



State of New Hampshire

GENERAL COURT

CONCORD

MEMORANDUM

DATE: October 28, 2020

TO: Honorable Stephen Shurtleff, Speaker of the House
Honorable Donna Soucy, President of the Senate
Honorable Paul C. Smith, House Clerk
Honorable Tammy L. Wright, Senate Clerk
Honorable Chris Sununu, Governor
Michael York, State Librarian

FROM: Representative George Sykes, Chair

SUBJECT: Final Report of the Committee on the Needs of Victims of Crime and the Enforcement of Crime Victims' Rights
HB 705, Chapter 24:8, Laws of 2020

Pursuant to HB 705, Chapter 24:8, Laws of 2020, enclosed please find the Final Report of the Committee on the Needs of Victims of Crime and the Enforcement of Crime Victims' Rights.

If you have any questions or comments regarding this report, please do not hesitate to contact me.

I would like to thank those members of the commission who are instrumental in this study. I would also like to acknowledge all those who testified before the committee and assisted the commission in our study.

Enclosures

cc: Members of the Committee

FINAL REPORT

Committee on the Needs of Victims of Crime and the Enforcement of Crime Victims' Rights

HB 705, Chapter 24:8, Laws of 2020

October 28, 2020

Rep. George Sykes

Rep. Linda Harriott-Gathright

Rep. Nancy Murphy

Rep. David Meuse

Rep. David Welch

Sen. Shannon Chandley

Committee Charge:

The commission is charged with the following duties pursuant to HB 705:

- (a) Review the needs and services for victims of crime, and provide recommendations concerning addressing needs and enhancing services for victims of crime.
- (b) Review the existing mechanisms and resources for the enforcement of the rights of victims of crimes and provide recommendations on enhancing enforcement of victims' rights.
- (c) Solicit testimony and input from the victims of crime and members of the general public.
- (d) Study other matters related to the needs of victims of crime as the committee may determine.

Committee Findings:

The Committee took testimony from the following individuals/organizations;

Lyn Schollett, Executive Director, NH Coalition Against Domestic and Sexual Violence*	Marissa Chase, NH Association for Justice
Lynda Ruel Director, Office of Victim/Witness Assistance, NH Attorney General's Office*	Attorney Michael Iacopino. NH Criminal Defense Lawyers' Association
Sean Locke, Enforcement Division, New Hampshire Attorney General's Office	Attorney Anthony Sculimbrene
Jeanne Hruska, Political Director, ACLU-NH*	Judge David King
Nicole Kipphut, NH Department of Corrections*	Ken Norton, NAMI
Moira O'Neil, Child Advocate, DCYF*	

*indicates the individual also submitted written testimony

The Committee attempted or will attempt to schedule testimony from the following individuals and/or organizations:

NH Trial Lawyers Association	Representative Renny Cushing
Mr. Buzz Schurr	

The following areas remain to be examined more fully:

- 1) Identify additional resources for prevention
- 2) Mechanisms for long term evaluation of victims' rights enforcement
- 3) Methodologies to help victims identify their rights for mental health, housing, and transportation
- 4) Instituting a media campaign to educate constituencies
- 5) A full examination of new technologies in the court system as they pertain to victims in civil and criminal procedures

Committee Recommendations:

Given the short amount of time the committee could meet, the ongoing pandemic, and the complexity of the issues, the committee recommends consideration of further legislation to re-establish the committee. Proposed legislation may be as follows:

Committee on the Needs of Victims of Crime and the Enforcement of Crime Victims' Rights Established.

I. There is established a committee on the needs of crime victims and the enforcement of crime victims' rights. The members of the committee shall be as follows:

(a) Five members of the house of representatives, appointed by the speaker of the house of representatives.

(b) One member of the senate, appointed by the senate president.

II. The committee shall:

(a) Review the needs and services for victims of crime, and provide recommendations concerning addressing needs and enhancing services for victims of crime.

(b) Review the existing mechanisms and resources for the enforcement of the rights of victims of crimes and provide recommendations on enhancing enforcement of victims' rights.

(c) Solicit testimony and input from the victims of crime and members of the general public.

(d) Study other matters related to the needs of victims of crime as the committee may determine.

