
2021-####  
##

Amendment to SB122

Amend the bill by replacing Part II with the following:

**PART II**

Relative to Exemptions from Prosecution for Victims of Human Trafficking.

1 New Paragraph; Trafficking in Persons; Definitions. Amend RSA 633:6 by inserting after paragraph VI the following new paragraph:

VII. "Victim of human trafficking" means:

(a) An individual who, at any point in time, was the victim of a trafficking in persons offense under RSA 633:7, I-III, whether or not the offense was prosecuted; or

(b) An individual who at any point in time was the victim of a severe form of trafficking in persons offense under 22 U.S.C. section 7102(11)(A), whether or not the offense was prosecuted.

2 Trafficking in Persons. RSA 633:7, VI is repealed and reenacted to read as follows:

VI. No victim of human trafficking shall be prosecuted for any offense, where the otherwise chargeable conduct was committed as a direct result of being trafficked, provided that the conduct chargeable did not involve an act of violence or a threat of violence as defined in RSA 625:9, VII.

VII. A victim of human trafficking who was under 18 years of age at the time of the offense shall not be subject to juvenile delinquency proceedings under RSA 169-B for any otherwise chargeable offense, where the conduct was committed as a direct result of being trafficked, provided that the conduct chargeable did not involve an act of violence or a threat of violence as defined in RSA 625:9, VII.

VIII. (a) This paragraph shall apply to:

(1) An individual convicted for an offense which was committed as a direct result of being trafficked;

(2) An individual who was under 18 years of age at the time of the offense, who was adjudicated as delinquent for an offense which was committed as a direct result of being trafficked; or

(3) An individual who entered into a diversion agreement in lieu of further criminal proceedings for an offense which was committed as a direct result of being trafficked.

(b) A victim of human trafficking who was subject to adjudication as specified in VIII (a) above, may, at any time, file a motion with the circuit court, district division or superior court to vacate a conviction, adjudication of delinquency, or diversion agreement, and the related court records and arrest



records, for any offense. A copy of the motion to vacate shall be provided to the agency that prosecuted the offense.

(c) After a hearing, the court shall grant the motion to vacate the conviction, adjudication of delinquency, or diversion agreement upon a finding by a preponderance of the evidence that the petitioner's participation in the offense underlying the conviction, delinquency adjudication, or diversion agreement was the direct result of being trafficked. A finding by the court that the petitioner was a victim of human trafficking at the time of the offense shall be a prima facie evidence that the petitioner's participation in the offense was a direct result of being trafficked.

(d) The petitioner shall not be required to provide any official documentation indicating that he or she was a victim of human trafficking at the time of the offense. However, if such documentation is provided, it shall be prima facie evidence that the petitioner's participation in the offense was a direct result of being trafficked. In this subparagraph, "official documentation" means:

(1) A copy of an official record, certification, or eligibility letter from a federal, state, tribal, or local proceeding, including an approval notice or an enforcement certification generated from a federal immigration proceeding, that shows the petitioner was a victim of human trafficking; or

(2) An affidavit or sworn testimony from a member of the clergy, a medical professional, a trained professional staff member of a victim services organization, or other professional from whom the petitioner has sought legal counsel or other assistance in addressing the trauma and other challenges associated with being a victim of human trafficking.

(e) In determining whether the petitioner was a victim of human trafficking at the time of the offense, the court may consider any other evidence the court finds has sufficient credibility and probative value. Such evidence may include, but is not limited to:

(1) The affidavit or sworn testimony of the petitioner;

(2) Branding or other tattoos on the body of the petitioner that identify the petitioner as having had a trafficker;

(3) Photographic evidence of branding or other tattoos on the body of the petitioner that identify the petitioner as having or having had a trafficker;

(4) Affidavits or sworn testimony of police, police interview notes, or police reports;

(5) Affidavits or sworn testimony from any person with firsthand knowledge of the petitioner's involvement in the trafficking or any person who indicates that he or she was trafficked or exploited by the same individual or group of individuals who trafficked the petitioner;

(6) Financial records showing revenues or expenses from the trafficking;

(7) Internet listings, print advertisements, or business cards used to promote the petitioner for services; or

(8) Email, text messages, or voicemail records between the petitioner, the trafficker, or solicitors of sex that reveal aspects of the trafficking, such as examples of trafficker exerting control over the petitioner, evidence of behavior patterns of the trafficker or the petitioner, or discussion of meeting times or payments.

