

PROTOCOLS RELATIVE TO
ABUSE AND NEGLECT CASES
AND PERMANENCY PLANNING

LEGAL UPDATES
and
NEW HAMPSHIRE SUPREME COURT SUMMARIES
2003 - 2018

FOR USE IN NEW HAMPSHIRE CIRCUIT COURT



**DEVELOPED BY THE NEW HAMPSHIRE COURT IMPROVEMENT PROJECT
IN COOPERATION WITH THE MODEL COURT PROJECT**

Revised as of August 31, 2018

INTRODUCTION AND ACKNOWLEDGMENTS

In 2003, New Hampshire issued *The Protocols Relative to Abuse and Neglect Cases and Permanency Planning*, after extensive collaboration among the court, the Court Improvement Project, the Division for Children, Youth and Families, Court Appointed Special Advocates, parent attorneys, legislative members, law enforcement, the Attorney General's Office, foster parents and service providers. The Court Improvement Project (CIP), through its work with New Hampshire's Model Court Project, has continued to develop additional protocols for child protection cases over the past 15 years. Most recently, the Model Court revised the latter chapters of the 2003 protocols, issuing the *2018 Protocols Relative to Termination of Parental Rights, Surrender of Parental Rights, Voluntary Mediation and Adoptions Involving RSA 169-C Cases*, effective January 1, 2018.

While the Model Court will continue its work on procedural revisions to the earlier chapters of the 2003 Protocols, in the interim the Model Court Executive Committee is issuing the attached Legal Updates to the 2003 *Protocols Relative to Abuse and Neglect Cases and Permanency Planning*. These Updates gather statutory changes, court rules revisions, and New Hampshire Supreme Court opinions relating to child protection issues over the past 15 years. The Updates also provide a summary of relevant federal statutes that impact RSA 169-C cases.

The Updates are the result of significant research by CIP consultants David Sandberg, Esq., and Lyndsay Robinson, Esq., who have spent innumerable hours locating statutory revisions, court rule changes and Supreme Court opinions, and annotating these legal updates to the appropriate protocol chapters and sections. They have continued to add the most recent legal changes to this compilation, even as they have finalized their edits to this extensive document, so that the Updates reflect the state of the law as of August 31, 2018. The Model Court Executive Committee, as representatives of the court, DCYF, CASA and parent attorneys, extends its sincere gratitude to Attorneys Sandberg and Robinson for their tireless work on this project.

Finally, special thanks are extended to the originator of this project, CIP Coordinator Kristy Lamont, Esq., who marshalled excellent resources, as well as her energy and editing skills, to produce a comprehensive legal source to be used by all child protection stakeholders. The Model Court also thanks Marge Therrien for her efficiency in preparing the final formatting so that this document can be distributed to judges, DCYF workers, parent attorneys, Guardians ad Litem, and others involved in child protection cases.

Insofar as these Updates suggest any interpretation of the law, the reader should bear in mind that the interpretation of the law, as it applies to any given case, is within the sole province of the trial judge, subject to the ultimate review of the New Hampshire Supreme Court.

The Updates are designed to be used similarly to a statutory “pocket part” so that a person reviewing a particular section of the 2003 protocols can then refer to the Updates to see any subsequent law, rule or opinion that may have impacted that protocol section. The Model Court Project hopes to issue yearly Legal Updates hereafter, so that child protection stakeholders will continue to have quick reference to legal changes impacting existing court protocols.

A handwritten signature in black ink, appearing to read "Susan W. Ashley", with a long horizontal flourish extending to the right.

Susan W. Ashley
Model Court Lead Judge
Circuit Court—Family Division

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SUMMARY OF RELEVANT FEDERAL STATUTES

ADOPTION AND SAFE FAMILIES ACT OF 1997 (ASFA) **42 U.S.C. 675**

The purpose of the Adoption and Safe Families Act is to further remedy chronic problems with the nation's foster care system, establishing children's health and safety as paramount concerns. ASFA emphasizes timely decision-making for children and families as well as circumstances under which states can move expeditiously to permanency for children in care.

In the first order of removal, ASFA requires the court to make a judicial determination that continuation of residence in the home would be contrary to the welfare, or that placement would be in the best interests of the child. 42 U.S.C. Sec. 472 (a)(1); 45 C.F.R. 1356.21(C).

A judicial determination of reasonable efforts to prevent a child's removal from the home is also required by ASFA. When a child is removed from his/her home, the judicial determination as to whether reasonable efforts were made, or were not required, to prevent the removal must be made no later than 60 days from the date the child is removed from the home unless there are aggravating circumstances. 42 U.S.C. 471 (a)(15)(A)(b)(i); 45 C.F.R. 1356.21(b)(1)(i).

The state agency must obtain a judicial determination of reasonable efforts to finalize a permanency plan. This must be made within 12 months of the date the child is considered to have entered foster care and then at least once every 12 months thereafter. 42 U.S.C. 475 (5)(C); 45 C.F.R. 1356.21(b)(2)(i).

National Council of Juvenile and Family Court Judges, *Enhanced Resource Guidelines* at 381-382.

Note: Of particular importance is 42 U.S.C. 675 (5) (C) which mandates a permanency hearing for the child and court determination of a permanency plan for the child. This provision is codified at RSA 169-C:24-b, I.

FAMILY FIRST PREVENTION SERVICES ACT OF 2018 (FFPSA) **H.R. 1892 (2018)**

One of the major areas this legislation seeks to change is the way Title IV-E funds can be spent by states. Title IV-E funds previously could be used only to help with the costs of foster care maintenance for eligible children; administrative expenses to manage the program; training for staff, foster parents, and certain private agency staff; adoption assistance; and kinship guardianship assistance.

Now states, territories, and tribes with an approved Title IV-E plan have the option to use these funds for prevention services that would allow ‘candidates for foster care’ to stay with their parents or relatives. The Act also seeks to curtail the use of congregate or group care for children and instead places a new emphasis on family foster homes. With limited exceptions, the federal government will not reimburse states for children placed in group care settings for more than two weeks. Approved settings must use a trauma-informed treatment model and employ registered or licensed nursing staff and other licensed clinical staff. Within 30 days of a child being placed in a qualified residential treatment program, an age-appropriate and evidence-based review must be performed to determine if a qualified residential treatment program is the best fit for the child. The court must approve or disapprove the placement within 60 days and continue to demonstrate at each status review that the placement is beneficial to the child.

