

LEGISLATIVE COMMITTEE MINUTES

**SB94**

Bill as  
Introduced

SB 94 - AS INTRODUCED

2021 SESSION

21-0942  
05/04

SENATE BILL        **94**

AN ACT            relative to juvenile diversion programs.

SPONSORS:        Sen. Carson, Dist 14; Rep. Belanger, Rock. 9

COMMITTEE:      Judiciary

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ANALYSIS

This bill clarifies the procedure for obtaining a needs assessment through juvenile diversion prior to proceeding with a delinquency petition under RSA 169-B.

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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                         Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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 juvenile diversion programs.

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

1           1 Statement of Purpose and Findings.

2           I. In furtherance of the objectives stated in RSA 169-B:1, the general court finds that  
3 promoting the earlier engagement in the community based services and minimizing the involvement  
4 of youth in the formal legal system will promote the goal of positive youth development.

5           II. The general court finds that authorizing pre-petition engagement by the department for  
6 the purpose of completing assessments and making referrals to the children's behavior health  
7 system or other appropriate services and supports will increase the use of diversion and decrease the  
8 need for future judicial involvement.

9           III. It is the intent of this act to provide the department with the authority to assess all  
10 youth as early as possible in the process and the ability to share that information with law  
11 enforcement, prior to formal involvement with the court, in order to minimize the need for court  
12 involvement when the minor's needs can be met with services.

13           2 Juvenile Delinquency; Juvenile Diversion. Amend RSA 169-B:10, I and I-a to read as follows:

14           I. An officer authorized under RSA 169-B:9 to take a minor into custody may dispose of the  
15 case without court referral by releasing the minor to a parent, guardian, or custodian. The officer  
16 shall make a written report to the officer's department identifying the minor, specifying the grounds  
17 for taking the minor into custody and indicating the basis for the ~~[disposition]~~ *disposal* of the case.  
18 *The officer may refer the minor to the department of health and human services for the*  
19 *needs assessment described in paragraph I-a.*

20           I-a. Prior to filing a delinquency petition with the court, the arresting agency or  
21 prosecutor shall ~~[screen the petition for participation in diversion.]~~ *refer the minor to the*  
22 *department of health and human services for a voluntary needs assessment within 2*  
23 *business days of arrest, to be completed as follows:*

24           (a) *The department shall obtain the consent of the minor and the minor's*  
25 *parent or guardian, prior to conducting the needs assessment.*

26           (b) *If the minor or the minor's parent or guardian does not consent, the*  
27 *department shall report to the prosecutor that the voluntary needs assessment was*  
28 *declined and the prosecutor may proceed with a petition and inform the court that the*  
29 *needs assessment was declined.*

30           (c) *The department shall complete the voluntary needs assessment within 30*  
31 *days from referral or, if an assessment has been completed within the prior 6 months, the*

1 *department shall provide the referring entity with the report and recommendations from*  
2 *any prior assessments.*

3 *(d) A report and recommendations shall be provided to the minor, the minor's*  
4 *parent or guardian, the minor's attorney, and the referring entity and shall include the*  
5 *department's specific recommendation regarding whether a petition should be filed and*  
6 *any recommendations for supports and services.*

7 *(e) The report and recommendations, any additional documents and records,*  
8 *and any statements made by the minor or others providing information for the purpose of*  
9 *the needs assessment shall not be admissible at the adjudicatory hearing held pursuant to*  
10 *RSA 169-B:16.*

11 *(f) If a finding is made at the adjudicatory hearing, the needs assessment,*  
12 *report and recommendations shall be admissible at all subsequent hearings including the*  
13 *dispositional hearing, for the purpose of determining appropriate services and supports.*

14 *(g) Prior to filing a delinquency petition with the court, the arresting agency or*  
15 *prosecutor shall review the department's report and recommendations to screen the*  
16 *petition for participation in other voluntary services or diversion.*

17 *(h) A petition may be filed prior to the completion of the referral and needs*  
18 *assessment if:*

19 *(1) The prosecutor or arresting officer determines there is a need to request*  
20 *an order from the court for immediate detention or non-secure placement to protect the*  
21 *minor or the community; or*

22 *(2) The minor or the minor's parent or guardian does not consent to the*  
23 *voluntary assessment.*

24 *(i) The petitioner shall identify why diversion was not an appropriate disposition prior to*  
25 *seeking court involvement.*

26 *(j) If the petition is filed prior to the referral and assessment, and the minor has*  
27 *not had an assessment in the prior 6 months, the department shall make the assessment*  
28 *available to the minor after the petition is filed and the confidentiality and admissibility*  
29 *of the report and recommendations and related statements shall be treated the same as*  
30 *assessments completed prior to the petition.*

31 3 Applicability. This act shall apply to the circuit courts as follows:

32 I. Beginning January 1, 2022, in the following circuit court locations: Lebanon of circuit 2,  
33 Claremont and Newport of circuit 5, Dover and Rochester of circuit 7, Keene and Jaffrey of circuit 8,  
34 and Nashua, Milford and Merrimack of circuit 9.

35 II. Beginning July 1, 2022, in the following circuit court locations: Concord, Hillsborough  
36 and Hooksett of circuit 6 and Portsmouth, Hampton, Brentwood, Derry, Salem and Candia of circuit  
37 10.

**SB 94 - AS INTRODUCED**

**- Page 3 -**

1           III. Beginning October 1, 2022, in the following circuit court locations: Berlin, Colebrook and  
2 Lancaster of circuit 1, Plymouth, Littleton and Haverhill of circuit 2, Conway and Ossipee of circuit  
3 3, Laconia of circuit 4, Franklin of circuit 6, Manchester and Goffstown of circuit 9.

4           IV. In all circuit court locations as of October 1, 2022.

5           4 Effective Date. This act shall take effect January 1, 2022.

SB 94 - AS AMENDED BY THE SENATE

04/01/2021 1001s

2021 SESSION

21-0942

05/04

SENATE BILL

**94**

AN ACT

relative to juvenile diversion programs.

SPONSORS:

Sen. Carson, Dist 14; Rep. Belanger, Rock. 9

COMMITTEE:

Judiciary

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ANALYSIS

This bill clarifies the procedure for obtaining a needs assessment through juvenile diversion prior to proceeding with a delinquency petition under RSA 169-B.

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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 juvenile diversion programs.

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

1 I Statement of Purpose and Findings.

2 I. In furtherance of the objectives stated in RSA 169-B:1, the general court finds that  
3 promoting the earlier engagement in the community based services and minimizing the involvement  
4 of youth in the formal legal system will promote the goal of positive youth development.

5 II. The general court finds that authorizing pre-petition engagement by the department for  
6 the purpose of completing assessments and making referrals to the children's behavior health  
7 system or other appropriate services and supports will increase the use of diversion and decrease the  
8 need for future judicial involvement.

9 III. It is the intent of this act to provide the department with the authority to assess all  
10 youth as early as possible in the process and the ability to share that information with law  
11 enforcement, prior to formal involvement with the court, in order to minimize the need for court  
12 involvement when the minor's needs can be met with services.

13 IV. Further, the general court finds that when court involvement is required, dispositions  
14 should be tailored to address the individual needs of youth and, therefore, the court should utilize  
15 needs assessments for the purpose of determining appropriate services and supports when making  
16 dispositional decisions.

17 2 Juvenile Delinquency; Arrest or Taking Minor Into Custody; Juvenile Diversion Alternative.  
18 Amend RSA 169-B:9 to read as follows:

19 169-B:9 Arrest or Taking Minor Into Custody.

20 I. *A police officer or juvenile probation and parole officer may, without taking a*  
21 *minor into custody, refer the minor to the department for a needs assessment. Upon*  
22 *receiving such referral, the department shall conduct the needs assessment using the same*  
23 *process for obtaining consent as required in RSA 169-B:10, I-a for cases referred to the*  
24 *department after a minor is taken into custody.*

25 I-a. Nothing in this chapter shall be construed as forbidding any juvenile probation and  
26 parole officer from immediately arresting or taking into custody any minor who is found violating  
27 any law, or who is reasonably believed to be a fugitive from justice, or whose circumstances are such  
28 as to endanger such minor's person or welfare, unless immediate action is taken.