III. The committee's final report will be due September 1, 2022,

Respectfully Submitted,

Representative George Sykes

Appendix A

Committee Charge

From HB-705: The Committee on the Needs of Victims of Crime and the Enforcement of Crime Victims' Rights shall:

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- (b) Review the existing mechanisms and resources for the enforcement of the rights of victims of crimes and provide recommendations on enhancing enforcement of victims' rights.
- (c) Solicit testimony and input from the victims of crime and members of the general public.
- (d) Study other matters related to the needs of victims of crime as the committee may determine.

Committee members: Sen. Shannon Chandley, Rep. George Sykes, Rep. Nancy Murphy, Rep. David Meuse, Rep. Linda Harriott-Gathwright, Rep. David Welch

Staff: Brad Greenland

Oct. 15, 2020

Present: Sen. Shannon Chandley, Rep. George Sykes, Rep. Nancy Murphy, Rep. David Meuse, Brad Greenland (Staff)

Decisions:

- Elected Rep. George Sykes as chairman 3-0 (Rep. Sykes abstaining)
- Rep. Meuse volunteered to act as committee clerk
- Committee members send names of people and organizations we want to get input from at the next meeting to Brad Greenland and Brad will contact them and ask them to appear.
- A 4th Committee meeting will be added on Wednesday, October 28 from 1-3pm.
- The report will include recommendations for moving forward, including legislation to extend the life of the committee
- The next meeting on Oct 22 will focus on getting input and suggestions from the AG's Office, Department of Corrections, NH Coalition Against Domestic and Sexual Violence, the ACLU, and child advocates.
- Voted 4-0 to adjourn

Discussion:

- Sen. Chandley: It would be good to obtain victims services reports so we don't duplicate what is already being done. Rep. Sykes agreed. He expressed concern about the committee being able to do its work in the limited time left before Nov 1. He suggested one of our recommendations should be legislation extending the time for the committee to do its work.
- Rep. Sykes also suggested added an additional meeting and making a list of agencies and speakers we want to hear from at our next meeting. After a calendar check, committee members agreed to add another meeting on Oct. 28 from 1-3 p.m.

- Rep Meuse suggested we focus our initial work and final report on addressing priorities that may have surfaced during the pandemic. He outlined an example where he had been told a domestic violence victim whose abuser had been released from prison had gone to court to get his firearms back. The victim—who is afraid her abuser still intends to do her harm—is being required to appear in court as a plaintiff to oppose his attempt to get back his firearms. This means she must travel from out-of-state back to NH, potentially putting her in the same room as a man who went to prison for abusing her. Rep. Meuse asked if it would be possible for victims in situations like this to provide testimony virtually. During the pandemic many NH courts held virtual hearings. The schools and health care providers (telemedicine) also went virtual for safety reasons. Rep. Meuse asked if legislation allowing victims to testify virtually at hearings on the extension of domestic violence protection orders and the return of deadly weapons might make a potentially dangerous situation safer for victims while still ensuring the rights of the respondent are not violated. He suggested getting feedback on this from the NH AG's office, the ACLU, and the NH Coalition Against Domestic and Sexual Violence.
- Rep. Murphy said it will also be important to hear from child advocates.

Rep. Sykes asked Rep. Murphy and Rep. Meuse who testified at the original committee hearing of HB-705. Rep. Meuse reported that Buzz Scherr from UNH Law School, James Cara from the Department of Justice, and Jessica Eckland from the Coalition testified in favor of the bill. Katherine Cooper from the NH Trial Lawyers Assn. requested that the bill be retained.

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Committee members: Sen. Shannon Chandley, Rep. George Sykes, Rep. Nancy Murphy, Rep. David Meuse. Rep. Linda Harriott-Gathwright, Rep. David Welch

Oct. 22, 2020

Present: Sen. Shannon Chandley, Rep. George Sykes, Rep. Nancy Murphy, Rep. David Meuse. Rep. Linda Harriott-Gathwright, Rep. David Welch, Brad Greenland (staff)

Testifying

- *Lyn Schollett, Executive Director, NH Coalition Against Domestic and Sexual Violence
 - *Lynda Ruel Director, Office of Victim/Witness Assistance, New Hampshire Attorney General's Office
 - Sean Locke, Enforcement Division , New Hampshire Attorney General's Office
 - *Jeanne Hruska, Political Director ACLU-NH
 - *Nicole Kipphut, Dept. of Corrections
 - Judge David King
- (* also provided written testimony)

Decisions

- Brad to reach out to NH Trial Lawyers Association, NAMI (Ken Norton), and DCYF for additional input and testimony at our next meeting.
- Approved motion to adjourn 6-0.