(f) Upon request of the petitioner and in lieu of the personal appearance of the petitioner in the courtroom, a hearing shall be conducted by 2-way electronic audio-video communication, between the petitioner, the judge, and any other present in the courtroom for the hearing, if the petitioner is represented by counsel and upon request of the petitioner, the petitioner's personal appearance shall be waived and counsel for petitioner shall be permitted to appear on the petitioner's behalf.

IX. Upon request of the petitioner, the court shall not disclose or open to public inspection any information identifying the petitioner, including any records of the motion hearing which could provide circumstantial details that may identify the petitioner. Information regarding the petitioner that is sealed pursuant to this paragraph shall be disclosed only to the following:

- (a) The judge of the circuit court, district division or superior court and members of the staff of the court as designated by the judge;
- (b) Parties to the proceedings and their attorneys;
- (c) With the consent of the petitioner, any individual or public or private agency or institution providing educational, medical, or mental health service to the petitioner;
- (d) When necessary for the discharge of official duties, law enforcement officers, prosecutors, or law enforcement or prosecution staff, or
- (e) When authorized by court order, any other person, subject to any conditions imposed by the order, consistent with the petitioner's safety and privacy interests.

X (a) An order vacating a conviction, adjudication of delinquency, or diversion agreement shall:

- (1) Nullify the conviction, delinquency adjudication, or diversion agreement;
- (2) Vacate the conviction, delinquency adjudication, or diversion agreement due to a substantive defect in the underlying criminal proceedings.
- (3) Remove all civil disabilities and disqualifications imposed as a result of the conviction, delinquency adjudication, or diversion agreement; and
- (4) Place the petitioner in the position of never having been investigated, arrested, convicted, deemed delinquent, or diverted for the offense.

(b) Upon a finding that the petitioner's participation in the offense underlying the conviction, delinquency adjudication, or diversion agreement was a direct result of being trafficked and an entry of an order vacating the conviction, delinquency's adjudication, or diversion agreement the court shall:

(1) Order the conviction, delinquency adjudication, or diversion agreement and any related court records expunged and purged from all applicable state and federal systems. The court shall enter this order regardless of whether the petitioner had any criminal record prior or subsequent to the conviction, delinquency adjudication, or diversion agreement being vacated.

(2) Order the division of state police to purge the conviction, delinquency adjudication, or diversion agreement, and any related court records or arrest records from the criminal history record information repository and all applicable state and federal databases. The clerk of the court shall send a certified copy of the order to the division of state police, which shall carry out the order and shall notify the following of the court's order: the Federal Bureau of Investigation, the New Hampshire department of corrections, and any other criminal justice agency that may have a record of the conviction, adjudication of delinquency, or diversion agreement and related court records or arrest records.

(c) Upon a finding that the petitioner's participation in the offense underlying the conviction, delinquency adjudication, or diversion agreement was a direct result of being trafficked and an entry of an order vacating the conviction, delinquency adjudication, or diversion agreement, the court may, in its discretion, grant other relief to the petitioning victim in the interests of justice.

(d) Vacating a conviction, delinquency adjudication, or diversion agreement shall not affect any right of the person whose offense was vacated to appeal the conviction or sentence.

3 Effective Date. This act shall take effect upon its passage.

**PROPOSED AMENDMENT – February 4, 2021**

Judiciary  
February 4, 2021  
2021-####  
##

Amendment to SB122

Amend the bill by replacing Part V with the following:

**PART V**

Relative to Immunity from Arrest or Prosecution for  
Prostitution for Seeking Medical Assistance for Reporting Certain Crimes.

1. New Paragraphs; Prostitution and Related Offenses; Immunity From Prosecution. Amend RSA 645:2 by inserting after paragraph VI the following new paragraphs:

VII. As used in this section, "reports being the victim of a sexual assault or other crime" means reporting the initial crime to law enforcement. It does not include further cooperation in prosecution.

VIII. It shall be a defense to a violation of this section that a person reports being the victim of a sexual assault as defined in RSA 632-A:2, 632-A:3, or 632-A:4. A person who reports being the victim of such an offense shall not be arrested, prosecuted, or convicted for a violation of this section if the evidence for the charge was gained as a proximate result of the person's reporting. Any victim seeking medical treatment following a sexual assault will be afforded all options of care outlined in the New Hampshire Attorney General's Sexual Assault Medical Forensic Exam Protocol without making a report to or cooperating with law enforcement.

