

CHAPTER 175

HB 1686 – FINAL VERSION

03Mar2010... 0603h

04/28/10 1539s

2010 SESSION

10-2936

05/04

HOUSE BILL **1686**

AN ACT relative to juvenile diversion programs.

SPONSORS: Rep. Shattuck, Hills 1

COMMITTEE: Criminal Justice and Public Safety

AMENDED ANALYSIS

This bill:

- I. Requires the administrative judge of the judicial branch family division to approve juvenile diversion programs.
- II. Clarifies employee benefits and liability issues for persons engaged in public service under RSA 169-B, the juvenile delinquency statute.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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

AN ACT relative to juvenile diversion programs.

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

175:1 Delinquent Children; Definition of Court Approved Diversion Program. Amend RSA 169-B:2, IV-b to read as follows:

IV-b. “Court approved diversion program” means a program that has been approved by the administrative judge of the judicial branch family division and has been approved to accept court referrals. An approved diversion program is a community based alternative to the formal court process that integrates restorative justice practices, promotes positive youth development, and reduces juvenile crime and recidivism.

IV-c. “Intervention” means a decision made by a person with authority which results in specific official action of the legal system not being taken or being postponed in regard to a juvenile and, in lieu of such inaction or postponement, providing an individually designed program for delivery of services for the juvenile by a specific provider or a plan to assist the juvenile in finding a remedy for his or her inappropriate behavior. The goal of intervention is to prevent further involvement of the juvenile in the formal legal system. Intervention for a juvenile may take place either at the adjudicatory or dispositional level.

175:2 Delinquent Children; Parent Responsibility. Amend RSA 169-B:2-a, I(c) and (d) to read as follows:

- (c) Fully participate in all services ordered by the court including, but not limited to, substance abuse treatment, parenting classes, mediation, ***diversion***, and community service.
- (d) Pay a portion, or all, of any restitution or fines imposed by the court ***or court approved diversion program fees***, when the court finds the payment by the parent to be in the interest of justice and rehabilitation.

175:3 Delinquency Statute; Juvenile Diversion. Amend RSA 169-B:10 to read as follows:

169-B:10 Juvenile Diversion.

I. An officer authorized under RSA 169-B:9 to take a minor into custody may dispose of the case without court referral by releasing the minor to a parent, guardian, or custodian. The officer shall make a written report to the officer's department identifying the minor, specifying the grounds for taking the minor into custody and indicating the basis for the disposition.

I-a. Prior to filing a delinquency petition with the court, the arresting agency or prosecutor shall screen the petition for participation in diversion. The petitioner shall identify why diversion was not an appropriate disposition prior to seeking court involvement.

II. At any time before or at arraignment pursuant to this chapter, a minor and the minor's family may be referred to a court-approved diversion program or other ***intervention program or*** community resource. Referral may be made by the arresting or prosecuting agency or juvenile probation and parole officer, prior to filing a petition with the court or after the filing of a petition by such agency with the court's approval, or by the court on its own, or any party's motion. When the arresting or prosecuting agency, or juvenile probation and parole officer suspects that a minor has a disability, an administrator at the responsible school district shall be notified. If appropriate, the school district shall refer the minor for evaluation to determine if the child is in need of special education and related services.

II-a. The administrative judge of the [district court] ***judicial branch family division*** shall have the authority to approve diversion referral procedures for use in all juvenile matters throughout the state.

III. Referral to diversion or other community resource after filing is appropriate if:

- (a) The facts bring the case within the jurisdiction of the court;
- (b) Referral of the case is in the best interest of the public and the minor; and
- (c) The minor and the parents, guardian, or other custodian consent with the knowledge that consent is not obligatory.

IV. Referral after filing shall stay the proceedings for a period not to exceed [3] **6** months from the date of referral, unless extended by the court for an additional period not to exceed [3] **6** months and does not authorize the detention of the minor.

V. During the period of referral, the court may require further conditions of conduct on the part of the minor and the minor's parents.

VI. No person who performs public service as part of his or her participation in a court approved diversion program under this chapter shall receive any benefits that such employer gives to its employees, including, but not limited to, workers' compensation and unemployment benefits and no such employer shall be liable for any damages sustained by a person while performing such public service or any damages caused by that person unless the employer is found to be negligent.

175:4 Delinquent Children; Arraignment. Amend RSA 169-B:13, II to read as follows:

II. The court may, at any time after arraignment, dispose of the petition by referring the minor or the minor and family for participation in [~~an approved~~] **a court approved diversion program or other** intervention program.

175:5 Child in Need of Services (CHINS); Diversion. Amend RSA 169-D:9 to read as follows:

169-D:9 Diversion.

I. At any time before or during a proceeding brought pursuant to this chapter, a child and the child's family may be referred to a court approved diversion program, ***as defined in RSA 169-B:2, IV-b,*** or other ***intervention program or*** community resource. Referral may be made by a law enforcement agency or juvenile probation and parole officer prior to or after filing a petition with the court, upon the court's own motion, or at the request of any party with the approval of the court. When the arresting or prosecuting agency, or juvenile probation and parole officer suspects that a child has a disability, an administrator at the responsible school district shall be notified. If appropriate, the school district shall refer the child for evaluation to determine if the child is in need of special education and related services. The administrative judge of the [district court] ***judicial branch family division*** shall have authority to approve diversion procedures for use by the courts in all juvenile matters throughout the state.

II. Referral after filing is appropriate if:

- (a) The facts bring the case within the jurisdiction of the court.
- (b) Referral of the case is in the best interest of the public and the child.
- (c) The child and parent, guardian or other custodian consent with the knowledge that consent is not obligatory.

III. Referral after filing shall stay the proceedings for a period not to exceed [3] **6** months from the date of referral, unless extended by the court for an additional period not to exceed [3] **6** months and does not authorize the detention of the child, and the court may, on its own motion or that of any party, designate or utilize a multi-disciplinary team to consider the facts and circumstances of the case, the needs of the child and family, and available services and resources.

IV. During the period of referral, the court may require further conditions of conduct on the part of the child and the child's parents.

175:6 CHINS; Initial Appearance. Amend RSA 169-D:11, III to read as follows:

III. After hearing, the court may, with the consent of the child, dispose of the petition by ordering the child to participate in [~~an approved~~] **a court approved** diversion program ***or other intervention program.***

175:7 CHINS; Liability for Diversion Expenses. Amend RSA 169-D:29, I(a) to read as follows:

I.(a)(1) [~~Whenever~~] **When** an order creating liability for expenses is issued by the court under this chapter or [~~whenever~~] **when** a voluntary service plan is developed and provided for a minor and the minor's family by the department, any expenses incurred for services, placements, and programs the providers of which are certified pursuant to RSA 170-G:4, XVIII, shall be payable by the department of health and human services.

(2) When an order creating liability for expenses is issued by the court under this chapter or when a voluntary service plan is developed and provided for a minor, any expenses incurred for approved diversion services shall be paid by the parent or guardian.

175:8 Effective Date. This act shall take effect January 1, 2011.

Approved: June 17, 2010

Effective Date: January 1, 2011