Testimony/Discussion

- Lyn Schollett of the NH Coalition Against Domestic and Sexual Violence said the impact on victims of sexual and domestic violence has been substantial. Asking victims to shelter in place with abusers was a risky proposition.
 - There was an initial fall in calls, but over the course of the year there has been an uptick with calls up 6% so far this year. The 13 crisis centers are also seeing more complex cases involving violence and substance abuse issues.
 - Because victims were isolating with their abusers and had more difficulty using the phone, the Coalition invested in and implemented text and chat services to help. Shelters also had to implement safety measures that reduced capacity, so they turned to housing more people in hotels. 440 individual housed in 2019 but turned away 1100, including 600 children
 - 5% of protective orders have used remote hearing process.
 - Some CARES Act funding went to crisis centers. It was spent on hotel costs for housing and other direct expenses.
 - More resources needed for prevention—“how we stop these crimes from happening in the

first place is critical”. Most state funding is used for direct services and the running shelters themselves—not for prevention. About \$200,000 in federal grant money is available to 13 crisis centers for prevention. Most of the money is used to deliver presentations and have conversations in the community. Increasing staffing to support more prevention education in schools is a key goal.

- Longer-term, evaluating victims rights enforcement mechanisms is critical. Perhaps something that can be done next year with more time.
- Lynda Ruel and Sean Locke of the N.H. Attorney General’s Office of Victim Assistance.
 - Provided a study and survey on victim issues conducted in 2019 (Brad emailed them to committee members)
 - The Office of Victim Assistance provides direct services to victims and provides training initiatives and protocols to develop best practices for addressing child and adult sexual assault.
 - The Office is also doing double duty working on complaints for violations of the governor’s emergency orders.
 - A key goal is to ensure victims are treated well no matter what county they live in. There are victim advocates in every county.
 - One pain point is that in the circuit court there are only a handful of advocates dealing with misdemeanor crime. There are issues with victims not knowing their rights. Mental health, housing, and transportation issues also an issue—especially during COVID. Mental health especially because of lack of available clinicians.
 - Education is important. A media campaign would be a very good idea.
 - People receive info in many different ways. Some are very connected online. Others are not. It would be great to do a campaign with a multiphased approach.
 - If victims don’t feel like they have support, it’s harder to go through the trial process.
 - Some victims want to be in the courtroom. But the flip side are people living out of state. All options should be on the table for victims. “It’s important to meet victims where they are.”
- Sean Locke. The confrontation clause in the US Constitution makes the threshold for allowing video testimony in criminal court very high. There may be room to expand. The confrontation clause guarantees criminal defendants the opportunity to face the prosecution’s witnesses in the case against them and dispute the witnesses’ testimony. This guarantee applies to both statements made in court and statements made outside of court that are offered as evidence during trial. applies in criminal cases, but not in civil cases such as protective orders.
 - When considering changes to enforcement models for victims rights, we should look at models that have worked in other states and ones that haven’t worked.
 - The Superior court has used remote technology for evidentiary hearings but not trials.
- Jeanne Hruska, ACLU NH
 - Supports extending committee’s scope to next year
 - Shares Lyn Schollett’s emphasis on the need for additional investment in prevention.
 - Reminded us that a defendant in one case can be a victim in another. There are also victims who are currently incarcerated. It’s not uncommon for people to be a defendant and a crime victim.
 - Too often narratives focus on white victims and minority perpetrators.
 - Suggested we take a closer look at the needs for victims who are currently incarcerated—especially women, who are often victims of domestic and sexual violence. Suggested this committee talk to them.
 - Shares concern of AG’s office with allowing remote testimony at a criminal trial. “We think our experiences with technology should really be looked at and studied to see if they should continue.” (Cited bail commissioners being able to conduct bail hearing remotely

as an example of something that's working well.)