Additionally, the Act:

- is intended to enable States to use Federal funds to provide enhanced support for children and families and prevent foster care placements through the provision of mental health and substance abuse prevention and treatment services, in-home parent skill-based programs, and kinship navigator services;
- establishes an electronic interstate processing system for the placement of children in foster care, guardianship or adoption;
- requires states to demonstrate that they are in line with newly established national model licensing standards for relative foster family homes;
- defines a reimbursement-eligible family foster home as having six or fewer children, and a reimbursement-eligible child care institution as having 25 or fewer youth; and
- permits States to use John H. Chafee Foster Care Independence Program funds for youth up to 23 years of age who have aged out of foster care if that state has extended federal Title IV-E funds to children up to age 23.

National Conference of State Legislatures, *Family First Prevention Services Act (FFPSA)* (May 15, 2018)

FOSTERING CONNECTIONS TO SUCCESS AND INCREASING ADOPTIONS ACT OF 2008: Pub. L 110-351

The purpose of the Fostering Connections Act is to connect and support relative caregivers, improve outcomes for children in foster care, provide for tribal foster care and adoption access, and improve incentives for adoption.

Fostering Connections amended the Social Security Act to increase opportunities for relatives to step in when children are removed from their parents. This includes grants for kinship guardianship (42 U.S.C. Sec. 471(a)), with specific requirements detailed in Sec.483. In order to qualify for this assistance, relatives caring for children in foster care must undergo background checks (42 U.S.C. 471(a)(20)).

For some relatives, the background check would stop the licensing process. However, the new law allows states to waive non-safety-related licensing standards for relatives on a case-by-case basis (e.g. square footage requirements), and states have discretion to establish licensing standards and define which are non-safety standards.

National Council of Juvenile and Family Court Judges, *Enhanced Resource Guidelines* at 388-389.

INDIAN CHILD WELFARE ACT OF 1978 (ICWA) **25 U.S.C. 1901-1963**

Congress passed ICWA in 1978 in response to the alarmingly high number of Indian children being removed from their homes by both public and private agencies. The intent of Congress under ICWA was to “protect the best interests of the Indian children and to promote the stability and security of Indian tribes and families”. (25 U.S.C. Sec. 1902).

Indian child is defined as “any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.” (25 U.S.C. Sec. 1903 (4)).

ICWA sets specific standards that must be followed when a case involves an Indian child. There are requirements about notice, expert testimony, and the burden of proof required to remove a child and place a child permanently away from the parents. There are also placement preferences.

No foster care placement may be ordered in such proceeding in the absence of a determination, supported by clear and convincing evidence, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child (25 U.S.C. 1912(e)).

Notice must be sent to the tribe, parents, and Indian custodian by registered mail with return receipt (25 U.S.C. Sec. 1912(a)).

No termination of parental rights may be ordered in such proceeding in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child (25 U.S.C. Sec. 1912(f)).

National Council of Juvenile and Family Court Judges, *Enhanced Resource Guidelines* at 389-391.

See also Jones, B., Tilden, M., Gaines-Stoner, K., *The Indian Child Welfare Act Handbook: A Legal Guide to the Custody and Adoption of Native American Children*, American Bar Association, 2nd edition (2008); Bureau of Indian Affairs final rule at 25 CFR Part 23 addressing requirements for State courts in ensuring implementation of ICWA in Indian child welfare proceedings; and Questions and Answers, Subpart I - Indian Child Welfare Act Proceedings, 81 Federal Register 38868-38876 (June 14, 2016).

INDIVIDUALS WITH DISABILITIES EDUCATION ACT (IDEA) (1990)

Pub. L. 94-142

The Individuals with Disabilities Act (IDEA) provides tools to help some children in foster care. Under the federal IDEA, students who qualify for special education are eligible for services and individualized education plans that may be essential to the academic success of the child. Children who are eligible for special education must be provided with a “free appropriate public education” in the “least restrictive environment”.

National Council of Juvenile and Family Court Judges, *Enhanced Resource Guidelines* at 409-410

See also RSA 186-C Special Education, and RSA 169-C:20 Disposition of a Child with a Disability. IDEA was previously known as the Education for All Handicapped Children’s Act, enacted in 1975.

INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN (ICPC) and SAFE AND TIMELY PLACEMENT ACT (2006)

Pub. L. 109-239

The purpose of the ICPC and the Safe and Timely Placement Act is to ensure that a child placed across state lines for foster care or adoption is placed with persons who are safe, suitable, and able to provide proper care. The ICPC also fixes legal and financial responsibility and responsibility for supervision and provision of services for the child.

The ICPC applies when the following entities...”send, bring, or cause a child to be brought or sent” to another party state: a state that is party to the ICPC; a court of a party state; or a child-placing agency of a party state; or any person (including parents and relatives in some instances, such as a birth parent placing a child for a private adoption out of state; or a parent or relative arranging for an out-of-state residential treatment for a child).

National Council of Juvenile and Family Court Judges, *Enhanced Resource Guidelines* at 398-399.

See also RSA 169-A Interstate Compact on Juveniles; and *In re Alexis O.*, 157 N.H. 781, 959 A.2d 176 (2008) (reversed family division’s order that the ICPC applied to the family division’s decision allowing the mother to retrieve her daughter).

PREVENTING SEX TRAFFICKING AND STRENGTHENING FAMILIES ACT OF 2014 **Pub. L. 113-183**

The first section of this Act, which amends AFSA, includes processes for identifying and protecting children and youth at risk of sex trafficking, improving opportunities for children in foster care, supporting permanency, and creating a national advisory committee on sex trafficking.

The second section of the Act includes the APPLA option for permanency which the Act prohibits for children under the age of 16 (P.L. 113-183, Sec. 111(a) and Sec. 112(a)). At each permanency hearing when APPLA is the current option, the state is now required to demonstrate several things. First, it must document intensive, ongoing and unsuccessful efforts for a family placement including searches for biological family members. Second, the child must be asked about his or her desired permanency outcome. Third, a judicial determination must be made explaining why APPLA is the best permanency option and why it is not in the child’s best interests to be returned home or placed with a legal guardian, fit and willing relative, or adopted. Fourth, steps need to be specified for the agency to ensure that the reasonable and prudent parent standard is followed and the child has regular opportunities to engage in appropriate activities. P.L. 113-183, Sec. 112(b).

National Council of Juvenile and Family Court Judges, *Enhanced Resource Guidelines* at 405-407.

