

CHAPTER 219
SB 93-FN - FINAL VERSION

03/18/2021 0763s
06/24/2021 2055EBA

2021 SESSION

21-0941
05/04

SENATE BILL ***93-FN***

AN ACT relative to permanency planning under the child protection act.

SPONSORS: Sen. Carson, Dist 14; Sen. Avard, Dist 12; Sen. Bradley, Dist 3; Sen. D'Allesandro,
Dist 20; Sen. Soucy, Dist 18; Rep. Rice, Hills. 37

COMMITTEE: Judiciary

ANALYSIS

This bill clarifies that adoption rather than the termination of parental rights is a potential permanency plan objective; clarifies the timing of the 12-month permanency hearing; specifies other circumstances for when a subsequent permanency hearing may be conducted; allows for an earlier permanency hearing; provides for cases where the parents are in compliance but the unique needs of the child prevent reunification; and clarifies that the court can modify a permanency plan by agreement at a post-permanency hearing.

The bill is a request of the New Hampshire Model Court Protect and the legislative study committee established in 2019, 129:1 (HB 354).

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 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty One

AN ACT relative to permanency planning under the child protection act.

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

1 219:1 Child Protection Act; Definition of Compelling Reason Added. Amend RSA 169-C:3, VII-a
2 to read as follows:

3 VII-a. ***“Compelling reason” for assessing permanency at an early permanency***
4 ***hearing includes circumstances where:***

5 (a) ***Both parents, or only one parent if the other parent is deceased or not***
6 ***identified, have made no effort or only negligible efforts to comply with the dispositional***
7 ***orders;***

8 (b) ***A ground exists for termination of parental rights for both parents, or for***
9 ***only one parent if the other parent is deceased or not identified, under one or more***
10 ***paragraphs of RSA 170-C:5; or***

11 (c) ***There is another compelling reason to assess the permanency plan of***
12 ***reunification earlier than the 12-month permanency hearing.***

13 VII-b. "Concurrent plan" means an alternate permanency plan in the event that a child
14 cannot be safely reunified with his or her parents.

15 219:2 Child Protection Act; Definition of Permanency Plan. Amend RSA 169-C:3, XXI-c to read
16 as follows:

17 XXI-c. "Permanency plan" means a plan for a child in an out-of-home placement that is
18 adopted by the court and provides for timely reunification, ***adoption through*** termination of
19 parental rights or parental surrender [~~when an adoption is contemplated~~], guardianship with a fit
20 and willing relative or another appropriate party, or another planned permanent living
21 arrangement.

22 219:3 Child Protection Act; Adjudicatory Hearing. Amend RSA 169-C:18, V-a to read as follows:

23 V-a. Where an adjudicatory order includes a finding and provides for the out-of-home
24 placement of a child, the order shall set a date for a permanency hearing that is [within] 12 months
25 [of] ***from*** the date of the [adjudicatory] finding ***pursuant to RSA 169-C:17 and/or RSA 169-C:18.***

26 219:4 Child Protection Act; Permanency Hearings. RSA 169-C:24-b is repealed and reenacted to
27 read as follows:

28 169-C:24-b Permanency Hearings.

29 I. A permanency hearing may be scheduled as follows:

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1 (a) For a child who has been in an out-of-home placement for 12 or more months, the
2 court shall hold a permanency hearing 12 months from the finding pursuant to RSA 169-C:17 and/or
3 RSA 169-C:18. For a child who enters an out-of-home placement subsequent to a finding pursuant to
4 RSA 169-C:17 and/or RSA 169-C:18, the court shall hold a permanency hearing 12 months from the
5 date the child enters the out-of-home placement.

6 (b) If the court at the 12-month permanency hearing grants an extension pursuant to
7 RSA 169-C:24-b, IV, the court shall hold a subsequent permanency hearing no later than 90 days
8 from the 12-month permanency hearing.

9 (c) If a termination of parental rights petition is withdrawn or dismissed, the court shall
10 hold a subsequent permanency hearing no later than 90 days from the withdrawal or dismissal of
11 the termination of parental rights petition.

12 (d) If a child has been reunified at or following a permanency hearing, and is thereafter
13 removed from parental care prior to closure of the RSA 169-C case, the court may hold a subsequent
14 permanency hearing.

15 (e) For a child in an out-of-home placement pursuant to RSA 169-C:24-b, V, the court
16 may hold another permanency hearing upon request of any party at any time.

17 (f) For a child in an out-of-home placement, at any time 14 days prior to the 6-month
18 review hearing and before the 12-month permanency hearing, the department may request an early
19 permanency hearing for the child. The court may schedule an early permanency hearing if the
20 department alleges sufficient facts to satisfy the standard set forth in RSA 169-C:24-b, II(b).

21 II.(a) At a permanency hearing pursuant to subparagraph I(a), (b), (c), (d), or (e), the court
22 shall determine whether and, if applicable, when the child will be returned to the parent or parents,
23 pursuant to RSA 169-C:23. Except as provided for in RSA 169-C:24-b, IV, if the standard for return
24 pursuant to RSA 169-C:23 is not met, the court shall identify a permanency plan other than
25 reunification for the child. Other options for a permanency plan include:

26 (1) Adoption through termination of parental rights or parental surrender when an
27 adoption is contemplated;

28 (2) Guardianship with a fit and willing relative or another appropriate party; or

29 (3) Another planned permanent living arrangement.