29 II. Nothing in this chapter shall be construed as forbidding any police officer from  
30 immediately taking into custody any minor who is found violating any law, or whose arrest would be  
31 permissible under RSA 594:10, or who is reasonably believed to be a fugitive from justice, or whose



1 circumstances are such as to endanger such minor's person or welfare, unless immediate action is  
2 taken.

3 3 Juvenile Delinquency; Juvenile Diversion. Amend RSA 169-B:10, I and I-a to read as follows:

4 I. An officer authorized under RSA 169-B:9 to take a minor into custody may dispose of the  
5 case without court referral by releasing the minor to a parent, guardian, or custodian. The officer  
6 shall make a written report to the officer's department identifying the minor, specifying the grounds  
7 for taking the minor into custody and indicating the basis for the ~~[disposition]~~ *disposal* of the case.  
8 *The officer may refer the minor to the department of health and human services for the*  
9 *needs assessment described in paragraph I-a.*

10 I-a. *If the arresting agency contemplates the initiation of court proceedings, prior to*  
11 *filing a delinquency petition with the court, the arresting agency or prosecutor shall* ~~[screen the~~  
12 ~~petition for participation in diversion.]~~ *refer the minor to the department of health and human*  
13 *services for a voluntary needs assessment within 2 business days of arrest, to be completed*  
14 *as follows:*

15 (a) *The department shall obtain the consent of the minor and the minor's*  
16 *parent or guardian, prior to conducting the needs assessment.*

17 (b) *If the minor or the minor's parent or guardian does not consent, the*  
18 *department shall report to the prosecutor that the voluntary needs assessment was*  
19 *declined and the prosecutor may proceed with a petition and inform the court that the*  
20 *needs assessment was declined.*

21 (c) *The department shall complete the voluntary needs assessment within 30*  
22 *days from referral or, if an assessment has been completed within the prior 6 months, the*  
23 *department shall provide the referring entity with the report and recommendations from*  
24 *any prior assessments.*

25 (d) *If a needs assessment conducted pursuant to this paragraph or RSA 169-B:9*  
26 *reveals that the child has complex behavioral health needs and is at risk of residential,*  
27 *hospital, or secure placement, or is already involved in multiple service systems, the*  
28 *department shall refer the child and family to the FAST Forward program to determine*  
29 *eligibility for FAST Forward and referral to a care management entity.*

30 (e) *A report and recommendations shall be provided to the minor, the minor's*  
31 *parent or guardian, the minor's attorney, and the referring entity and shall include the*  
32 *department's specific recommendation regarding whether a petition should be filed and*  
33 *any recommendations for supports and services.*

34 (f) *Absent the consent of the minor following consultation with counsel, the*  
35 *report and recommendations, any additional documents and records, and any statements*  
36 *made by the minor or others providing information for the purpose of the needs assessment*  
37 *shall not be used in any way by law enforcement during any portion of its investigation,*

1 *nor shall they be admissible at an adjudicatory hearing held pursuant to RSA 169-B:16,*  
2 *proceedings pursuant to RSA 169-B:24, or adult criminal proceedings.*

3 *(g) If a finding is made at the adjudicatory hearing, the needs assessment,*  
4 *report, and recommendations shall, with the consent of the minor following consultation*  
5 *with counsel, be admissible at the dispositional hearing, and subsequent hearings*  
6 *pursuant to RSA 169-B:31 and RSA 169-B:31-a, for the purpose of determining appropriate*  
7 *services and supports.*

8 *(h) Prior to filing a delinquency petition with the court, the arresting agency or*  
9 *prosecutor shall review the department's report and recommendations to screen the*  
10 *petition for participation in other voluntary services or diversion.*

11 *(i) A petition may be filed prior to the completion of the referral and needs*  
12 *assessment if:*

13 *(1) The prosecutor or arresting officer determines there is a need to request*  
14 *an order from the court for immediate detention or non-secure placement to protect the*  
15 *minor or the community; or*

16 *(2) The minor or the minor's parent or guardian does not consent to the*  
17 *voluntary assessment.*

18 *(j) The petitioner shall identify why diversion was not an appropriate disposition prior*  
19 *to seeking court involvement.*

20 *(k) If the petition is filed prior to the referral and assessment, and the minor*  
21 *has not had an assessment in the prior 6 months, the department shall make the*  
22 *assessment available to the minor after the petition is filed and the confidentiality and*  
23 *admissibility of the report and recommendations and related statements shall be treated*  
24 *the same as assessments completed prior to the petition.*

25 *I-b. The department of health and human services shall produce informational*  
26 *materials regarding the process for making referrals to the department pursuant to RSA*  
27 *169-B:9 in lieu of making formal arrests and shall make such materials available to all*  
28 *New Hampshire law enforcement agencies.*

29 4 Applicability. This act shall apply to the circuit courts as follows:

30 I. Beginning January 1, 2022, in the following circuit court locations: Lebanon of circuit 2,  
31 Claremont and Newport of circuit 5, Dover and Rochester of circuit 7, Keene and Jaffrey of circuit 8,  
32 and Nashua, Milford and Merrimack of circuit 9.

33 II. Beginning July 1, 2022, in the following circuit court locations: Concord, Hillsborough  
34 and Hooksett of circuit 6 and Portsmouth, Hampton, Brentwood, Derry, Salem and Candia of circuit

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**SB 94 - AS AMENDED BY THE SENATE**

**- Page 4 -**

1           III. Beginning October 1, 2022, in the following circuit court locations: Berlin, Colebrook and  
2 Lancaster of circuit 1, Plymouth, Littleton and Haverhill of circuit 2, Conway and Ossipee of circuit  
3 3, Laconia of circuit 4, Franklin of circuit 6, Manchester and Goffstown of circuit 9.

4           IV. In all circuit court locations as of October 1, 2022.

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

6

CHAPTER 220  
SB 94 - FINAL VERSION

04/01/2021 1001s

2021 SESSION

21-0942  
05/04

SENATE BILL **94**

AN ACT relative to juvenile diversion programs.

SPONSORS: Sen. Carson, Dist 14; Rep. Belanger, Rock. 9

COMMITTEE: Judiciary

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ANALYSIS

This bill clarifies the procedure for obtaining a needs assessment through juvenile diversion prior to proceeding with a delinquency petition under RSA 169-B.

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1 220:1 Statement of Purpose and Findings.

2 I. In furtherance of the objectives stated in RSA 169-B:1, the general court finds that  
3 promoting the earlier engagement in the community based services and minimizing the involvement  
4 of youth in the formal legal system will promote the goal of positive youth development.

5 II. The general court finds that authorizing pre-petition engagement by the department for  
6 the purpose of completing assessments and making referrals to the children's behavior health  
7 system or other appropriate services and supports will increase the use of diversion and decrease the  
8 need for future judicial involvement.

9 III. It is the intent of this act to provide the department with the authority to assess all  
10 youth as early as possible in the process and the ability to share that information with law  
11 enforcement, prior to formal involvement with the court, in order to minimize the need for court  
12 involvement when the minor's needs can be met with services.

13 IV. Further, the general court finds that when court involvement is required, dispositions  
14 should be tailored to address the individual needs of youth and, therefore, the court should utilize  
15 needs assessments for the purpose of determining appropriate services and supports when making  
16 dispositional decisions.

17 220:2 Juvenile Delinquency; Arrest or Taking Minor Into Custody; Juvenile Diversion  
18 Alternative. Amend RSA 169-B:9 to read as follows:

19 169-B:9 Arrest or Taking Minor Into Custody.

20 I. ***A police officer or juvenile probation and parole officer may, without taking a***  
21 ***minor into custody, refer the minor to the department for a needs assessment. Upon***  
22 ***receiving such referral, the department shall conduct the needs assessment using the same***  
23 ***process for obtaining consent as required in RSA 169-B:10, I-a for cases referred to the***  
24 ***department after a minor is taken into custody.***

25 ***I-a.*** Nothing in this chapter shall be construed as forbidding any juvenile probation and  
26 parole officer from immediately arresting or taking into custody any minor who is found violating  
27 any law, or who is reasonably believed to be a fugitive from justice, or whose circumstances are such  
28 as to endanger such minor's person or welfare, unless immediate action is taken.