See also *Protocols Relative to RSA 169-C Post-Permanency Hearings for Older Youth with a Permanency Plan of Another Planned Permanent Living Arrangement (APPLA)*, developed by the Model Court Project in cooperation with the New Hampshire Court Improvement Project (2015).

SPECIAL IMMIGRANT JUVENILE STATUS (THE IMMIGRATION ACT OF 1990)
Pub. L. 101-649

Special Immigrant juvenile status was enacted to provide a remedy in immigration law for children in juvenile court proceedings who could not be returned to their parents due to a finding that the child is dependent on the court due to abuse, abandonment, and/or neglect.

Court involvement is necessary in SIJS cases. The I-360 petition requires that the court order from the juvenile court judge establishes the child's dependency on the juvenile court or his or her being committed or placed under the custody of an agency or department of a state or an individual or entity appointed by a state or juvenile court. It is essential for the order to also establish the requirements that:

- It would not be in the child's best interest to be returned to his or her home country or country of last habitual residence; and
- Reunification with one or both of the child's parents is not viable due to abuse, neglect, abandonment, or a similar basis found under state law.

National Council of Juvenile and Family Court Judges, *Enhanced Resource Guidelines* at 397-398.

See *In re Juvenile 2002-098*, 148 N.H. 743, 813 A.2d 1197 (2002) (held the district court had jurisdiction over an [RSA 169-C] neglect case involving a juvenile nonresident foreign national, and that the jurisdiction could be used in furtherance of obtaining special immigration juvenile status).

THE SERVICEMEMBER CIVIL RELIEF ACT (2003)
50 U.S.C., Sec. 3931

This Act applies to any civil action or proceeding, including any child custody proceeding in which the defendant does not make an appearance. Under the Act, the court, before entering judgment for the plaintiff, shall require the plaintiff to file with the court an affidavit stating whether or not the defendant is in military service and showing necessary facts to support the affidavit; or, if the plaintiff is unable to determine whether or not the defendant is in military service, stating that the plaintiff is unable to determine whether or not the defendant is in military service. If it appears that the defendant is in military service, the court may not enter a judgment until after the court appoints an attorney to represent the defendant. In such cases, the court shall grant a stay of the proceedings for a minimum of 90 days in certain circumstances.

**PROTOCOLS DEVELOPED BY THE MODEL COURT PROJECT AND
NEW HAMPSHIRE COURT IMPROVEMENT PROJECT (CIP)**

PROTOCOLS RELATIVE TO CHILDREN AND YOUTH IN COURT RSA 169-C CHILD PROTECTION CASES (SEPTEMBER 2012)

The *Protocols Relative to Children and Youth in Court RSA 169-C Child Protection Cases* were developed to provide children and youth with an opportunity to be invited and to attend and participate in RSA 169-C post-adjudicatory court hearings. Many children and youth, in removal and non-removal cases, who are able to talk with a judge feel better about themselves. In tune, judges obtain a greater understanding of these children and youth by virtue of being able to see them and, with the exception of very young children, talk to them.

The Children and Youth in Court Protocols were developed by the multi-disciplinary Model Court Project in cooperation with the New Hampshire Court Improvement Project (CIP). The initiative included participation by the courts and CIP, CASA of New Hampshire, the Division for Children, Youth and Families (DCYF), the New Hampshire Bar Association, foster and adoptive parents and New Hampshire youth. The Protocols set forth “best practices” that are intended to further children and youth having a positive and personally meaningful experience in court.

RSA 170-G:21, XII (2018)

A child who is placed in a foster home or other out-of-home placement pursuant to a juvenile court proceeding under RSA 169-B, RSA 169-C, or RSA 169-D shall have the right or privilege to attend and participate in court hearings to the extent permitted by the court and appropriate given the age and experience of the child.

PROTOCOLS RELATIVE TO RSA 169-C POST-PERMANENCY HEARINGS FOR OLDER YOUTH WITH A PERMANENCY PLAN OF ANOTHER PLANNED PERMANENT LIVING ARRANGEMENT (APPLA) (OCTOBER 2015)

The *Protocols Relative to RSA 169-C Post-Permanency Hearings for Older Youth with a Permanency Plan of APPLA* are intended to:

- assist courts in their handling of post-permanency hearings and;
- guide DCYF and CASA GALs/GALs in their work involving older youth (16 years of age or older) with a permanency plan of APPLA.

The goal is for each APPLA youth to leave our system with a connection to at least one court-approved Primary Caring Adult (PCA), an adult who makes a lifelong commitment to be the youth’s primary source of guidance and encouragement.

The Protocols were developed by the multi-disciplinary Model Court Project in cooperation with the New Hampshire Court Improvement Project. The Protocols are applicable in all New Hampshire RSA 169-C abuse/neglect cases when APPLA is being considered as the permanency plan for a youth sixteen (16) years of age or older, and in hearings following court identification of APPLA as a youth's permanency plan.

Pursuant to Administrative Order 2015-15 issued by Judge Edwin W. Kelly, the APPLA Protocols, and all forms promulgated for use with them, are mandatory for use in the Judicial Branch Family Division of New Hampshire.

CHAPTER 1A – BILL F. HEARING

LEAD CASES

In Re Juvenile, 2002-511-A+B, 149 N.H. 592, 827 A.2d 195 (2003)

Following a family division finding of neglect against the children's mother and placing the children with their father, the mother appealed de novo to the superior court which entered a finding of neglect against her. Subsequently, the superior court conducted a dispositional hearing resulting in the superior court closing the RSA 169-C neglect case, awarding legal custody of the children to their father, and directing that all further proceedings concerning visitation and custodial rights be considered within the jurisdiction of the parents' marital case.

Mother appealed to the New Hampshire Supreme Court, contending that RSA 169-C:19 and RSA 169-C:21 required the court to specify conditions for reunification with her children in its dispositional order notwithstanding the children being placed with their father, and that failure to do so deprived her of both her statutory rights and procedural due process. The Supreme Court agreed, and remanded the case to the superior court.

Note: At oral argument, the State (DCYF) took the position, for purposes of this case, that the requirement of RSA 169-C:21, II attaches when a child is removed from the home *regardless of where the child is subsequently placed* [emphasis added]. In view of this, the Supreme Court did not consider whether placement with a parent constitutes an exception to the application of RSA 169-C:21, II.