- Rep. Sykes observed: "In our final report it will be important to list the issues we've uncovered and couldn't address in our report."
- Nicole Kipphut, Dept. of Corrections, Administrator of Victims Services Unit
 - Any victim of felony-level crime in NH can use the services of the Victims Services Unit.
 - Last year, 3263 people used their services. Each victim advocate maintains a large caseload.
 - Post-conviction services. Helps with restitution, information, preparation of victim impact statements, no contact orders, dealing with threats, notifications, safety planning and advocacy as offender starts to transition out, notice of offender moves, parole board hearing support, arrange phone number blocks, restitution advocacy, support at hearings, debriefing,
 - For many, hearings and statements are a part of their healing process. But others don't feel like their voices are being heard.
 - Her unit also works with prisoners who are victims of sexual assault.
 - All parole board hearings have been conducted on Zoom. This has been really good change. "People feel more comfortable being on Zoom."
 - Victim Offender Dialogue was restarted in 2017. 43 referrals received. Victims and survivors meet with offenders to talk with offender about the personal impact of the crime and to get answers to questions.
 - Accountability Letter Bank is a resident/prisoner-initiated process that communicates regret/responsibility to victim. Victims are never forced to accept or reject a letter. 33 residents have taken advantage of this.
- Judge David King
 - When COVID crisis came, we shut the courts down for the safety
 - Normally the circuit courts handle 10-12k cases per month, including domestic violence protection orders
 - There was a huge need to triage cases, but the domestic violence protection orders were recognized as a key priority from the start.
 - The courts were never been closed to people filing domestic violence protection orders.
 - However, Judge King noticed that the number of petitions were down and it was an access issue.
 - Some judges would prefer in-person hearings, others say we can do it just as well telephonically.
 - 2000 protective orders since March 16 have been addressed with telephonic hearings
 - Remote hearings are not without challenges. There have been issues with minutes and battery power running out on cell phones. There are also connectivity issues in the north country.
 - On the plus side, remote hearings allow people to overcome work and transportation issues.
 - Some domestic violence advocates have shared that they prefer telephonic (audio-only) hearings over video hearings in the case of victims testifying from places that can be recognized —such as a shelter—from things appearing in the background.
 - Protective order filings are back up: 326 in August and 357 in July.
 - About 5% of petitions for domestic violence protective orders have come in electronically.
 - There is no prohibition in the statute from doing telephonic or videoconference hearings. Judges have the option.
 - Suggests getting more opinions from advocates and judges.
 - Notes that virtually all bail hearings have been done remotely on WebEx for the past year.

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Committee members: Sen. Shannon Chandley, Rep. George Sykes, Rep. Nancy Murphy, Rep. David Meuse. Rep. Linda Harriott-Gathwright, Rep. David Welch

Oct. 26, 2020

Present: Sen. Shannon Chandley, Rep. George Sykes, Rep. Nancy Murphy, Rep. David Meuse, Brad Greenland (staff)

Testifying

- Attorney Michael Iacopino, NH Criminal Defense Lawyers' Association
- Ken Norton, NAMI
- Marissa Chase, New Hampshire Association for Justice
- Attorney Tony Sculimbrene, tentative

(* also provided written testimony)

Decisions

- The final report will recommend extending the timeline for the committee to do its work.
- While many important issues were raised by those providing testimony, we agreed that developing proper recommendations and proposed legislative solutions will require more time than we have.
- The final report
- Voted 4-0 to adjourn

Recommendations

- File legislation extending the timeline of the committee to do its work.

Testimony

- Attorney Michael Iacopino, NH Criminal Defense Lawyers' Association.
 - Serves approximately 300 attorneys representing people accused of crimes.
 - “Defendants have constitutional rights in the criminal justice system. Victims do not. Victims have statutory rights.”
 - At this point, the courts are only starting to get back to jury trials. At those trials, the defendant has the right to face the person accusing them under the NH Constitution. Defendants have a right to confrontation when accused of a crime.
 - Our association opposes virtual/remote victim testimony in criminal procedures via Zoom, closed circuit TV, or any replacement for live face-to-face confrontation.
 - The right to a public trial seems to be in play with Judge Nadeau’s current directive in the Superior court system that allows a livestream to be shut off during victims testimony