29 II. Nothing in this chapter shall be construed as forbidding any police officer from  
30 immediately taking into custody any minor who is found violating any law, or whose arrest would be

CHAPTER 220  
SB 94 - FINAL VERSION  
- Page 2 -

1 permissible under RSA 594:10, or who is reasonably believed to be a fugitive from justice, or whose  
2 circumstances are such as to endanger such minor's person or welfare, unless immediate action is  
3 taken.

4 220:3 Juvenile Delinquency; Juvenile Diversion. Amend RSA 169-B:10, I and I-a to read as  
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7 case without court referral by releasing the minor to a parent, guardian, or custodian. The officer  
8 shall make a written report to the officer's department identifying the minor, specifying the grounds  
9 for taking the minor into custody and indicating the basis for the ~~[disposition]~~ **disposal** of the case.  
10 ***The officer may refer the minor to the department of health and human services for the***  
11 ***needs assessment described in paragraph I-a.***

12 I-a. ***If the arresting agency contemplates the initiation of court proceedings, prior to***  
13 ***filing a delinquency petition with the court, the arresting agency or prosecutor shall*** ~~[screen the~~  
14 ~~petition for participation in diversion.]~~ ***refer the minor to the department of health and human***  
15 ***services for a voluntary needs assessment within 2 business days of arrest, to be completed***  
16 ***as follows:***

17 (a) ***The department shall obtain the consent of the minor and the minor's***  
18 ***parent or guardian, prior to conducting the needs assessment.***

19 (b) ***If the minor or the minor's parent or guardian does not consent, the***  
20 ***department shall report to the prosecutor that the voluntary needs assessment was***  
21 ***declined and the prosecutor may proceed with a petition and inform the court that the***  
22 ***needs assessment was declined.***

23 (c) ***The department shall complete the voluntary needs assessment within 30***  
24 ***days from referral or, if an assessment has been completed within the prior 6 months, the***  
25 ***department shall provide the referring entity with the report and recommendations from***  
26 ***any prior assessments.***

27 (d) ***If a needs assessment conducted pursuant to this paragraph or RSA 169-B:9***  
28 ***reveals that the child has complex behavioral health needs and is at risk of residential,***  
29 ***hospital, or secure placement, or is already involved in multiple service systems, the***  
30 ***department shall refer the child and family to the FAST Forward program to determine***  
31 ***eligibility for FAST Forward and referral to a care management entity.***

32 (e) ***A report and recommendations shall be provided to the minor, the minor's***  
33 ***parent or guardian, the minor's attorney, and the referring entity and shall include the***  
34 ***department's specific recommendation regarding whether a petition should be filed and***  
35 ***any recommendations for supports and services.***

36 (f) ***Absent the consent of the minor following consultation with counsel, the***  
37 ***report and recommendations, any additional documents and records, and any statements***

CHAPTER 220  
SB 94 - FINAL VERSION  
- Page 3 -

1 *made by the minor or others providing information for the purpose of the needs assessment*  
2 *shall not be used in any way by law enforcement during any portion of its investigation,*  
3 *nor shall they be admissible at an adjudicatory hearing held pursuant to RSA 169-B:16,*  
4 *proceedings pursuant to RSA 169-B:24, or adult criminal proceedings.*

5 *(g) If a finding is made at the adjudicatory hearing, the needs assessment,*  
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**CHAPTER 220**  
**SB 94 - FINAL VERSION**  
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4           IV. In all circuit court locations as of October 1, 2022.

220:5 Effective Date. This act shall take effect January 1, 2022.

Approved: August 23, 2021

Effective Date: January 01, 2022



# Amendments

Amendment to SB 94

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

2

3 1 Statement of Purpose and Findings.

4 I. In furtherance of the objectives stated in RSA 169-B:1, the general court finds that  
5 promoting the earlier engagement in the community based services and minimizing the involvement  
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16 should be tailored to address the individual needs of youth and, therefore, the court should utilize  
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19 2 Juvenile Delinquency: Arrest or Taking Minor Into Custody; Juvenile Diversion Alternative.  
20 Amend RSA 169-B:9 to read as follows:

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22 I. *A police officer or juvenile probation and parole officer may, without taking a*  
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24 *receiving such referral, the department shall conduct the needs assessment using the same*  
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15 *as follows:*

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19 *department shall report to the prosecutor that the voluntary needs assessment was*  
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34 *any recommendations for supports and services.*

35 (f) *Absent the consent of the minor following consultation with counsel, the*  
36 *report and recommendations, any additional documents and records, and any statements*  
37 *made by the minor or others providing information for the purpose of the needs assessment*

1 *shall not be used in any way by law enforcement during any portion of its investigation,*  
2 *nor shall they be admissible at an adjudicatory hearing held pursuant to RSA 169-B:16,*  
3 *proceedings pursuant to RSA 169-B:24, or adult criminal proceedings.*

4 (g) *If a finding is made at the adjudicatory hearing, the needs assessment,*  
5 *report, and recommendations shall, with the consent of the minor following consultation*  
6 *with counsel, be admissible at the dispositional hearing, and subsequent hearings*  
7 *pursuant to RSA 169-B:31 and RSA 169-B:31-a, for the purpose of determining appropriate*  
8 *services and supports.*

9 (h) *Prior to filing a delinquency petition with the court, the arresting agency or*  
10 *prosecutor shall review the department's report and recommendations to screen the*  
11 *petition for participation in other voluntary services or diversion.*

12 (i) *A petition may be filed prior to the completion of the referral and needs*  
13 *assessment if:*

14 (1) *The prosecutor or arresting officer determines there is a need to request*  
15 *an order from the court for immediate detention or non-secure placement to protect the*  
16 *minor or the community; or*

17 (2) *The minor or the minor's parent or guardian does not consent to the*  
18 *voluntary assessment.*

19 (j) *The petitioner shall identify why diversion was not an appropriate disposition prior to*  
20 *seeking court involvement.*

21 (k) *If the petition is filed prior to the referral and assessment, and the minor*  
22 *has not had an assessment in the prior 6 months, the department shall make the*  
23 *assessment available to the minor after the petition is filed and the confidentiality and*  
24 *admissibility of the report and recommendations and related statements shall be treated*  
25 *the same as assessments completed prior to the petition.*

26 *I-b. The department of health and human services shall produce informational*  
27 *materials regarding the process for making referrals to the department pursuant to RSA*  
28 *169-B:9 in lieu of making formal arrests and shall make such materials available to all*  
29 *New Hampshire law enforcement agencies.*

30 4 Applicability. This act shall apply to the circuit courts as follows:

31 I. Beginning January 1, 2022, in the following circuit court locations: Lebanon of circuit 2,  
32 Claremont and Newport of circuit 5, Dover and Rochester of circuit 7, Keene and Jaffrey of circuit 8,  
33 and Nashua, Milford and Merrimack of circuit 9.

34 II. Beginning July 1, 2022, in the following circuit court locations: Concord, Hillsborough  
35 and Hooksett of circuit 6 and Portsmouth, Hampton, Brentwood, Derry, Salem and Candia of circuit

36 10.

**Amendment to SB 94**

**- Page 4 -**

1           III. Beginning October 1, 2022, in the following circuit court locations: Berlin, Colebrook and  
2 Lancaster of circuit 1, Plymouth, Littleton and Haverhill of circuit 2, Conway and Ossipee of circuit  
3 3, Laconia of circuit 4, Franklin of circuit 6, Manchester and Goffstown of circuit 9.

4           IV. In all circuit court locations as of October 1, 2022.

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

UNAPPROVED

Amendment to SB 94

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

2

3 1 Statement of Purpose and Findings.

4 I. In furtherance of the objectives stated in RSA 169-B:1, the general court finds that  
5 promoting the earlier engagement in the community based services and minimizing the involvement  
6 of youth in the formal legal system will promote the goal of positive youth development.

7 II. The general court finds that authorizing pre-petition engagement by the department for  
8 the purpose of completing assessments and making referrals to the children's behavior health  
9 system or other appropriate services and supports will increase the use of diversion and decrease the  
10 need for future judicial involvement.

11 III. It is the intent of this act to provide the department with the authority to assess all  
12 youth as early as possible in the process and the ability to share that information with law  
13 enforcement, prior to formal involvement with the court, in order to minimize the need for court  
14 involvement when the minor's needs can be met with services.