In re J.H.; In re A.H., _____ N.H. _____, _____ A.3d _____ (2018)

Following an RSA 169-C adjudicatory hearing, the trial court found mother neglectful but dismissed DCYF's neglect petition against father due to insufficient evidence. Subsequently, father requested custody of his children who were in an out-of-home placement. The trial court in its 3-month review hearing order indicated it did not believe that DCYF's failure to prove its neglect petition made father a fit parent, and scheduled a parental fitness hearing pursuant to RSA 169-C:19-e.

Father argued that RSA 169-C:19-e did not apply to him as a formerly accused but exonerated household parent. The trial court, nonetheless, proceeded with the fitness hearing, and found that father was not presently fit to care for his children. Father appealed to the N.H. Supreme Court, challenging the trial court's authority to conduct a fitness hearing in his case, citing both statutory and constitutional grounds for his appeal.

The Supreme Court rejected father's argument that RSA 169-C:19-e fitness hearings are limited to a non-accused, non-household parent who requests custody, noting that RSA 169-C:19-e pertains to "[a] parent who has not been charged with abuse or neglect", and that, upon dismissal of the neglect petition against him, father was in the same position as a parent who has not been charged with abuse or neglect. Additionally, RSA 169-C:19-e does not limit fitness hearings to non-household members.

But, the Court agreed with father that he was a presumptively fit parent following dismissal of the neglect petition, and that requiring him to demonstrate his compliance with conditions before the children can be returned to his custody violated his fundamental right to parent as this essentially required father to affirmatively prove his fitness which is inconsistent with a presumption of fitness.

Nonetheless, the Court held that the trial court was not required to immediately return the children to father's custody following dismissal of the neglect petition, concluding that holding an additional hearing to determine Father's parental fitness did not violate his constitutionally protected fundamental right to parent. The bases for the Court's position included parental rights are not absolute, but are subordinate to the State's parens patriae power, and must yield to the welfare of the child, citing Preston v. Mercieri, 148 N.H. 632, 639 (2002). Additionally, the neglect finding against mother and the fact that father and mother lived together constituted "unusual and serious" circumstances that justified the trial court's continued intervention in the relationship between father and his children, citing *In re Guardianship*, 163 N.H. 107, 112 (2011).

The Supreme Court noted that at the fitness hearing conducted by the trial court, DCYF bore the burden of rebutting father's presumed fitness and proving by a preponderance of the evidence that he was unfit to exercise custody of the children at that time. In so doing, the Supreme Court concluded the trial court struck the proper balance between father's fundamental right to raise and care for his children, and the State's (DCYF's) interest in protecting the children's welfare.

PROTOCOL 1 SCHEDULING A BILL F. HEARING

RSA 169-C:19-e, II (2008)

Pursuant to RSA 169-C:19-e, II, DCYF shall notify a parent who has not been charged with abuse or neglect of his or her right to request a hearing under this section at the earliest available opportunity.

PROTOCOL 3 CONDUCTING A BILL F. HEARING

In the Matter of R.A. and J.M., 153 N.H. 82, 891 A.2d 564 (2005)

This case includes numerous references to “fit” and “unfit” parents. Note: neither RSA 169-C nor related New Hampshire Supreme Court case law provides a definitive definition of a “fit” or “unfit” parent.

PROTOCOL 4 THE COURT’S ODER FOLLOWING A BILL F. HEARING

RSA 169-C:19-e, I (2008)

Pursuant to RSA 169-C:19-e, I, the court shall make written findings of fact supporting its decision.

CHAPTER 1 – GENERAL PROVISIONS

COURT FORM

- Order of Protection, RSA 169-C Child Protection Act (NHJB-2255-DF) (2011)

PROTOCOL 2 CONTINUANCES

RSA 169-C:26 (2007)

Continuances are granted by the court only for good cause shown. The court shall make written findings as to the circumstances that warranted the continuance.

Circuit Court/Family Division Rule 1.27

Except for the initial hearing in a case or for an emergency hearing, hearing dates are generally selected by agreement of the parties and the court. Therefore, motions to continue will usually be denied, except for good cause shown. The court may condition the granting of a motion to continue on a requirement that the moving party obtain a date and time agreeable to all other parties and the court.

PROTOCOL 4 HEARINGS NOT OPEN TO THE PUBLIC

RSA 169-C:14 (2006)

Other persons invited by a party may attend the proceedings but must have the court's prior approval.

Circuit Court/Family Division Rule 4.4

Foster parents, pre-adoptive parents, and/or relatives providing care for a child are entitled to notice of all review hearings, permanency hearings and post-permanency hearings and shall be allowed to be heard at these hearings, but shall not be given party status unless otherwise granted by the court.

PROTOCOL 5 PERMANENCY HEARING

RSA 169-C:3, XXI-b (2007)

"Permanency hearing" means a court hearing for a child in an out-of-home placement to review, modify, and/or implement the permanency plan or to adopt the concurrent plan.

PROTOCOL 6 PERMANENCY PLAN

RSA 169-C:3 XXI-c (2007)

“Permanency plan” means a plan for a child in an out-of-home placement that is adopted by the court and provides for timely reunification, termination of parental rights or parental surrender when an adoption is contemplated, guardianship with a fit and willing relative or another appropriate party, or another planned permanent living arrangement.

PROTOCOL 7 RETENTION OF JURISDICTION WITH YOUTH RIGHT TO REVOKE A CONSENT

RSA 169-C:4, II-a (2008)

A child who has consented to the continued jurisdiction of the court pursuant to paragraph II under 169-C:4, may revoke his or her consent and request that the case be closed. The revocation of consent and request to close a case shall be made in writing and filed with the court. Upon receipt of the request, the court shall forward copies to all parties of record at their last known address. If no party objects within 10 business days of the date the court forwarded copies of the request to the parties, the court shall accept the child's revocation of consent and shall close the case. If a party objects, the court may, after consideration of the objection, either grant the request and close the case without hearing or schedule the matter for hearing. If the matter is scheduled for hearing, the court shall accept the child's revocation of consent and close the case unless the court finds that immediate closure would create a risk of substantial harm to the child. If the court finds that immediate closure would create a risk of substantial harm to the child, the court shall continue the matter for a period not to exceed 30 days and direct that the department work with the child to develop an independent living plan which shall include referrals to appropriate services. If at the end of such period, the child still wishes to revoke his or her consent and to request that the case be closed, the court shall accept the revocation of consent and close the case.