IX. Nothing in this section shall be construed to limit the admissibility of evidence in connection with the investigation or prosecution of a crime involving a person who is not protected as provided in paragraph VIII. Nothing in this section shall be construed to limit the lawful seizure of any evidence or contraband. Nothing in this section shall be construed to limit or abridge the authority of a law enforcement officer to detain or place into custody a person as part of a criminal investigation who is not protected by the provisions of paragraph VIII.

3 Effective Date. Part V of this act shall take effect January 1, 2021.



Senate Commerce Committee 02-09-2021

**SB122, adopting omnibus legislation relative to certain crimes and judicial processes and procedures**

Testimony of Lyn Schollett  
Executive Director, NH Coalition Against Domestic and Sexual Violence

Good afternoon Madam Chair and Members of the Committee. My name is Lyn Schollett, and I am the Executive Director of the NH Coalition Against Domestic and Sexual Violence. The Coalition is an umbrella organization for 13 community-based crisis centers who each year provide free and confidential services to nearly 15,000 survivors of sexual and domestic violence. I am here to speak specifically to Parts II and V of SB122, which relate to exemptions from prosecution for victims of human trafficking and granting immunity from prosecution for victims of sexual assault. Thank you for the opportunity to share this testimony.

There is a need to amend Part II of SB122

As written, the Coalition is opposed to Part II of SB122. I will briefly speak to the need for an amendment to Part II that will ensure that human traffickers will be brought to justice in New Hampshire. The Coalition is grateful for Senator Ward's leadership in bringing forth legislation that aims to strengthen support for victims of human trafficking. We will defer any technical questions about this provision to our colleagues from the New Hampshire Human Trafficking Task Force who are present here today.

The state's current human trafficking statute, RSA 633:7, has successfully worked to ensure that victims are able to vacate certain convictions for charges brought against them as a direct result of being trafficked, while also maintaining important safeguards to ensure that traffickers can be prosecuted for their crimes. Although well-meaning, the changes brought forth in SB122 without amendment would actually make it more difficult to prosecute human trafficking cases and would water down our current statute in New Hampshire.

There are two aspects of the bill that we are specifically concerned about, which would be addressed in the amendment. Currently, SB122 would repeal and replace Section VI of RSA 633:7 and remove critical language that ultimately 1) changes the scope of exemptions in cases where conduct was committed as a result of being trafficked, and 2) broadens the exemptions from prosecution to *any offense*, including violent offenses.

1) The inclusion of the word "direct" is a significant and necessary part of RSA 633:7

SB122 would allow a human trafficking victim to vacate criminal convictions that happened as a result of victimization, which could potentially open a floodgate of vacatur motions. This provision provides for vacatur regardless of contemporaneousness to the trafficking event. This means that a human trafficking victim, in theory, could claim a defense to criminal liability for an offense that was committed 10 years after they were trafficked, if the defendant can claim that the offense was committed as a result, however tenuous the connection may be, of having been trafficked. We recommend that the current language used in RSA 633:7-VI "committed as a direct result of being trafficked" remain in statute. This recommendation is consistent with the underlying spirit of the law, which is to protect a trafficking victim from being prosecuted for something that they likely had no choice in because the conduct is so closely linked to the trafficking they are experiencing.

2) Individuals who commit violent crimes should not receive blanket immunity, even if they are victims of human trafficking.

SB122 would provide vacatur and immunity from prosecution for any offense from prosecution for victims of human trafficking, including violent crimes. In the Human Trafficking field, we recognize victim-offender intersectionality, the phenomenon of sex trafficking victims facing sex trafficking charges. Through this approach, we seek to provide a trauma-informed response through our services, policy work, and criminal justice approach. This means we consider the impact that coercion, force or fraud might have on a human trafficking victim and whether or not they are culpable of an offense.

Under current statute, human trafficking victims can already vacate non-violent crimes, which was a provision that we supported and helped pass. This bill, however, would allow human trafficking victims to vacate violent crimes such as human trafficking, murder, or sexual assault, which is something that we cannot support.

We strongly encourage the committee to adopt an amendment that would address these key changes.