15 IV. Further, the general court finds that when court involvement is required, dispositions  
16 should be tailored to address the individual needs of youth and, therefore, the court should utilize  
17 needs assessments for the purpose of determining appropriate services and supports when making  
18 dispositional decisions.

19 2 Juvenile Delinquency; Arrest or Taking Minor Into Custody; Juvenile Diversion Alternative.  
20 Amend RSA 169-B:9 to read as follows:

21 169-B:9 Arrest or Taking Minor Into Custody.

22 I. *A police officer or juvenile probation and parole officer may, without taking a*  
23 *minor into custody, refer the minor to the department for a needs assessment. Upon*  
24 *receiving such referral, the department shall conduct the needs assessment using the same*  
25 *process for obtaining consent as required in RSA 169-B:10, I-a for cases referred to the*  
26 *department after a minor is taken into custody.*

27 *I-a.* Nothing in this chapter shall be construed as forbidding any juvenile probation and  
28 parole officer from immediately arresting or taking into custody any minor who is found violating  
29 any law, or who is reasonably believed to be a fugitive from justice, or whose circumstances are such  
30 as to endanger such minor's person or welfare, unless immediate action is taken.

31 II. Nothing in this chapter shall be construed as forbidding any police officer from  
32 immediately taking into custody any minor who is found violating any law, or whose arrest would be

1 permissible under RSA 594:10, or who is reasonably believed to be a fugitive from justice, or whose  
2 circumstances are such as to endanger such minor's person or welfare, unless immediate action is  
3 taken.

4 3 Juvenile Delinquency; Juvenile Diversion. Amend RSA 169-B:10, I and I-a to read as follows:

5 I. An officer authorized under RSA 169-B:9 to take a minor into custody may dispose of the  
6 case without court referral by releasing the minor to a parent, guardian, or custodian. The officer  
7 shall make a written report to the officer's department identifying the minor, specifying the grounds  
8 for taking the minor into custody and indicating the basis for the ~~[disposition]~~ **disposal** of the case.  
9 ***The officer may refer the minor to the department of health and human services for the***  
10 ***needs assessment described in paragraph I-a.***

11 I-a. ***If the arresting agency contemplates the initiation of court proceedings, prior to***  
12 ***filing a delinquency petition with the court, the arresting agency or prosecutor shall [screen the***  
13 ***petition for participation in diversion.] refer the minor to the department of health and human***  
14 ***services for a voluntary needs assessment within 2 business days of arrest, to be completed***  
15 ***as follows:***

16 (a) ***The department shall obtain the consent of the minor and the minor's***  
17 ***parent or guardian, prior to conducting the needs assessment.***

18 (b) ***If the minor or the minor's parent or guardian does not consent, the***  
19 ***department shall report to the prosecutor that the voluntary needs assessment was***  
20 ***declined and the prosecutor may proceed with a petition and inform the court that the***  
21 ***needs assessment was declined.***

22 (c) ***The department shall complete the voluntary needs assessment within 30***  
23 ***days from referral or, if an assessment has been completed within the prior 6 months, the***  
24 ***department shall provide the referring entity with the report and recommendations from***  
25 ***any prior assessments.***

26 (d) ***If a needs assessment conducted pursuant to this paragraph or RSA 169-B:9***  
27 ***reveals that the child has complex behavioral health needs and is at risk of residential,***  
28 ***hospital, or secure placement, or is already involved in multiple service systems, the***  
29 ***department shall refer the child and family to the FAST Forward program to determine***  
30 ***eligibility for FAST Forward and referral to a care management entity.***

31 (e) ***A report and recommendations shall be provided to the minor, the minor's***  
32 ***parent or guardian, the minor's attorney, and the referring entity and shall include the***  
33 ***department's specific recommendation regarding whether a petition should be filed and***  
34 ***any recommendations for supports and services.***

35 (f) ***Absent the consent of the minor following consultation with counsel, the***  
36 ***report and recommendations, any additional documents and records, and any statements***  
37 ***made by the minor or others providing information for the purpose of the needs assessment***

1 *shall not be used in any way by law enforcement during any portion of its investigation,*  
2 *nor shall they be admissible at an adjudicatory hearing held pursuant to RSA 169-B:16,*  
3 *proceedings pursuant to RSA 169-B:24, or adult criminal proceedings.*

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6 *with counsel, be admissible at the dispositional hearing, and subsequent hearings*  
7 *pursuant to RSA 169-B:31 and RSA 169-B:31-a, for the purpose of determining appropriate*  
8 *services and supports.*

9 *(h) Prior to filing a delinquency petition with the court, the arresting agency or*  
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15 *an order from the court for immediate detention or non-secure placement to protect the*  
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17 *(2) The minor or the minor's parent or guardian does not consent to the*  
18 *voluntary assessment.*

19 *(j) The petitioner shall identify why diversion was not an appropriate disposition prior*  
20 *to seeking court involvement.*

21 *(k) If the petition is filed prior to the referral and assessment, and the minor*  
22 *has not had an assessment in the prior 6 months, the department shall make the*  
23 *assessment available to the minor after the petition is filed and the confidentiality and*  
24 *admissibility of the report and recommendations and related statements shall be treated*  
25 *the same as assessments completed prior to the petition.*

26 *I-b. The department of health and human services shall produce informational*  
27 *materials regarding the process for making referrals to the department pursuant to RSA*  
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29 *New Hampshire law enforcement agencies.*

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**Amendment to SB 94**

**- Page 4 -**

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4           IV. In all circuit court locations as of October 1, 2022.

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

# Committee Minutes

**AMENDED  
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: March 10, 2021

**HEARINGS**

| Tuesday                 | 03/16/2021   |           |
|-------------------------|--|-----------|
| (Day)                   | (Date)   |           |
| Judiciary               | REMOTE   | 1:00 p.m. |
| (Name of Committee)     | (Place)  | (Time)    |
| 1:00 p.m. <b>SB 94</b>  | relative to juvenile diversion programs.   |           |
| 1:20 p.m. <b>SB 111</b> | relative to claims for medical monitoring.   |           |
| 2:00 p.m. <b>SB 154</b> | prohibiting the state from enforcing a Presidential Executive Order that restricts or regulates the right of the people to keep and bear arms. |           |

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/95044399618>
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,,95044399618# or +13017158592,,95044399618#
4. Webinar ID: [950 4439 9618](https://www.zoom.us/j/95044399618)
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 94**

Sen. Carson

Rep. Belanger

**SB 111**

Sen. Carson

**SB 154**

Sen. Bradley  
Sen. Avar  
Rep. Rice

Sen. Daniels  
Sen. Carson

Sen. Gannon  
Rep. Weyler

Sen. Giuda  
Rep. Osborne

Jennifer Horgan 271-7875

Sharon M Carson  
Chairman

# Senate Judiciary Committee

*Jennifer Horgan 271-7875*

**SB 94**, relative to juvenile diversion programs.

**Hearing Date:** March 16, 2021

**Time Opened:** 1:10 p.m.

**Time Closed:** 2:03 p.m.

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

**Members of the Committee Absent :** None

**Bill Analysis:** This bill clarifies the procedure for obtaining a needs assessment through juvenile diversion prior to proceeding with a delinquency petition under RSA 169-B.