PROTOCOL 8 CONFIDENTIALITY

RSA 169-C:25, I (a) (2008)

Pursuant to RSA 169-C:25, I (a), such records shall be withheld from public inspection but shall be open to inspection by the parties, child, parent, grandparent pursuant to subparagraph (b), guardian, custodian, attorney, or other authorized representative of the child.

PROTOCOL 9 GRANDPARENT ACCESS TO RECORDS

RSA 169-C:25, I(b) (2008)

A grandparent seeking access to court records shall file a request for access with the court clerk supported by an affidavit signed by the grandparent stating the reasons for requesting access and shall give notice of such request to all parties to the case and the minor's parents. Any party to the case or parent may object to the grandparent's request within 10 days of the filing of the request. If no objection is made, and for good cause shown, the grandparent's request may be granted by the court. If an objection is made, access may be granted only by court order.

NEW PROTOCOL *(To be added when 2003 Abuse and Neglect Protocols are updated.)* **PURPOSE OF RSA 169-C CHILD PROTECTION ACT**

RSA 169-C:2, I (2017)

It is the primary purpose of this chapter, through the mandatory reporting of suspected incidences of child abuse or neglect, to provide protection to children whose life, health or welfare is endangered.

RSA 169-C:2, II (2017)

It is a further purpose of this chapter to establish a judicial framework to protect the rights of all parties involved in the adjudication of child abuse or neglect cases. Each child coming within the provisions of this chapter shall receive, preferably in the child's own home, the care, emotional security, guidance, and control that will promote the child's best interest; and, if the child should be removed from the control of his or her parents, guardian, or custodian, adequate care shall be secured for the child. This chapter seeks to coordinate efforts by state and local authorities, in cooperation with private agencies and organizations, citizens' groups, and concerned individuals, to:

- (a) Protect the safety of the child.
- (b) Take such action as may be necessary to prevent the abuse or neglect of children.
- (c) Preserve the unity of the family.
- (d) Provide protection, treatment, and rehabilitation, as needed, to children placed in alternative care.
- (e) Provide assistance to parents to deal with and correct problems in order to avoid removal of children from the family.

RSA 169-C:3, III(a) (2017)

This chapter shall be liberally construed to the end that its purpose may be carried out to encourage the mental, emotional, and physical development of each child coming within the provisions of this chapter, by providing the child with the protection, care, treatment, counseling, supervision, and rehabilitative resources which the child needs and has a right to receive.

RSA 169-C:3, III(b) (2017)

This chapter shall be liberally construed to the end that its purpose may be carried out to achieve the foregoing purposes and policies, whenever possible, by keeping a child in contact with his or her home community and in a family environment by preserving the unity of the family and separating the child from his or her parents only when the safety of the child is in danger or when it is clearly necessary for the child's welfare or the interests of the public safety and when it can be clearly shown that a change in custody and control will plainly better the child.

NEW PROTOCOL *(To be added when 2003 Abuse and Neglect Protocols are updated.)*
CONCURRENT PLANNING DEFINED

RSA 169-C:3, VII-a (2007)

A concurrent plan means an alternate permanency plan in the event that a child cannot be safely reunified with his or her parents.

RSA 169-C:19, III (a) (2007)

When a child is in an out-of-home placement, the court shall include in its dispositional order the concurrent plan for the child.

NEW PROTOCOL *(To be added when 2003 Abuse and Neglect Protocols are updated.)*
OUT-OF-HOME PLACEMENT DEFINED

RSA 169-C:3, XX-a (2007)

“Out-of-home placement” means the placement of a child in substitute care with someone other than the child’s biological parent or parents, adoptive parent or parents, or legal guardian.

NEW PROTOCOL *(To be added when 2003 Abuse and Neglect Protocols are updated.)*
NEGLECT DEFINED

RSA 169-C:3, XIX(b) (2017)

“Neglected child” means a child who is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for the child's physical, mental, or emotional health, when it is established that the child's health has suffered or is likely to suffer serious impairment; and the deprivation is not due primarily to the lack of financial means of the parents, guardian, or custodian.

NEW PROTOCOL *(To be added when 2003 Abuse and Neglect Protocols are updated.)*
ABUSED CHILD DEFINED

RSA 169-C:3, II (2018)

“Abused child” means any child who has been:

- (a) Sexually abused; or
- (b) Intentionally physically injured; or
- (c) Psychologically injured so that said child exhibits symptoms of emotional problems generally recognized to result from consistent mistreatment or neglect; or
- (d) Physically injured by other than accidental means; or
- (e) Subjected, by any person, to human trafficking as defined in RSA 633:7; or
- (f) Subjected to an act prohibited by RSA 632-A:10-d.

NEW PROTOCOL *(To be added when 2003 Abuse and Neglect Protocols are updated.)*
NOTIFICATION OF HEARINGS - FOSTER PARENTS AND RELATIVE PROVIDERS

RSA 170-E creates a new subsection on foster parents that states that foster parents shall be: 1) notified of all court proceedings, and 2) allowed to submit written reports. It also provides that, in the court’s discretion, foster parents may “provide oral reports of the child’s behavior, progress and development, educational, and healthcare needs.” RSA 170-E:52, VI.

The 2003 *Abuse and Neglect Protocols* and/or Family Division Rule 4.4 already require notice of review, permanency and post-permanency hearings to foster parents and relative providers. Thus, court processing manuals instruct court staff to classify foster parents and relative providers as “participants” rather than “parties” so that they will receive hearing notices but not court orders. With the new law, notice of all court proceedings is required.

To ensure the court can provide proper notice to foster parents and relative providers, DCYF will file a **Court Notification of Child’s Placement Change** notice promptly after any out-of-home placement into foster or relative care. This form will be used to inform the court of the child’s foster care/relative placement, regardless of whether it is the child’s initial placement or a subsequent change in placement.

Consistent with this new legislation and the original 2003 Protocols, judges are encouraged to seek input from foster parents or relative providers at the court hearings, as to the child’s behavior, development, and educational/healthcare needs. As explained in the comment to Chapter 10 Protocol 2 of the 2003 Protocols, regarding review hearings:

Consistent with the Adoption and Safe Families Act of 1997 (ASFA), foster parents, pre-adoptive parents or relative caregivers must receive notice of the review hearing and should be strongly encouraged to attend the review hearing and present information on the status of the child. Foster parents, pre-adoptive parents or relative caregivers should be invited to offer information about the child, rather than to advance a particular position. Although vitally important, they are not "parties" to the case and, as such, do not have standing. They are not entitled to counsel, may not file pleadings, and may not offer or cross-examine witnesses. If a party does not believe it is appropriate for a foster parent, pre-adoptive parent or relative caregiver to attend the hearing, the party should raise it with the judge for the court to decide.

