

Amendment to SB 96-FN-A

1 Amend the title of the bill by replacing it with the following:

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3 AN ACT relative to implicit bias training for judges; body-worn and in-car cameras and
4 making an appropriation therefor; juvenile delinquency proceedings and
5 transfers to superior court; committees to study the role and scope of authority of
6 school resource officers; collection of race and ethnicity data on state
7 identification cards; and the protection of individual rights.
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9 Amend the bill by inserting after section 9 the following and renumbering the original section 10 to
10 read as 11:

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12 10 New Chapter; Cause of Action to Protect Individual Rights. Amend RSA by inserting after
13 chapter 507-G the following new chapter:

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CHAPTER 507-H

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CAUSE OF ACTION TO PROTECT INDIVIDUAL RIGHTS

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507-H:1 Superseding Enactment. To the extent of any conflict, this chapter supersedes a
defense or immunity in RSA 99-D, 507-B, 541-B, or other RSA section enacted prior to the effective
date of this chapter.

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507-H:2 Employer Liability.

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I. The state of New Hampshire and its political subdivisions shall be responsible for the
actions of its employees.

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II. An employee is an agent of the state of New Hampshire or a political subdivision that
employs the employee.

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III. The state of New Hampshire or a political subdivision shall be legally responsible for
any wrongful act of its agents if such act occurs under the color of law.

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IV. This chapter shall constitute a waiver of sovereign immunity by the state of New
Hampshire and its political subdivisions, and acceptance by the state and its political subdivisions of
responsibility for an agent's acts under the color of law, as required to enforce this chapter.

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507-H:3 Cause of Action.

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I. An individual may seek legal, equitable, or other relief under this chapter in state court
for an injury caused by an agent of the state of New Hampshire or a political subdivision in violation
of a right under the laws or constitution of New Hampshire or the United States.

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1 II. The individual seeking relief shall name as the defendant the state employer, or an
2 official who acts in an official capacity for the state employer, pursuant to the New Hampshire rules
3 of civil procedure.

4 III. The state agent shall not be named as a defendant in the cause of action or a third-party
5 complaint. The agent shall not be deemed a necessary party. Upon motion, the court shall dismiss
6 any claim against the agent.

7 IV. The individual seeking relief shall bear the burden of proving a violation of a right under
8 the laws or constitution of New Hampshire or the United States by a preponderance of the evidence.

9 507-H:4 Judicial Process.

10 I. The court shall not be impeded by an invocation of a state agent's defense or immunity
11 including that:

12 (a) The rights, privileges, or immunities secured by the laws or constitution of New
13 Hampshire or the United States were not clearly established at the time of their deprivation by the
14 state agent, or that the state of the law was otherwise such that the state agent could not reasonably
15 or otherwise have been expected to know whether the agent's conduct was lawful; or

16 (b) The state agent acted in good faith, or that the state agent believed, reasonably or
17 otherwise, that his or her conduct was lawful at the time it was committed.

18 II. A state agent shall not be found financially liable under this chapter for a violation of a
19 right under the laws or constitution of New Hampshire or the United States.

20 III. Notwithstanding the waiver of sovereign immunity in section 507-H:2 IV, nothing in this
21 chapter shall abrogate judiciary or legislative immunity at the level of the state or a political
22 subdivision.

23 IV. When evaluating a state agent's use of force under the constitution of New Hampshire or
24 the United States, the court's determination of reasonableness shall be an objective one based on the
25 facts and circumstances confronting the agent. It shall not be based on hindsight. It shall recognize
26 an agent often must make split-second decisions in dangerous situations.

27 507-H:5 Attorney Fees.

28 I. In any proceeding in which a plaintiff's claims prevail, the state of New Hampshire or a
29 political subdivision shall be liable for reasonable attorney fees and other litigation costs. In actions
30 for injunctive relief, a court shall deem a plaintiff to have prevailed if the plaintiff's suit was a
31 substantial factor in obtaining the results sought by litigation

32 II. Paragraph I of this section shall include reasonable attorney fees incurred on a
33 contingency basis or by an attorney providing legal services on a pro bono basis.

34 507-H:6 Termination of Contract, Agreement, or Employment.

35 I. Notwithstanding any provision of law, contract, or agreement to the contrary, the state of
36 New Hampshire or a political subdivision may terminate a contract, agreement, or employment with

1 a state agent if the court finds, under this section, that the state agent violated an individual's right
2 under the laws or constitution of New Hampshire or the United States.

3 II. The termination of a contract, agreement, or employment by the state of New Hampshire
4 or a political subdivision with a government agent shall not affect the liability of the state or a
5 political subdivision under this chapter.

UNAPPROVED

2021-1244h

AMENDED ANALYSIS

This bill:

I. Amends the municipal retention schedule for certain police non-criminal internal affairs investigations.

II. Requires the memorandum of understanding between a school district and a school resource officer to be made public and establishes a committee to study the role and scope of authority of school resource officers.

III. Establishes a body-worn and in-car camera fund and makes an appropriation therefor.

IV. Amends the juvenile delinquency statutes to exclude any child under 13 years of age unless he or she has committed a violent crime, and removes certain criminal offenses as the basis for transferring a delinquent child to superior court.

V. Establishes a committee to study whether the state should collect race and ethnicity data to be included on state identification cards.

VI. Encourages all judges to receive annual training covering the topics of implicit bias and racial profiling.

VII. Creates a cause of action in state court for an injury to an individual caused by an agent of the state of New Hampshire, or any of its political subdivisions, which constitutes the violation of a right under state or federal law, and waives the state's sovereign immunity for deprivations of an individual's rights under state or federal law.