Part V of SB122 must be compliant with Federal Victims' Services Laws

Regarding Part V, the Coalition generally supports this provision, and would like to present a recommendation that will ensure that this bill is compliant with federal victims' services laws and serves in the best interest of sexual assault victims in New Hampshire. In order to do that, you simply need to remove the following language from Part V, Section VII of the bill, "and assisting law enforcement to identify the alleged perpetrator."

We fundamentally believe that the fear of being arrested should never prohibit a victim from reporting that they have been sexually assaulted, and this protection should apply to individuals who engage in prostitution. We would like to provide both the context for what happens in Emergency Departments in New Hampshire when sexual assault victims present, and also

explain to you the concerns we have about how this bill conflicts with protections for victims provided in federal law.

The Violence Against Women Act (VAWA) is a federal statute that grants rights and protections to victims of gender-based violence and allocates funding to professionals who respond to victims, such as law enforcement, prosecutors, crisis centers, housing providers, campuses, legal assistance providers and others. Since it was first authorized, it has been renewed several times over the last three decades.


In 2005, VAWA was reauthorized with several landmark changes specifically affecting the response of law enforcement agencies and health care facilities to victims of sexual assault. This act, often referred to as "VAWA 2005," specifies that states and territories may not "require a victim of sexual assault to participate in the criminal justice system or cooperate with law enforcement in order to be provided with a forensic medical exam, reimbursed for charges incurred on account of such an exam, or both." In other words, VAWA 2005 was designed to ensure that victims of sexual assault have access to medical care and forensic evidence collection with no out of pocket costs to the victim regardless of whether they report the crime to police or otherwise cooperate with the criminal justice system.

The clear goal of VAWA was to make every effort to ensure that any person who is sexually assaulted is able to get critical medical care and screening to help the victim become physically and mentally healthy after the assault. Victims face countless possible barriers when deciding whether to access health care – shame, concern of being blamed, fear of retribution by the offender, concerns regarding how the medical provider or law enforcement will treat them – and VAWA aims to remove as many of those barriers as possible.

This bill, however, moves backwards from the protections currently provided under federal law. Specifically, Section VII of Part V states that "'reports being the victim of a sexual assault' or other crime means reporting the initial crime to law enforcement and assisting law enforcement to identify the alleged perpetrator. It does not include further cooperation in prosecution." While this language appears to be an attempt to comply with VAWA, it still conflicts with the federal statute and would send victims very mixed messages about their rights.

If this language were inserted into NH state law, as a state, we would be saying to a certain group of rape victims "you can have this benefit – this immunity – but only if you report and cooperate in an investigation." This would be in violation of the intent and the black letter of the law in the Violence Against Women Act. Moreover, a **victim should never be obligated** to cooperate with law enforcement in order to receive immunity.

As of 2009, all states and territories must certify that they are in compliance with these requirements in order to remain eligible for the funding mentioned above. States and communities put an extraordinary amount of work into designing protocols for the initial response to a sexual assault disclosure, as well as addressing questions regarding payment for the medical forensic examination, mandatory reporting to law enforcement, storage and



transportation of evidence, case tracking and retrieval, processing of evidence, and the potential for evidence-based prosecution, which does not require the victim's cooperation.

For many states and territories, the changes that are required in public policy and daily practice have been described as "monumental." This bill as written would violate those protocols and also render communities throughout the Granite State ineligible for critical funding that supports victims.

In conclusion, we believe that no rape victim who comes forward for medical care should be arrested as a consequence and making that care contingent on their involvement in the criminal legal system is not acceptable. It is imperative that any victim of sexual assault have access to the services and treatment, regardless of their circumstances.

The Coalition would be happy to work with the committee on these changes. Thank you for your time. I am happy to answer any questions.

New Hampshire Coalition Against Domestic & Sexual Violence • PO Box 353 • Concord, NH 03302 • 603.224.8893



**NHCADSV.ORG**





AMERICAN  
KENNEL CLUB<sup>SM</sup>

**Stacey Ober, J.D.**  
Legislative Analyst  
Community Outreach  
New England Region

February 9, 2021

The Honorable Sharon Carson, Chairperson  
New Hampshire Senate Committee on Judiciary  
SH Room 100, 107 North Main Street  
Concord, New Hampshire 03301

**RE: SB 122, Part VI - American Kennel Club Supports Service Dogs**

Dear Chairperson Carson and Members of the Senate Committee on Judiciary:

Founded in 1884, the American Kennel Club (AKC) is a recognized and trusted expert in canine health, breeding, and training. We represent over 5,100 dog clubs nationally, including 22 in New Hampshire, which represent thousands of dog owners. We advocate for the purebred dog as a family companion, advance canine health and well-being, protect the rights of dog owners, and promote the ideals of responsible dog ownership. On principle, the AKC supports reasonable and enforceable laws that protect the welfare and health of purebred dogs and do not restrict the rights of breeders and owners who meet their responsibilities.