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**Sponsors:**

Sen. Carson

Rep. Belanger

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**Who supports the bill:** Senator Carson; Rep. Cody Belanger; Honorable Susan Ashley, NH Circuit Court; Joseph Ribsam, DHHS/DCYF; Rebecca Ross, DHHS – DCYF; Moira O'Neill, Office of the Child Advocate; Kate Coon; Margaret Gordon; Patricia Anastasia; Elizabeth-Anne Platt; Maxine Petruccelli; Charles Petruccelli; Sandra Stonebanks; Marie Nardino; Laurie Gordon; Elizabeth Vaughan; Andrew Jones; Sherrill Howard; Gail Laker-Phelps; Annie Rettew; Mel Hinebauch; Gale Taylor; Linda Mattlage; Barbara Zaenglein; Lucinda Hope; Katherine Cooper, NH Association of Criminal Defense Lawyers; Deborah Jak; Nancy Graham; Dennis Jakubowski; Ann Garland; Richard DeMark; Ed Friedrich; Susan Bruce; Ruth Larson; Ruth Heath; Jeanne Torpey; Cheri Falk; Claudia Damon; Ruth Perencevich; Dennis Clark; Joanne Casino; Kathy Spielman; Elizabeth Corell; Sandra Blanchard; Kent Hackmann; Barbara Reed; Birgid McNamee; Don Rankin; Jay Newton; Margaret Keeler; John DeJoie, Waypoint; Devon Chaffee, ACLU of NH; Marie Straiton; Debby Lukaszewicz

**Who opposes the bill:** Peter Llewellyn, NHJPOA; Richard Bergeron; Robin Vogt

**Who is neutral on the bill:** Michelle Wangerin, NH Legal Assistance

**Summary of testimony presented in support:**

**Senator Carson**

- This bill clarifies the procedure for obtaining a needs assessment through juvenile diversion prior to proceeding with a delinquency petition under RSA 169-B.
- This was a request of the Juvenile Justice Transformation Group.
- The bill amends the diversion section of the juvenile delinquency chapter to expand the ability to provide youth with assessments and services prior to court involvement.
- This bill requires law enforcement and prosecutors to refer youth for a needs assessment prior to filing a delinquency petition except in limited cases that involve the most serious offenses.
- The proposed assessment is voluntary, and it is meant to allow the Department to identify the needs of youth prior to court involvement.
- The goal of this is to lower court involvement with the use of appropriate community service.
- Senator Whitley asked if this be an extension off of the system of care.
  - Yes.

**Director Joseph Ribsam and Rebecca Ross (DCYF/DHHS)**

- The Juvenile Justice Transformation Team was formed in November 2019 through a federal grant, and the Team went to Georgetown University to learn about the latest in juvenile justice.
- The Team included Director Ribsam, two other members of the Juvenile Justice staff at DCYF, NH's Child Advocate, a judge, the Chair of the Juvenile Diversion Program, the Public Defender's Office, and a prosecutor.
- This bill is one step of the plan that has been formed out of the work of the Team.
- This creates a process for the identification of needs youth have sooner than is possible now and allows for the connection of youth to the services they need in order to prevent them from getting more deeply involved with the juvenile justice system.
- Often youth need community services, diversion programs, or even just recreational activities to keep them occupied with pro-social positive influences.
- Under this bill when children come into contact with law enforcement, law enforcement may make a referral to DCYF even without arresting a youth.
- However, if they do arrest a youth, they must make a referral before filing a petition unless there is an immediate issue that requires detention or removal from the home. This is a very small minority of the total.
- DCYF staff would then conduct a needs assessment and make referrals to services where appropriate and provide information to the referring law enforcement as to whether they think it is necessary to move forward with a petition.
- Law enforcement can move forward with the petition at their own discretion, but the hope is that if law enforcement sees that youth are being served in the community then they will not move forward with unnecessary petitions.
- This assessment is voluntary, and no youth or family is compelled to participate in it.

- If they do not participate, law enforcement will proceed how they would otherwise.
- The information from the assessment is not allowed to be used against the youth in the adjudicatory process.
- If the youth does go through the court process, but does do the needs assessment, this will allow the information, with the consent of the youth and their counsel, to be used by the courts to help inform the development of a treatment plan.
- Currently, often see disposition being made without understanding the needs of the youth.
- This will allow the assessment to be used towards the end of the case to make sure we are meeting needs of youth and being more effective.
- There is an amendment (0816s) to address overlooked aspects to clarify the process, but it does not substantively change the intent.
- Senator Whitley asked how this bill connects to the work to build the system of care and specifically with SB14.
  - This bill integrates really well with just being able to quickly identify needs and quickly connect youth and families with the services to meet those needs. With children's behavioral health there is a high fidelity wrap around model called Fast Forward, which connects youth and families with the behavioral health services. It has been very successful. One thing this bill will do is that if a youth presents during an assessment of having a complex behavioral health need then the Department will be referring that youth to the Fast Forward program to have those needs met. Anticipates that some of the youth that come into the juvenile justice system will end up in the Fast Forward program voluntarily and will have their needs met there.
- Senator Whitley asked what the needs assessment entails.
  - The plan is to use the Child and Adolescent Needs and Strengths (CANS) tool. That goes through a host of domains of what the youth may need and what their individuals and family's strengths are. The idea is that with all of that information being gathered a treatment plan can be created off of that and allows for the support that youth within their own family and with their own natural resources. The Fast Forward program moves over time to meet a youth's needs where appropriate. Using CANS in this venue, as well as in the Behavioral Health System and eventually in the Child Protection System, will mean that there is a common language of understanding between these systems. Currently these systems do not really know how to talk to each other about need because they are all using different languages. Currently some kids stay in juvenile justice system to have their behavioral health care needs met, which does not make a lot of sense. This common language will allow for youth to move between the systems so that they can continue to have their needs met without unnecessary coercive services.
- Senator Whitley asked if the needs assessments and referrals will be tracked.

- Some of the details are not totally worked out yet. The idea behind using CANS is that there is already a web-based version being used in Children's Behavioral Health and they use that to track what kind of services are available and track progress over time of children and providers. This will allow the Department to better determine which providers are the most effective and be able to measure a youth's progress.
- Senator Whitely asked what training with law enforcement will look like under this.
  - Those are part of the ongoing implementation conversations. The plan for this bill is that there is a rolling implementation. It would be initiated in one-third of the state in January 2022, and then rolling out through the rest of the state through the next year. Still working on what training will look for that.
- Senator Whitley suggested collaborating with Chief Scippa at Police Standards and Training Council.
  - Absolutely.
- Senator Kahn asked if they worked with the county attorneys on this.
  - At this point they have been engaged somewhat. Throughout this process have had 101 Sessions with about 500 people each, including individuals from the county attorney's office. Have also hosted infinity groups, where every week they get a group of individuals together and one of those groups was for law enforcement and prosecutors. Some county attorneys have engaged with the process. Happy to add more individuals to the table.
- Senator Kahn asked if there have been instances where there has been a request to have petitions without a prior assessment.
  - That issue has not been raised. The bill is written to allow for a petition to be filed prior to an assessment if there is a need for an emergency placement. This would include youths whose acts qualify them for detention or if they pose a risk to their family or community. Typically, if it is not one of those instances, petitions aren't filed after a month or so of the incident. Part of the design of this was to ensure that they would receive the referral quickly, and conduct the assessment within 30 days, so that it would not interfere with the filing of a petition. If a youth or family refuses to engage in an assessment, then law enforcement can file a petition at any time.
- Senator Kahn asked about what the amendment entails.
  - The amendment has a couple pieces. One section further clarifies in the statement of purpose around the use of these assessments later in the process. It also clarifies that law enforcement can refer for an assessment even if they do not arrest the youth. The language also specifies that during the assessment process if it appears that a youth has a substantial behavioral health need that they will be referred to the Fast Forward program. It also clarifies that the assessment cannot be used for the disposition phase without the consent of the youth or the attorney.



Typically, young people and families won't have attorneys when the assessments are being conducted and they might disclose information they might not otherwise disclose if they had been advised by counsel. Did not want to create a disincentive for youth and families to share openly during the assessment process.

- Senator Whitley asked if on page 2, line 26 of the amendment where it refers to Fast Forward, whether that should be referencing a care management entity under the appropriate statutory reference instead.
  - Struggled with that decision. The challenge is that the way the system is developed is that the SB14 care management entity is a different program that what youth would typically be referred to. That program is for youth who are engaged in a residential program, where this bill deals with youth who are typically pre-residential. Is okay with changing it to refer to a care management entity, but is conscientious about referring specifically to the SB14 care management entity because it is somewhat different.
- Senator Whitley asked if both care management entities have a Fast Forward programs
  - Currently they both do, but that may change over time.

#### **Honorable Susan Ashley (NH Circuit Court)**

- Was a member of the Juvenile Justice Transformation Team.
- This legislation covers the front end of who should be coming into court.
- It is fair to say that there are communities that embrace diversion programs and other communities that have not been able to accomplish that same level of diversion.
- By having an assessment for all youth, this would be addressing that discrepancy through the whole state.
- Hopefully this would find that community-based services may be able to better address the needs of a youth rather than going through the juvenile justice system.
- The court is a very stressful environment for anyone to come in, certainly for teenagers.