Both the law and 2003 Protocols recognize the importance of foster parents and relative providers sharing information with the court regarding the children placed in their care.

**CHAPTER 2 – PETITION, SUMMONS, COURT’S APPOINTMENT OF
COUNSEL FOR PARENTS, CASA GAL/GAL AND COUNSEL FOR CHILDREN**

COURT FORMS

- Notice to Accused Parent (NHJB-2192-DF) (2018)
- Notice to Non-Accused Household Member (NHJB-2231-DF) (2013)
- Notice to Non-Accused Non-Household Member (NHJB-2232-DF) (2011)
- Petition for Abuse/Neglect, RSA 169-C (NHJB-2113-DF) (2010)

LEAD CASE

In re Father 2006-360, 155 N.H. 93, 921 A.2d 409 (2007)

Non-accused, non-household member/father argued that the discretionary provision in RSA 169-C:10, II (a) violated his federal and State due process rights by limiting the trial court’s appointment of counsel to non-accused parents who are household members. Citing a non-household member does not share the same interests of preserving a marital relationship or family dynamic that a parent living in the household would have and other reasons, the Supreme Court held that due process does not require that counsel be appointed for a non-accused, non-custodial parent in RSA 169-C proceedings.

PROTOCOL 1 JURISDICTION

RSA 169-C:4 and RSA 490-D:2, IV (2005)

The family division shall have exclusive original jurisdiction over all proceedings alleging the abuse or neglect of a child.

PROTOCOL 2 PETITION

RSA 169-C:6-a, VI (2016)

If the court issues ex-parte orders, DCYF or law enforcement officer shall file a petition meeting the requirements of RSA 169-C:7 within 72 hours of the issuance of the orders, excluding Saturday, Sunday and holidays.

PROTOCOL 4 THE COURT’S APPOINTMENT OF COUNSEL FOR PARENTS

RSA 169-C:10, II (a) (2013)

The court shall appoint an attorney to represent an indigent parent alleged to have neglected or abused his or her child.

**PROTOCOL 5 THE COURT'S APPOINTMENT OF A GUARDIAN AD LITEM
(GAL) OR COURT APPOINTED SPECIAL ADVOCATE (CASA
GAL)**

RSA 169-C:10, I (2011)

The court shall appoint a Court Appointed Special Advocate (CASA) or other approved program guardian ad litem. If a CASA or other approved program guardian ad litem is unavailable for appointment, the court may then appoint an attorney or other guardian ad litem as the guardian ad litem for the child.

Family Division Rule 1.14, B. (2)

For appointment in family division cases of juvenile delinquency, children in need of services, and abuse and neglect, guardians ad litem must be Board certified in the district court.

Family Division Rule 1.14, C. (1)

A guardian ad litem who, without good cause, fails to file a report required by any Court or statute by the date the report is due may be subject to a fine of not less than \$100 and not more than the amount of costs and attorney fees incurred by the parties to the action for the day of the hearing. The guardian ad litem shall not be subject to the fine under this rule if, at least ten (10) days prior to the date the report is due, the GAL files a motion requesting an extension of time to file the report. See RSA 490:26-g.

CHAPTER 3 – PROTECTIVE CUSTODY BY THE POLICE AND THE 48-HOUR PROTECTIVE CUSTODY HEARING

All references to the “24-hour protective custody hearing” in the title to Chapter 3 and elsewhere in this Chapter are changed to the “48-hour protective custody hearing.” RSA 169-C:6, IV (2016)

COURT FORMS

- Juvenile Abuse/Neglect Telephonic Ex Parte Order (NHJB-2259-DF) (2016)
- Juvenile Abuse/Neglect Order 48-Hour Protective Custody Hearing Order (NHJB-2229-DF) (2016)

PROTOCOL 3 SCHEDULING THE 48-HOUR PROTECTIVE CUSTODY HEARING

RSA 169-C:6, IV (2016)

The court shall hold a hearing on the matter within 48 hours of taking the child into protective custody, Saturdays, Sundays, and holidays excluded. Notice shall be given by the police to both parents, the department, and all parties designated by the petitioner or the court.

PROTOCOL 5 SUBMISSION OF POLICE AFFIDAVIT AND/OR POLICE REPORT AT THE 48-HOUR PROTECTIVE CUSTODY HEARING

RSA 169-C:6-a, II (2016)

DCYF or law enforcement officer requesting an ex parte order shall, to the extent known, present in person or by telephone, either orally under oath or by sworn written affidavit, the following information [as set forth in RSA. 169-C:6-a, II (a) thru (f)].

PROTOCOL 6 THE COURT’S INQUIRY AT THE 48-HOUR PROTECTIVE CUSTODY HEARING

RSA 169-C:6-a, IV (2008)

If the court finds reasonable cause to believe that the child is in such circumstances or surroundings as would present an imminent danger to the child's health or life, the court shall issue such ex parte orders as are necessary to protect the child and shall set the matter for hearing no later than 5 days from the date of the ex parte orders, excluding Saturdays, Sundays, and holidays.

RSA 169-C:6-b, I (2008)

The court shall, in its first court ruling that sanctions, even temporarily, the removal of a child from the home, determine whether continuation in the home is contrary to the child's welfare.

**PROTOCOL 7 THE COURT'S WRITTEN ORDER FOLLOWING THE 48-HOUR
PROTECTIVE CUSTODY HEARING**

RSA 169-C:6, b, I (2008)

The court shall, in its first court ruling that sanctions, even temporarily, the removal of a child from the home, determine whether continuation in the home is contrary to the child's welfare. (2008).

RSA 169-C:6-b, II (2008)

The court shall within 60 days of a child's removal from the home, determine and issue written findings as to whether reasonable efforts were made or were not required to prevent the child's removal. In determining whether reasonable efforts were made to prevent the child's removal, the court shall consider whether services to the family have been accessible, available, and appropriate.

RSA 169-C:6-a, VI (2016)

If the court issues ex parte orders, DCYF or law enforcement officer shall file a petition meeting the requirements of RSA 169-C:7 within 72 hours. (Redesignated as paragraph VI in 2016).