Part VI of SB 122 would increase the penalty for a person who willfully causes physical injury to a service animal or willfully allows his or her animal to cause physical injury to a service animal from a misdemeanor to a class B felony. In addition, if the injury is severe enough that the service animal is incapable of returning to service, that person would be guilty of a class A felony.

AKC strongly supports the training and use of dogs by humans, whose lives are enriched by dogs' performing essential services. Dogs provide a wide variety of valuable services including handicapped assistance dogs; drug, bomb, and arson detection dogs; and tracking dogs to locate missing persons and fugitives. Service dogs are defined as dogs that are individually trained to work or perform tasks for people with disabilities. Providing safe public accommodations that allow individuals with disabilities to use service dogs is a must and why AKC fully supports SB 122, Part VI.

Please know that American Kennel Club and our affiliated dog clubs are available as a resource to you. I can be reached at (919) 816-3348 or [Stacey.Ober@akc.org](mailto:Stacey.Ober@akc.org).

Sincerely,

Stacey Ober, JD  
Legislative Analyst and Community Outreach Coordinator, New England  
AKC Government Relations  
CC: Angela Ferrari, Dog Owners of the Granite State (DOGS)

Founded in 1884; a not-for-profit corporation

8051 Arco Corporate Drive Raleigh, NC 27617 Tel 919-816-3600 [www.akc.org](http://www.akc.org)



P.O. Box 375, Morristown, NJ 07963-0375  
(973) 539-4425 • Fax: (973) 539-0922 • www.SeeingEye.org

Testimony of The Seeing Eye, Inc.  
Before the  
Judiciary Committee of the New Hampshire Senate  
Regarding Support of Senate Bill 122  
February 9, 2021

My name is Melissa Allman and I am the Advocacy & Government Relations Specialist at The Seeing Eye, Inc. in Morristown, New Jersey. I appreciate the opportunity to submit written testimony for the hearing record on an issue that is of paramount importance when it comes to the safety of people who are blind and visually impaired working with guide dogs throughout New Hampshire. The Seeing Eye strongly supports an increase in the current misdemeanor penalty to a class B felony for anyone willfully harming a service animal or willfully allowing their animal to injure a service animal.

The Seeing Eye was established in 1929 and is the world's oldest guide dog school, having made more than 17,600 partnerships between people and dogs since its founding. We are a charitable, non-profit organization and our mission is to enhance the independence, dignity and self-confidence of people who are blind and visually impaired through the use of specially bred and trained Seeing Eye® dogs. Currently across North America, there are in active service nearly 1,700 partnerships between our blind and visually impaired graduates and their Seeing Eye dogs. The Seeing Eye and those who complete our training program invest significant amounts of time and resources in building and maintaining these partnerships. Interference and attacks on guide dog teams can leave blind and visually impaired handlers stranded in dangerous situations and sometimes instantly end partnerships that foster daily independence and dignity.

The Seeing Eye is a staunch advocate for state laws with strict penalties for those who cause harm to service animals and their handlers and provide remedies for victims of such harm. We have been instrumental in supporting efforts to create or strengthen several such laws in our home state of New Jersey as well as in other states.

The Seeing Eye appreciates the efforts of the New Hampshire legislators who have shown their commitment to this issue by including this stricter penalty for harm to service animals in SB 122 and we support the bill. We thank you for the opportunity to submit this testimony for the public record in an effort to promote the safe work of guide dog teams throughout New Hampshire. Please do not hesitate to contact The Seeing Eye if you have any questions about the work we do.