#### **Representative Cody Belanger**

- Shared his personal experience with juvenile diversion programs, and today, is an established young man, married with an adopted son on the way.
- We are told that young children that have issues in the home need one strong role model that cares about them and the person they see in a diversion program could be that person.
- Kids are not adults and their behaviors can be changed in order for them to become successful members of society when they are given the supports that they need.
- Senator French asked why this bill will improve the current system.
  - Everyone's youth is not the same story as the next. His needs would be met differently than another student.

#### **Mike Skibbie (Disability Rights Center)**

- Supports the amendment.

- Is a member of the Juvenile Reform Project.
- The challenge in these situations is balancing protecting children's constitutional rights, while trying to evaluate them at the same time.
- The way this tends to work is that information is gathered at the same time that a prosecution is pending, which is fraught with danger of violating the right of self-incrimination or the right to counsel.
- The amendment harmonizes those two, sometimes competing, purposes by making sure the use of the information gained during the evaluation process is limited to what is consented to by the child with the assistance of counsel.
- This bill will result in many more interventions to be intelligently treatment oriented and therefore more likely to be successful.
- Does not think this will limit the options of police or prosecutors, as it simply will give them additional information so that their decisions about whether to proceed to court are better informed.
- Senator Whitley asked what he knows about the nature of children that end up in the system in NH.
  - Was involved in a study on the incidents of disability in the court involved youth about 15 to 20 years ago and it confirmed what is generally understood around the country, that there is a very high rate of behavioral health disorders and disability among children who become involved in the court system. That representation tends to be higher in more restrictive placement. Representatives of the Department testified a couple of years ago that at that time 100% of the children held at SYSC had a behavioral health disorder.
- Senator Whitley asked if children show up in the juvenile justice system because of an unmet treatment need or behavioral health need.
  - Yes. It is very common that you find upstream of court involvement is an unrecognized and unaddressed behavioral health disorder. Often will see this in the school system where a behavioral health disorder was not recognized and therefore behaviors began to develop and they were dealt with in a disciplinary manner rather than being addressed with appropriate treatment.
- Senator Kahn asked if there is a trade off between doing assessments upon a delinquency petition and delaying the petition in order to complete the assessment.
  - Understands that these assessments will be conducted within 30 days. Typically, there are at least a few weeks between the actual incident and the case being brought into court. That was his experience when he was a practitioner and what he has heard from others. This sort of timeline would fit quite well into the case processing.

**Moira O'Neil (Office of the Child Advocate) (submitted written testimony)**

- When children's needs are met the incidents of reoffending is lowered; lessening the risk to the community.
- Extensive research has shown that the typical punitive manner of probation or incarceration is not an effective strategy for reversing delinquent behavior.

- A recent study in Orange County, CA found that diverting youth from court instead of formally processing them resulted in them being less likely to be suspended from school or rearrested and resulted in far less offending behavior.
- The research findings on the effectiveness of probation and incarceration align with what we know about the brain development and critical thinking.
- Children can learn and adjust their anti-social behavior in the right conditions: trusting relationships with adults, a stable environment, and positive reinforcement.
- This process will direct children to where they can access needed services without getting caught up in the juvenile justice system.
- Her office has seen examples of children who could have benefited from this propose process.
- Recently received a call from an attorney who believes their client is mentally ill and is not getting the care and treatment that client needs.
- In speaking with children they say they need things to do in the afternoon and safe places to play. Many also noted that their parents need mental health or substance abuse treatment.
- Under this bill, if a child is adjudicated, the assessment will drive treatment in an individualized way to increase the likelihood that the child will benefit while under supervision or while being incarcerated.

**Summary of testimony presented in opposition:**

**Peter Llewellyn (Wakefield Police Department/NH Juvenile Police Officers Association)**

- Has worked in various roles including a police officer, an SRO and juvenile prosecutor.
- The current RSA 169-B:10 addresses the needs and services for today's youth.
- The current law requires authorized officers to take a minor into custody and allows for the officer to dispose of the case without court referral.
- The current law also requires the department to screen the case for diversion prior to filing a petition.
- Currently, if the petition is thought to be the best course of action at that time, it has requirements that need to be met in order for the court to know that particular case does not meet the standard for diversion.
- In his experience, believes that the needs of the youth have always been met with the best of the juvenile justice system's abilities, including diversion prior to court involvement.
- Believes that adding another layer of bureaucracy by getting DHHS involved will not benefit the youth and will delay the youth from getting the needs and services they may require.
- Believes this bill will further inhibit Juvenile Probation and Parole Officers from doing their job and will circumvent the court system which is often the only way to get services to some youth.
- Senator Whitley asked if he is aware that 3/5s of the children who enter the juvenile justice system have complex behavioral health needs and disorders.
  - Not aware of that.

**Neutral Information Presented:**

**Michelle Wangerin (NH Legal Assistance)**

- Neutral on the bill but is in full support with the amendment.
- This will hold youth accountable for their choices and ensures normal youth mistakes do not control or in fact change the course of their lives in negative ways.
- The juvenile justice system is designed as a treatment based system, but the reality is that it has a profoundly negative impact on youth.
- Not only does the system engender a delinquent youth identity in children, but even a single court appearance increases the likelihood that youth will drop out of school and become involved in the criminal justice system later on as adults.
- Kids are not adults and how we approach their behavior will likely determine if they will learn and grow from their experiences or whether they solidify their identity as delinquents and later as criminals.
- This legislation fulfills the original intent of the Team, it ensures that the state accomplishes those worthy objectives in a manner that maintains the constitutionality required due process protections.
- This will hopefully prevent the over pathologization of youth misbehavior when that behavior is part of the normal development process.

jch

Date Hearing Report completed: March 19, 2021

# Speakers

Judiciary Committee Testify List for Bill SB94 on 2021-03-16

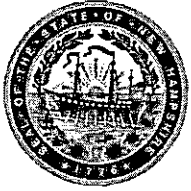
Support: 54 Oppose: 3 Neutral: 1 Total to Testify: 8

| Name                 | Title                  | Representing                               | Position | Testifying | Signed Up       |
|----------------------|------------------------|--|----------|------------|-----------------|
| Carson Sharon        | An Elected Official    | SD 14 - PRIME SPONSOR                      | Support  | Yes        | 3/11/2021 13:04 |
| Ashley Susan         | State Agency Staff     | New Hampshire Circuit Court                | Support  | Yes        | 3/12/2021 11:45 |
| Ribsam Joseph        | State Agency Staff     | DHHS/DCYF                                  | Support  | Yes        | 3/15/2021 17:20 |
| Ross Rebecca         | State Agency Staff     | DHHS - DCYF                                | Support  | Yes        | 3/15/2021 16:24 |
| Llewellyn Peter      | A Member of the Public | Myself and the NHJPOA                      | Oppose   | Yes        | 3/16/2021 8:31  |
| Wangerin Michelle    | A Lobbyist             | New Hampshire Legal Assistance             | Neutral  | Yes        | 3/15/2021 16:57 |
| O'Neill Moira        | State Agency Staff     | Office of the Child Advocate               | Support  | Yes        | 3/16/2021 12:36 |
| Belanger Cody        | An Elected Official    | Myself                                     | Support  | Yes        | 3/16/2021 13:23 |
| Coon Kate            | A Member of the Public | Myself                                     | Support  | No         | 3/16/2021 21:26 |
| Gordon Margaret      | A Member of the Public | Myself                                     | Support  | No         | 3/15/2021 17:13 |
| Anastasia Patricia   | A Member of the Public | Myself                                     | Support  | No         | 3/10/2021 19:45 |
| Platt Elizabeth-Anne | A Member of the Public | Myself                                     | Support  | No         | 3/16/2021 6:46  |
| Petrucelli Maxine    | A Member of the Public | Myself                                     | Support  | No         | 3/16/2021 7:43  |
| Petrucelli Charles   | A Member of the Public | Myself                                     | Support  | No         | 3/16/2021 7:44  |
| stonebanks sandra    | A Member of the Public | Myself                                     | Support  | No         | 3/16/2021 7:48  |
| Nardino Marie        | A Member of the Public | Myself                                     | Support  | No         | 3/16/2021 7:28  |
| Gordon Laurie        | A Member of the Public | Myself                                     | Support  | No         | 3/16/2021 8:21  |
| Vaughan Elizabeth    | A Member of the Public | Myself                                     | Support  | No         | 3/16/2021 8:23  |
| Jones Andrew         | A Member of the Public | Myself                                     | Support  | No         | 3/16/2021 11:20 |
| Bergeron Richard     | State Agency Staff     | Myself                                     | Oppose   | No         | 3/16/2021 11:54 |
| Vogt Robin           | A Member of the Public | Myself                                     | Oppose   | No         | 3/16/2021 8:50  |
| Howard Sherrill      | A Member of the Public | Myself                                     | Support  | No         | 3/16/2021 9:07  |
| Laker-Phelps Gail    | A Member of the Public | Myself                                     | Support  | No         | 3/15/2021 17:58 |
| Rettew Annie         | A Member of the Public | Myself                                     | Support  | No         | 3/15/2021 19:45 |
| Hinebauch Mel        | A Member of the Public | Myself                                     | Support  | No         | 3/15/2021 23:03 |
| Taylor Gale          | A Member of the Public | Myself                                     | Support  | No         | 3/15/2021 23:47 |
| Mattlage Linda       | A Member of the Public | Myself                                     | Support  | No         | 3/15/2021 17:30 |
| Zaenglein Barbara    | A Member of the Public | Myself                                     | Support  | No         | 3/15/2021 17:42 |
| Hope Lucinda         | A Member of the Public | Myself                                     | Support  | No         | 3/15/2021 14:49 |
| Cooper Katherine     | A Lobbyist             | NH Association of Criminal Defense Lawyers | Support  | No         | 3/14/2021 10:01 |
| Jak Deborah          | A Member of the Public | Myself                                     | Support  | No         | 3/14/2021 19:10 |