CHAPTER 4 – EX PARTE REQUEST BY DCYF OR A POLICE OFFICER

COURT FORM

- Juvenile Abuse/Neglect Ex Parte Order (NHJB-2225-DF) (2016)

PROTOCOL 2 EVIDENCE REQUIRED TO BE PRESENTED WHEN EX PARTE ORDER REQUESTED

RSA 169-C:6-a, II (a) thru RSA 169-C:6-a, II (f) (2016)

The DCYF caseworker or police officer seeking an ex parte order shall, to the extent known, present the following evidence to the court in writing with sworn signature or orally under oath:

- a) A statement of the specific danger requiring either immediate placement of the child or removal of the alleged perpetrator.
- b) The time, place, and manner in which the child was removed from danger, if relevant.
- c) If the child was removed prior to the court order, a brief statement why it was not possible to obtain the order prior to removal.
- d) Why there is not sufficient time to notify the parent, guardian, or custodian prior to the order.
- e) The names and addresses of custodial parents, non-custodial parents, legal custodians, other legal guardians of the child, and any other person responsible for the welfare of the child at the time of removal.
- f) When removal of the child is requested, those alternatives to foster care which were considered, such as removal of the alleged perpetrator, or placement of the child with relatives or others with whom the child is familiar.

PROTOCOL 4 THE COURT'S EX PARTE ORDER

RSA 169-C:6-b(I) (2008)

The court shall, in its first court ruling that sanctions, even temporarily, the removal of a child from the home, determine whether continuation in the home is contrary to the child's welfare.

RSA 169-C:6-b, II (2008)

The court shall within 60 days of a child's removal from the home, determine and issue written findings as to whether reasonable efforts were made or were not required to prevent the child's removal. In determining whether reasonable efforts were made to prevent the child's removal, the court shall consider whether services to the family have been accessible, available, and appropriate.

RSA 169-C:6-a, V (2016)

If the court issues an ex parte order based upon oral testimony provided by the department, the department shall submit a written affidavit supporting the department's request for ex parte relief on the next business day.

RSA 169-C:6-a, VI (2016)

If the court issues ex parte orders, DCYF or law enforcement officer shall file a petition meeting the requirements of RSA 169-C:7 within 72 hours of the issuance of the orders, excluding Saturdays, Sundays, and holidays.

NEW PROTOCOL *(To be added when 2003 Abuse and Neglect Protocols are updated.)*
REQUEST AND ISSUANCE OF COURT ORDER TO ENTER THE PREMISES

RSA 169-C:34, VII (2015)

If the child's parents refuse to allow a social worker or state employee on their premises as part of the department's investigation, and the department has probable cause to believe that the child has been sexually molested, sexually exploited, intentionally physically injured so as to cause serious bodily injury, physically injured by other than accidental means so as to cause bodily injury, a victim of a crime, abandoned, or neglected, DCYF shall seek a court order to enter the premises.

If the court finds probable cause to believe that the child has been abused or neglected in the manner described in this paragraph, the court shall issue an order permitting a police officer, juvenile probation or parole officer, or child protection service worker to enter the premises in furtherance of the department's investigation and to assess the child's immediate safety and well-being. Any juvenile probation or parole officer or child protection service worker who serves or executes a motion to enter issued under this paragraph shall be accompanied by a police officer.

CHAPTER 5 – PRELIMINARY HEARING

COURT FORMS

- Acknowledgement of Possible Consequences to Parental Rights in Abuse and Neglect Cases (NHJB-2209-DF) (2013)
- Juvenile Abuse/Neglect Order, Preliminary Hearing Order (NHJB-2222-DF) (2016)
- Affidavit to Identify and/or Locate a Parent, Legal Guardian or Putative Father (NHJB-3031-DF) (2018)

PROTOCOL 4 THE COURT’S REQUIREMENT OF DCYF TO MAKE SPECIAL EFFORTS TO LOCATE A NON-ACCUSED, NON-HOUSEHOLD PARENT AND/OR PUTATIVE FATHER(S) AND TO SUBMIT AN AFFIDAVIT DESCRIBING ITS EFFORTS

To meet the court’s requirement that DCYF make efforts to locate a non-accused, non-household parent and/or putative father, DCYF should file with the court the “Affidavit to Identify and/or Locate a Parent, Legal Guardian or Putative Father” (NHJB-3031-DF) (2018).

PROTOCOL 7 THE COURT’S INQUIRY AT THE PRELIMINARY HEARING

RSA 169-C:12-e (eff. 2016 and repealed eff. July 1, 2020)

Evidence of a custodial parent’s opioid drug abuse or opioid drug dependence, as defined in RSA 318-B:1, I or RSA 318-B:1, IX, shall create a rebuttable presumption that the child’s health has suffered or is very likely to suffer serious impairment. The presumption may be rebutted by evidence of the parent’s compliance with treatment for such use or dependence.

RSA 169-C:6-b, I (2008)

If at the preliminary hearing the court sanctions for the first time removal of the child from her/his home, federal law and RSA 169-C:6-b, I, require that the court’s order must include a determination that continuation in the home would be contrary to the welfare of the child.

RSA 169-C:6-b, II (2008)

A reasonable efforts determination must be made within 60 days of a child’s removal from the home.

RSA 169-C:12-c (2007)

A parent who is the subject of an abuse or neglect petition not involving sexual abuse shall be entitled to request a medical examination of each child involved by a licensed physician of the parent’s choice at the parent’s expense within 72 hours of the first official notice of the complaint received by the parent.

RSA 169-C:12-e (eff. 2016 and repealed eff. July 1, 2020)

Evidence of a custodial parent's opioid drug abuse or opioid drug dependence, as defined in RSA 318-B:1, I or RSA 318-B:1, IX, shall create a rebuttable presumption that the child's health has suffered or is very likely to suffer serious impairment. The presumption may be rebutted by evidence of the parent's compliance with treatment for such use or dependence.

PROTOCOL 8 THE COURT'S WRITTEN ORDER FOLLOWING THE PRELIMINARY HEARING

RSA 169-C:6-b, I (2018)

The court shall, in its first court ruling that sanctions, even temporarily, the removal of a child from the home, determine whether continuation in the home is contrary to the child's welfare.

RSA 169-C:6-b, II (2018)

The court shall within 60 days of a child's removal from the home, determine and issue written findings as to whether reasonable efforts were made or were not required to prevent the child's removal. In determining whether reasonable efforts were made to prevent the child's removal, the court shall consider whether services to the family have been accessible, available, and appropriate.