Respectfully,

Melissa R. Allman  
Senior Specialist, Advocacy and Government Relations  
The Seeing Eye, Inc.  
1 Seeing Eye Way  
Morristown, NJ 07960  
(973) 539-4425 ext. 1724  
mallman@seeingeye.org

# Voting Sheets

**Senate Judiciary Committee**  
**EXECUTIVE SESSION RECORD**  
*2021-2022 Session*

Bill # **SB122**

Hearing date: \_\_\_\_\_

Executive Session date: \_\_\_\_\_

Motion of: 0671 Vote: 5-0

Committee Member	Made by	Second	Yes	No
Sen. Carson, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<del>X</del>	<input type="checkbox"/>
Sen. Gannon, V-Chair	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<del>X</del>	<input type="checkbox"/>
Sen. French	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<del>X</del>	<input type="checkbox"/>
Sen. Kahn	<input type="checkbox"/>	<input type="checkbox"/>	<del>X</del>	<input type="checkbox"/>
Sen. Whitley	<input type="checkbox"/>	<input type="checkbox"/>	<del>X</del>	<input type="checkbox"/>

Motion of: OTPA Vote: 5-0

Committee Member	Made by	Second	Yes	No
Sen. Carson, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<del>X</del>	<input type="checkbox"/>
Sen. Gannon, V-Chair	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<del>X</del>	<input type="checkbox"/>
Sen. French	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<del>X</del>	<input type="checkbox"/>
Sen. Kahn	<input type="checkbox"/>	<input type="checkbox"/>	<del>X</del>	<input type="checkbox"/>
Sen. Whitley	<input type="checkbox"/>	<input type="checkbox"/>	<del>X</del>	<input type="checkbox"/>

Motion of: Consent Vote: 5-0

Committee Member	Made by	Second	Yes	No
Sen. Carson, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<del>X</del>	<input type="checkbox"/>
Sen. Gannon, V-Chair	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<del>X</del>	<input type="checkbox"/>
Sen. French	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<del>X</del>	<input type="checkbox"/>
Sen. Kahn	<input type="checkbox"/>	<input type="checkbox"/>	<del>X</del>	<input type="checkbox"/>
Sen. Whitley	<input type="checkbox"/>	<input type="checkbox"/>	<del>X</del>	<input type="checkbox"/>

Reported out by: French

Notes: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

# Committee Report

STATE OF NEW HAMPSHIRE  
SENATE  
REPORT OF THE COMMITTEE  
FOR THE CONSENT CALENDAR

Thursday, March 11, 2021

THE COMMITTEE ON Judiciary

to which was referred **SB 122-FN**

**AN ACT** adopting omnibus legislation relative to certain crimes and judicial processes and procedures.

Having considered the same, the committee recommends that the Bill

**OUGHT TO PASS WITH AMENDMENT**

**BY A VOTE OF: 5-0**

**AMENDMENT # 2021-0754s**

Senator Harold French  
For the Committee

As amended, this bill adopts legislation which allows persons charged with driving or operating under the influence of drugs or liquor to register for an impaired driving education program after attending or waiving their arraignment, exempts victims of human trafficking from prosecution of offenses directly related to the individual being trafficked, amends the definition of 'grandparent' in the guardianship statute to include great-grandparents or great-great grandparents, gives immunity from arrest or prosecution for prostitution for individuals seeking medical assistance for reporting certain crimes, increases the penalty for harming a service animal, and makes changes to the membership of the Council on Autism Spectrum Disorders.

Jennifer Horgan 271-7875

FOR THE CONSENT CALENDAR

**JUDICIARY**

**SB 122-FN**, adopting omnibus legislation relative to certain crimes and judicial processes and procedures.

Ought to Pass with Amendment, Vote 5-0.

Senator Harold French for the committee.

As amended, this bill adopts legislation which allows persons charged with driving or operating under the influence of drugs or liquor to register for an impaired driving education program after attending or waiving their arraignment, exempts victims of human trafficking from prosecution of offenses directly related to the individual being trafficked, amends the definition of 'grandparent' in the guardianship statute to include great-grandparents or great-great grandparents, gives immunity from arrest or prosecution for prostitution for individuals seeking medical assistance for reporting certain crimes, increases the penalty for harming a service animal, and makes changes to the membership of the Council on Autism Spectrum Disorders.

# Docket of SB122

**Bill Title:** (New Title) relative to exemptions from prosecution for victims of human trafficking, guardianship by grandparents, and making changes to the membership of the council on autism spectrum disorders.