30 (b) At an early permanency hearing pursuant to subparagraph I(f), the court shall
31 determine whether the department has proven by clear and convincing evidence that both parents,
32 or only one parent if the other parent is deceased or not identified, cannot currently satisfy the
33 standard of return of the child under RSA 169-C:23 and would be highly unlikely to satisfy such
34 standard at the time of a 12-month permanency hearing such that permanency should be assessed
35 early, based on parents making no effort or only negligible efforts to comply with dispositional orders
36 or based on another compelling reason. If the department does not satisfy its burden, the court shall

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1 hold, within 90 days, a periodic review hearing or the 12-month permanency hearing. If the
2 department satisfies its burden, the court shall determine whether it is in the child's best interest to:

3 (1) Identify a permanency plan other than reunification for the child, as set forth in
4 RSA 169-C:24-b, II(a), and hold a post-permanency hearing within 60 days; or

5 (2) Maintain reunification as the permanency plan, providing parents additional
6 time to meet the requirements of RSA 169-C:23, and hold, within 90 days, another early permanency
7 hearing or the 12-month permanency hearing.

8 III. At a permanency hearing the court shall determine whether the department has made
9 reasonable efforts to finalize the permanency plan that is in effect. Where reunification is the
10 permanency plan that is in effect, the court shall consider whether services to the family have been
11 accessible, available, and appropriate.

12 IV. At a 12-month permanency hearing for both parents, or only one parent if the other
13 parent is deceased or not identified, the court may grant one extension of time that shall not exceed
14 90 days, and hold a subsequent permanency hearing for both parents pursuant to RSA 169-C:24-b,
15 I(b). Such extension may be granted if the court finds a parent to be in substantial compliance with
16 the outstanding dispositional orders and if the parent establishes, by clear and convincing evidence,
17 that:

18 (a) The parent is diligently working toward reunification, which is expected to occur
19 within 90 days;

20 (b) It is probable the parent will be able to demonstrate, after the extension and at a
21 subsequent permanency hearing held pursuant to RSA 169-C:24-b, I(b), that the parent has met the
22 3 requirements of RSA 169-C:23; and

23 (c) The extension is in the best interest of the child.

24 V. If the standard for return of the child pursuant to RSA 169-C:23 is met, but, due to the
25 unique needs of the child, the child is not returned to the custody of the parent, the court may
26 maintain reunification as the permanency plan, and the court shall provide a written explanation as
27 to what circumstances warrant the continued out-of-home placement for the child. In such cases, the
28 court shall schedule subsequent post-permanency hearings pursuant to RSA 169-C:24-c, I, until the
29 child may be returned to the custody of the parent. Upon the request of any party at any time, based
30 on a material change in circumstances, the court may schedule another permanency hearing at
31 which the court may review, modify, and/or implement the permanency plan, or adopt the
32 concurrent plan.

33 219:5 Child Protection Act; Post-Permanency Hearings. Amend RSA 169-C:24-c to read as
34 follows:

35 169-C:24-c Post-Permanency Hearings.

36 I. For a child who is in an out-of-home placement following the **12-month** permanency
37 hearing, the court shall hold ~~[and complete]~~ a post-permanency hearing within 12 months of the

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1 permanency hearing and every 12 months thereafter as long as the child remains in an out-of-home
2 placement. The court may conduct periodic post-permanency hearings upon its motion or upon the
3 request of any party at any time.

4 II. At a post-permanency hearing the court shall determine whether the department has
5 made reasonable efforts to finalize the permanency plan that is in effect. Where reunification is the
6 permanency plan that is in effect, the court shall consider whether the services to the family have
7 been accessible, available, and appropriate.

8 ***III. At a post-permanency hearing, the court may, upon agreement of the parties,***
9 ***modify the permanency plan. In such cases a permanency hearing is not required.***

10 219:6 Grounds for Termination of the Parent-Child Relationship. Amend RSA 170-C:5, III to
11 read as follows:

12 III. [~~The parents,~~] Subsequent to a finding of child neglect or abuse under RSA 169-C, ***the***
13 ***parents*** have failed to correct the conditions leading to such a finding within 12 months of the
14 finding despite reasonable efforts under the direction of the [~~district~~] court to rectify the conditions.

15 ***III-a. Subsequent to a finding of child neglect or abuse under RSA 169-C, the***
16 ***parents have failed to correct the conditions leading to such a finding prior to an early***
17 ***permanency hearing held pursuant to RSA 169-C:24-b, II(b) at which the court changed the***
18 ***child's permanency plan, despite reasonable efforts under the direction of the court to***
19 ***rectify the conditions.***

20 219:7 Effective Date. This act shall take effect January 1, 2022.

Approved: August 23, 2021
Effective Date: January 01, 2022