|                    |                        |            |         |    |                 |
|--------------------|------------------------|------------|---------|----|-----------------|
| Graham Nancy       | A Member of the Public | Myself     | Support | No | 3/14/2021 19:19 |
| jakubowski dennis  | A Member of the Public | Myself     | Support | No | 3/14/2021 19:24 |
| Garland Ann        | A Member of the Public | Myself     | Support | No | 3/14/2021 19:25 |
| DeMark Richard     | A Member of the Public | Myself     | Support | No | 3/14/2021 12:41 |
| FRIEDRICH ED       | A Member of the Public | Myself     | Support | No | 3/14/2021 19:48 |
| Bruce Susan        | A Member of the Public | Myself     | Support | No | 3/14/2021 19:49 |
| Larson Ruth        | A Member of the Public | Myself     | Support | No | 3/14/2021 20:14 |
| Heath Ruth         | A Member of the Public | Myself     | Support | No | 3/14/2021 20:22 |
| Torpey Jeanne      | A Member of the Public | Myself     | Support | No | 3/14/2021 20:27 |
| Falk Cheri         | A Member of the Public | Myself     | Support | No | 3/14/2021 20:59 |
| Damon Claudia      | A Member of the Public | Myself     | Support | No | 3/14/2021 21:25 |
| Ruth Perencevich   | A Member of the Public | Myself     | Support | No | 3/14/2021 21:29 |
| Clark Denise       | A Member of the Public | Myself     | Support | No | 3/14/2021 21:32 |
| Casino Joanne      | A Member of the Public | Myself     | Support | No | 3/14/2021 22:12 |
| Spielman Kathy     | A Member of the Public | Myself     | Support | No | 3/15/2021 8:09  |
| Corell Elizabeth   | A Member of the Public | Myself     | Support | No | 3/15/2021 8:19  |
| Blanchard Sandra   | A Member of the Public | Myself     | Support | No | 3/15/2021 9:49  |
| Hackmann Kent      | A Member of the Public | Myself     | Support | No | 3/15/2021 11:37 |
| Reed Barbara       | A Member of the Public | Myself     | Support | No | 3/15/2021 7:06  |
| McNamee Brigid     | A Member of the Public | Myself     | Support | No | 3/15/2021 9:03  |
| Rankin Don         | A Member of the Public | Myself     | Support | No | 3/15/2021 10:14 |
| Newton Jay         | A Member of the Public | Myself     | Support | No | 3/15/2021 10:22 |
| Keeler Margaret    | A Member of the Public | Myself     | Support | No | 3/15/2021 11:45 |
| DeJoie John        | A Lobbyist             | Waypoint   | Support | No | 3/15/2021 13:39 |
| Chaffee Devon      | A Lobbyist             | ACLU of NH | Support | No | 3/15/2021 13:45 |
| Straiton Marie     | A Member of the Public | Myself     | Support | No | 3/15/2021 13:58 |
| Lukaszewicz Debbey | A Member of the Public | Myself     | Support | No | 3/15/2021 13:25 |

# Testimony

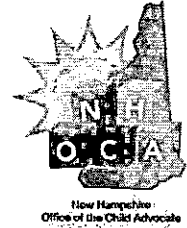




Moira O'Neill  
Child Advocate

# State of New Hampshire

Office of the Child Advocate



**Testimony of  
Moira O'Neill, PhD  
Child Advocate  
before  
The New Hampshire Senate Judiciary Committee  
March 16, 2021**

Good afternoon Chair Carson, Vice Chair Gannon, and esteemed members of the Senate Judiciary Committee. My name is Moira O'Neill and I am the Child Advocate for the New Hampshire Office of the Child Advocate. The Office of the Child Advocate is an independent state oversight agency. Recently the jurisdiction of the office expanded by RSA 21-V, to all children's services provided or arranged for by the State, however, a primary focus of our work will always be on children at risk of, or involved with, the juvenile justice system. Thank you for the opportunity to speak to you today in support of **Senate Bill 94, relative to juvenile diversion programs.**

Senate Bill 94 is ultimately about prevention. It provides for a child to obtain a voluntary strengths-based needs assessment prior to the filing of a juvenile delinquency petition. The premise is, when a child breaks a law or a rule, there are four potential conditions:

- Youthful indiscretion - which is more about immaturity than criminality
- Developmental disability or mental illness - which is about disruptions in development or an illness, and a resulting incapacity for insight
- Adverse childhood experience – in which children's actions are influenced by adverse factors such as poverty, hunger, exposure to substance abuse, family dysfunction, neglect or abuse
- Socio-pathology or intentional criminology - which is extremely rare

Among those four conditions under Senate Bill 94, the youthful indiscretion might be addressed by law enforcement providing counsel and release to parents who work with the child to learn right and wrong. In the case of disability or adverse influences, the strengths-based needs assessment will identify child or family needs that can be addressed clinically, educationally or through some targeted social supports. The purpose is to determine whether mitigating the child's need will mitigate the risk the child's behavior presents to the community. It certainly seems intuitive that incarcerating a child or placing them under supervision on probation would ensure safety for the community. In fact, that is not the case at all.

When children's needs are met, the incidence of re-offending is lowered, thereby lessening risk to the community. Research demonstrates that "surveillance oriented probation is not an effective strategy for reversing delinquent behavior."<sup>1</sup> To the contrary, any involvement at all in the juvenile justice system is the primary indicator of re-offending, poor school performance, and other negative outcomes. Probation actually has "insignificant effects on reoffending and

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<sup>1</sup> The Annie E. Casey Foundation. (2018). *Transforming Juvenile Probation: A Vision for Getting It Right*. Baltimore, MD, at 6.

especially poor results with children who start out at low risk of re-arrest.”<sup>2</sup> Furthermore, a recent study in Orange County, California showed that diverting youth from court versus formally processing them in court resulted in being less likely to be suspended from school or re-arrested, and self-reporting “far less offending behavior.”<sup>3</sup>

Those research findings are consistent with what we know about children’s brain development. Because the brain is still developing well into their mid-20s, especially the frontal lobe where critical thinking and insight happen, children can learn and adjust their anti-social behavior in the right conditions.<sup>4</sup> The best analogy I can offer you is the success of a flower garden when you have the right soil, sun and water. The growth of neuropathways in the brain is stimulated by positive reinforcement. Children respond better to rewards and incentives than to lengthy rules and sanctions<sup>5</sup> making a long list of probation rules and requirements merely a path to further punishment rather than compliance and rehabilitation.