*Official Docket of SB122.:*

Date	Body	Description
2/3/2021	S	<b>Introduced</b> 01/06/2021 and Referred to Judiciary; <b>SJ 3</b>
2/4/2021	S	Remote <b>Hearing:</b> 02/09/2021, 01:30 pm; Links to join the hearing can be found in the Senate Calendar; <b>SC 10</b>
3/11/2021	S	Committee Report: Ought to Pass with Amendment <b>#2021-0754s</b> , 03/18/2021; Vote 5-0; CC; <b>SC 15</b>
3/18/2021	S	Committee Amendment <b>#2021-0754s</b> , RC 23Y-1N, AA; 03/18/2021; <b>SJ 8</b>
3/18/2021	S	<b>Ought to Pass with Amendment</b> 2021-0754s, RC 23Y-1N, MA; OT3rdg; 03/18/2021; <b>SJ 8</b>
3/31/2021	H	Introduced (in recess of) 02/25/2021 and referred to Criminal Justice and Public Safety <b>HJ 4 P. 50</b>
4/14/2021	H	Public Hearing: 04/21/2021 02:00 pm Members of the public may attend using the following link: To join the webinar: <a href="https://www.zoom.us/j/93366148832">https://www.zoom.us/j/93366148832</a> / Executive session on pending legislation may be held throughout the day (time permitting) from the time the committee is initially convened.
5/10/2021	H	Executive Session: 05/10/2021 09:00 am Members of the public may attend using the following link: To join the webinar: <a href="https://www.zoom.us/j/97305033264">https://www.zoom.us/j/97305033264</a>
5/26/2021	H	Committee Report: Ought to Pass with Amendment <b>#2021-1308h</b> (Vote 15-6; RC) <b>HC 26 P. 17</b>
6/3/2021	H	Amendment <b>#2021-1308h</b> : AA VV 06/03/2021
6/3/2021	H	<b>Ought to Pass with Amendment</b> 2021-1308h: MA VV 06/03/2021
6/10/2021	S	Sen. Carson Moved Nonconcur with the House Amendment; Requests C of C, MA, VV; 06/10/2021; <b>SJ 19</b>
6/10/2021	S	President Appoints: Senators Carson, French, Whitley; 06/10/2021; <b>SJ 19</b>
6/10/2021	H	House Accedes to Senate Request for CofC (Rep. Abbas): MA VV 06/10/2021
6/10/2021	H	Speaker Appoints: Reps. Welch, Bordenet, True, Hopper 06/10/2021
6/11/2021	S	Committee of Conference Meeting: 06/15/2021, 9:30 a.m., Room 100, SH
6/14/2021	H	Conferee Change: Rep. Harriott-Gathright Replaces Rep. Bordenet 06/10/2021
6/17/2021	H	Conferee Change: Rep. Steven Smith Replaces Rep. Hopper 06/10/2021
6/17/2021	H	Conferee Change: Rep. Rice Replaces Rep. True 06/10/2021
6/22/2021	H	Conference Committee Report: Not Filed



# Other Referrals

# Senate Inventory Checklist for Archives

Bill Number: SB122

Senate Committee: Jud

Please include all documents in the order listed below and indicate the documents which have been included with an "X" beside

Final docket found on Bill Status

### Bill Hearing Documents: {Legislative Aides}

- Bill version as it came to the committee
- All Calendar Notices
- Hearing Sign-up sheet(s)
- Prepared testimony, presentations, & other submissions handed in at the public hearing
- Hearing Report
- Revised/Amended Fiscal Notes provided by the Senate Clerk's Office

### Committee Action Documents: {Legislative Aides}

All amendments considered in committee (including those not adopted):

- amendment # 0277     - amendment # 0671s  
 - amendment # 0279s     - amendment # 0754s

- Executive Session Sheet
- Committee Report

### Floor Action Documents: {Clerk's Office}

All floor amendments considered by the body during session (only if they are offered to the senate):

\_\_\_ - amendment # \_\_\_\_\_    \_\_\_ - amendment # \_\_\_\_\_  
\_\_\_ - amendment # \_\_\_\_\_    \_\_\_ - amendment # \_\_\_\_\_

### Post Floor Action: (if applicable) {Clerk's Office}

- Committee of Conference Report (if signed off by all members. Include any new language proposed by the committee of conference):
- Enrolled Bill Amendment(s)
- Governor's Veto Message

### All available versions of the bill: {Clerk's Office}

as amended by the senate     as amended by the house  
 final version

Completed Committee Report File Delivered to the Senate Clerk's Office By:

\_\_\_\_\_  
Committee Aide

\_\_\_\_\_  
Date

Senate Clerk's Office [Signature]