- unless they give their consent.
 - Victims should be provided respect and civility—but they do not have constitutional rights as victims. “Letting the witness drive the procedure is improper.”
 - Iacopino recognizes there are circumstances where a balance needs to be struck that takes into consideration the rights of the defendant if the public is going to be blocked for some reason.
 - 6th amendment right doesn’t apply in a civil suit. However, a protective order requires allegation that a crime has been committed. Based on the fact that criminal charges may be coming later, he does not think remote testimony should be allowed.
 - He says that while there may be situations where a portion of a criminal trial may need to occur outside the public domain—for example regarding confidential communications between a victim and a counselor—he can’t imagine the “balancing” (turning off positions of testimony) would include the victim’s entire testimony.
- Lyn Schollett, NHCADSV
 - Strongly defended the actions of Judge Nadeau to allow the testimony of victims of domestic or sexual violence to choose to have live-streaming turned off during their testimony (See <https://www.nhpr.org/post/nh-courts-alter-livestream-policy-protect-testifying-victims-defense-attorneys-cry-foul>). “It concerns me greatly that Attorney Iacopino is “offended””
 - The suggestion that a victim has no right to be at trial concerned Ms. Schollett.
 - “Victims have statutory rights to protect them from intimidation.”
 - “There have already been cases that have not gone forward because victims have been intimidated by the idea that anyone on the internet could watch or record their testimony.”
- Marissa Chase, New Hampshire Association for Justice
 - Our organization focuses on civil justice—people who represent plaintiffs and consumers
 - Supported HB705 to end civil statute of limitations on sexual assault
 - We know from our members that the courts are backlogged and most civil cases have been pushed out to 2022.
 - In a civil sexual assault case in Nashua, the defendant is out-of-state and they are not agreeing to depose a witness by Zoom. Things like this are slowing the system down.
 - With the court system being backlogged every aspect of cases is being delayed.
 - No issues with victims obtaining restraining or protective orders via Zoom.
 - Increased communication would be helpful but no specific ideas for legislation.
- Attorney Anthony Sculimbrene
 - Both victims and defendants are being harmed by having every trial up in the air.
 - Some things could be done to relieve the backlog with the help of the legislation.
 - Taking up pre-trial motions at the same time as trials may need to be rethought in ways that don’t impact constitutional rights
 - Need to tighten up how information is released to the press. For victims this can be traumatizing.
 - While the call for protective orders—and extensions—is case by case, there are ways to do it that comply with a statute without traumatizing the victim. It should be offered as a choice.
- Ken Norton, NAMI (National Alliance for Mental Illness)
 - Numerous studies have demonstrated that people with mental illness are more likely to be victims of crimes—especially women.
 - Due to their condition, some may not report crimes.
 - Victims of crime may experience emotional and mental health issues, including trauma.
 - From a clinical perspective, there are two trial acute stress disorder (less than a month in duration) and post-traumatic stress disorder (more than one month in duration)

- Victims who are traumatizing often engages in patterns of risk taking and self-destruction.
- A high percentage of people in prison has reported experiencing life threatening trauma (75% of women in NH state prison)
- The line between victim and perpetrator is blurred
- All criminal justice personnel should be training to im
- NH needs to have mental health speciality courts.
- We need to reduce adverse childhood events and enhance the NH children's system of care.
- Youths awaiting emergency admissions in hospitals are now as high as 30 at any one time. We need to help kids to keep them out of our criminal justice system as both victims and offenders.
- There also needs to be more for support for families of victims involved in officer involved shootings

Committee Discussion

- Rep. Sykes. Our final report should list the charge of the committee, members of the committee, persons and organizations providing testimony, justification for extension, and
- Sen Chandley—many important issues raised but it's important not to get ahead of ourselves. Our focus should be on the "needs" of victims. I'm not comfortable making any recommendations beyond extending the committee. The legislation did not anticipate the issues COVID-19 has presented. We should keep the recommendation narrow while recognizing that we have a survey from DOJ that can inform future decisions.
- Rep. Meuse—Filing legislation that would cement the current ability under the governor's executive order for victims seeking domestic violence protection orders to appear remotely rather than in court does not appear to violate the right to confrontation because it is a civil case. However, while there's no statute that specifically prohibits virtual testimony by victims in civil cases, there is nothing that prevents it either. Given the small number of where virtual victim testimony has been used in protective order cases (5%) and the likelihood this practice will be allowed to continue after the order expires, filing legislation to specifically allow it under NH law is not a priority at this time. However, should it become apparent that it is needed after expiration of the emergency order, legislation could be filed with the approval of the Rules Committee.