We also know that a significant number of children enter the juvenile justice system because of unmet mental health needs.<sup>6</sup> In fact, the majority of children in the juvenile justice have a diagnosable mental health disorder.<sup>7</sup> This means that many end up in the system not because of the seriousness of their offense, but because of a lack of understanding of their needs or the inability to access services and treatment in their community. This creates a false narrative about criminality among juveniles. Are there children who commit acts worthy of being placed in the juvenile justice system? Sure. But when you truly examine the needs of children in the system, that number reduces drastically. By providing children with a voluntary needs assessment prior to entry into the system, either they will be diverted from the system or once adjudicated, will have an individualized program designed to address the problems identified in the assessment.

The cost of bringing children into the juvenile justice system is seen not only in the behavior of children with unmet needs, but in the financial impact on our systems and our state. Juvenile probation “consumes substantial public dollars.”<sup>8</sup> Add to that the cost of detention or

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<sup>2</sup> The Annie E. Casey Foundation. (2018). *Transforming Juvenile Probation: A Vision for Getting It Right*. Baltimore, MD, at 6.

<sup>3</sup> The Annie E. Casey Foundation. (2018). *Transforming Juvenile Probation: A Vision for Getting It Right*. Baltimore, MD, at 8.

<sup>4</sup> Arain, M., Haque, M., Johal, L., Mathur, P., Nel, W., Rais, A., Sandhu, R. & Sharma, S., Maturation of the Adolescent Brain, *Neuropsychiatr Dis. Treat.* 2013; 9: 449-461. <https://doi.org/10.2147/NDT.S39776>.

<sup>5</sup> The Annie E. Casey Foundation. (2018). *Transforming Juvenile Probation: A Vision for Getting It Right*. Baltimore, MD, at 10.

<sup>6</sup> Government Accountability Office. (2003). *Child Welfare and Juvenile Justice: Federal Agencies Could Play a Stronger Role in Helping States Reduce the Number of Children Placed Solely to Obtain Mental Health Services*. GAO-03-397 *Child Welfare and Juvenile Justice: Federal Agencies Could Play a Stronger Role in Helping States Reduce the Number of Children Placed Solely to Obtain Mental Health Services*

<sup>7</sup> Cocozza, J.J., Skowrya, K.R., & Shufelt, J.L. (2010). *Addressing the Mental Health Needs of Youth in Contact with the Juvenile Justice System in System of Care Communities: An Overview and Summary of Key Issues*. Washington, D.C.: Technical Assistance Partnership for Child and Family Mental Health.

<sup>8</sup> The Annie E. Casey Foundation. (2018). *Transforming Juvenile Probation: A Vision for Getting It Right*. Baltimore, MD, at 6.

inappropriately matched residential treatment, and the costs rise well beyond what it costs to provide treatment and services for the child at home in the community.<sup>9</sup>

Our office has seen several examples of children who could benefit from the proposed needs assessment in Senate Bill 94. We recently received a call from a child's attorney worried about her client whom she believes to be mentally ill. The attorney was struggling to get access to information to assure the child is being assessed and receiving appropriate treatment and services. Under Senate Bill 94, a pre-petition assessment would inform the Department of Health and Human Services about the child's needs perhaps negating the need for an attorney. The assessment would also ensure that those advocating for the child, whether it be an attorney or a parent, are not left wondering what the child's needs are and whether they are getting appropriate care to meet those needs.

We ask children themselves what they need to succeed. Many note that their parents need mental health or substance use treatment. One described the ineffectiveness of doing the work of therapy when a parent inevitably would not. A police officer recently told us that children are better off in the juvenile justice system because their parents are too dysfunctional to help them. This is not an effective way to do juvenile justice or child welfare for that matter. It is far more likely a child will get back on track if needs are identified and met, and family is supported in a way that they grow strong and gain capacity to manage their family's challenges.

Finally, children should not have to come into the juvenile justice system just to receive needed services and treatment. There is too high a risk of the harm of the system negating any therapeutic value of supports. Replacing the surveillance-based punitive approach to accountability and learning with individualized treatment and positive, incentives-based coaching will produce the outcomes New Hampshire seeks. Starting with a strengths-based needs assessment is the best way to mitigate needs of a child and mitigate risk to the community. Senate Bill 94 arose out of the New Hampshire Juvenile Probation Transformation initiative that is a collaborative endeavor supported by the Annie E. Casey Foundation. I am pleased to be part of the dedicated team of professionals from all branches of government. We have undergone intensive training and benefit from remarkable support of the Foundation. In fact, all eyes are on New Hampshire right now as we move forward towards an evidence-based, individualized and responsive approach to juvenile justice. A great deal of thought, research, and consultation with national experts have gone into this proposal. **For these reasons, I encourage you to support Senate Bill 94.**

Thank you for taking my testimony. I welcome questions if you have them.

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<sup>9</sup> Walker, S.C., & Herting, J.R., The Impact of Pretrial Detention on 12-Month Recidivism: A Matched Comparison Study, *Crime & Delinquency*. 2020 June; 66 (13-14), 1865-1887. <https://doi.org/10.1177%2F0011128720926115>

# Voting Sheets

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

Bill # **SB94**

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

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

Motion of: **0816** Vote: **5-0**

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

Motion of: \_\_\_\_\_ Vote: \_\_\_\_\_

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

Reported out by: **Carson**

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

# Committee Report

STATE OF NEW HAMPSHIRE

SENATE

REPORT OF THE COMMITTEE

Wednesday, March 24, 2021

THE COMMITTEE ON Judiciary

to which was referred **SB 94**

**AN ACT** relative to juvenile diversion programs.

Having considered the same, the committee recommends that the Bill

**OUGHT TO PASS WITH AMENDMENT**

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

**AMENDMENT # 2021-1001s**

Senator Sharon Carson  
For the Committee

Jennifer Horgan 271-7875

**JUDICIARY**

**SB 94**, relative to juvenile diversion programs.

Ought to Pass with Amendment, Vote 5-0.

Senator Sharon Carson for the committee.



**Docket of SB94****Bill Title:** relative to juvenile diversion programs.*Official Docket of SB94.:*

| <b>Date</b> | <b>Body</b> | <b>Description</b>  |
|-------------|-------------|---|
| 1/26/2021   | S           | <b>Introduced</b> 01/06/2021 and Referred to Judiciary; <b>SJ 3</b>   |
| 3/10/2021   | S           | Remote <b>Hearing:</b> 03/16/2021, 01:00 pm; Links to join the hearing can be found in the Senate Calendar; <b>SC 15</b>  |
| 3/24/2021   | S           | Committee Report: Ought to Pass with Amendment <b>#2021-1001s</b> , 04/01/2021; <b>SC 17</b>  |
| 4/1/2021    | S           | Committee Amendment <b>#2021-1001s</b> , RC 24Y-0N, AA; 04/01/2021; <b>SJ 10</b>  |
| 4/1/2021    | S           | <b>Ought to Pass with Amendment</b> 2021-1001s, RC 24Y-0N, MA; OT3rdg; 04/01/2021; <b>SJ 10</b>   |
| 4/13/2021   | H           | Introduced (in recess of) 04/09/2021 and referred to Children and Family Law <b>HJ 7</b> P. 99  |
| 4/14/2021   | H           | Public Hearing: 04/21/2021 11:15 am Members of the public may attend using the following link: To join the webinar:<br><a href="https://www.zoom.us/j/93446087542">https://www.zoom.us/j/93446087542</a> / Executive session on pending legislation may be held throughout the day (time permitting) from the time the committee is initially convened. |
| 5/19/2021   | H           | Committee Report: Ought to Pass (Vote 13-1; RC) <b>HC 26</b> P. 15  |
| 6/3/2021    | H           | <b>Ought to Pass:</b> MA VV 06/03/2021  |
| 7/1/2021    | H           | Enrolled (in recess of) 06/24/2021  |
| 7/1/2021    | S           | Enrolled Adopted, VV, (In recess 06/24/2021); <b>SJ 20</b>  |

NH House

NH Senate

# Other Referrals

# Senate Inventory Checklist for Archives

Bill Number: SB94

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 # 0816s      \_\_\_ - amendment # \_\_\_\_\_
- amendment # 1001s      \_\_\_ - amendment # \_\_\_\_\_
- 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:

Jennifer Horgan  
Committee Aide

8/12/21  
Date

Senate Clerk's Office AK