RSA 169-C:16, I-a (2005)

Notwithstanding RSA 169-C:25, a copy of each protective order issued pursuant to RSA 169-C:16, I(d)(1) shall be transmitted to the administrative office of the courts electronically or by facsimile. The administrative office of the courts shall enter information regarding the protective order into the state database, which shall be made available to the police and sheriff's departments statewide. It shall also update the database upon expiration or termination of the order.

The clerk shall immediately fax a copy of the judge's order (and the officer's affidavit and/or copy of the police report) to the DCYF district office.

RSA 169-C:12-d (2016)

The court may order alcohol or drug testing at any stage of the proceedings where substance abuse is an ongoing issue in the case, where alcohol or drug use is a disputed issue of fact, or where there is reason to believe that alcohol or drug use may be substantially interfering with a parent's ability to adhere to the case plan. Unless otherwise ordered by the court, the frequency and type of such testing shall be at the discretion of DCYF.

RSA 169-C:15, III (d) (2011)

In all cases the adjudicatory hearing shall be held and completed and written findings issued within sixty (60) days from the date that the petition was filed with the court. If the child is in an out-of-home placement, the adjudicatory hearing shall be held and completed within thirty (30) days from the date the petition was filed with the court, unless the court makes a written finding of extraordinary circumstances requiring the time limit to be extended.

Federal Law

Pursuant to 42 U.S.C. 671(a)(15) and 42 U.S.C. 672 (i)(2) under Part E. Federal Payments for Foster Care and Adoption Assistance, the court is required to make a determination that a child who remains in his/her home and receives preventative services is at "imminent risk of removal" absent such services. This determination is required every six (6) months.

CHAPTER 6 – CONSENT DECREE

COURT FORMS

- The Effect of a Consent Order on Your Constitutionally and Statutorily Protected Rights, Including Your Parental Rights (NHJB-2270-DF) (2011)
- The Effect of a Consent Without a Finding (NHJB-2258-DF) (2011)
- Juvenile Abuse/Neglect Consent Order, Consent in Lieu of Adjudicatory Finding (NHJB-2611-DF) (2016)

PROTOCOL 5 SCHEDULING THE PERMANENCY HEARING

RSA 169-C:17, III (2007)

Where a consent order includes a finding and provides for the out-of-home placement for a child, the order shall set a date for a permanency hearing that is within 12 months of the date of the court's approval of the consent order.

CHAPTER 7 – ADJUDICATORY HEARING

COURT FORMS

- Juvenile Abuse/Neglect Order, Adjudicatory Hearing (NHJB-2223-DF) (2016)
- Order on Extraordinary Circumstances (NHJB-2439-DF) (2011)
- Affidavit to Identify and/or Locate a Parent, Legal Guardian or Putative Father (NHJB-3031-DF) (2018)

LEAD CASES

In re Adam M., 148 N.H. 83, 802 A.2d 1218 (2002)

The N.H. Supreme Court reversed a RSA 169-C de novo adjudicatory order issued by the Superior Court concerning DCYF's RSA 169-C:XIX. (c) neglect petition. "Although the superior court cited this definition, its analysis focused almost exclusively on the caring, loving relationship between the [incarcerated] father and son. The court did not consider any other responsibilities a parent owes a child or assess [the father's] ability to fulfill these duties. This was error." Note: This case is noteworthy in that DCYF's neglect petition was based on RSA 169-C:XIX. (c) rather than RSA 169-C:3, XIX (b) which is the more common basis for DCYF neglect petitions.

In re Juvenile 2002-209, 149 N.H. 559, 825 A.2d 476 (2003):

The RSA 169-C trial court dismissed DCYF's petition alleging physical abuse of 3-year old child by her father. Mother (but not DCYF) appealed this order de novo to the superior court which also dismissed the petition. The Supreme Court affirmed the superior court's order, concluding "we find no error in the trial court's conclusion that the petitioner failed to carry her burden of proof that the child was harmed or is likely to suffer harm in the future, as contemplated by RSA 169-C:3, II (d)." Note: The Supreme Court opinion includes a reference to Petition of Jane Doe, 132 N.H. 270, 277 (1989) in which the Court defined the type of evidence that is needed to establish "physical injury".

In re P. Children, 149 N.H. 129, 816 A.2d 982 (2003)

Although there was no specific finding that the children had been harmed by the sale of drugs from the mother's home, the finding of neglect was proper under RSA 169-C:3, XIX(b), because findings of fact regarding the pervasiveness of drugs within the mother's household, the continuing and ongoing nature of the drug activity, and the children's unfettered access to illegal drugs compelled the determination that the health of the children was likely to be seriously impaired. New Hampshire Juvenile Law (2016-2017) at 202.

In re Juvenile 2003-195, 150 N.H. 644, 843 A.2d 318 (2004)

The Supreme Court, in affirming the Probate Court's termination of father's parental rights, held that the Confrontation Clause of Part I, Article 15 of the New Hampshire Constitution does not apply to proceedings to terminate parental rights. Although this appeal was in RSA 170-C and not RSA 169-C, the holding in this case would extend to RSA 169-C cases where less is at stake for an accused parent than in a RSA 170-C termination of parental rights proceeding.

In re Juvenile 2007-084, 156 N.H. 186, 931 A.2d 1239 (2007)

An adjudicatory hearing was held for the respondent on September 23, 2004, at which the respondent stipulated to a finding of neglect. On August 18, 2005 the district court held a permanency hearing, and on August 29 and September 2, 2005 the court issued an order directing DCYF to file TPR petitions. On appeal from an order of the probate court terminating his parental rights, respondent contended that he was not given the statutorily (RSA 170-C:5, III) required twelve months to correct the conditions leading to the finding of neglect. The Supreme Court vacated and remanded the probate court's termination of parental rights order based on RSA 170-C:5, III, requiring that the conditions be corrected within twelve months which the Supreme Court concluded cannot be determined until twelve months have elapsed.

In re G.G., 166 N.H. 193, 92 A.3d 648 (2014)

The Supreme Court rejected the assertion that the trial court, in this *de novo* case, has no discretion to decide whether to allow the respondent [father] to call G.G. [11-year old child] as a witness even though her testimony would have been relevant and material. The court vacated the superior court's order denying the respondent's request to cross-examine or subpoena G.G., and remanded the matter for further proceedings consistent with the Supreme Court's non-exhausting list of factors for courts to consider when deciding whether to compel the testimony of an alleged abused/neglected child in an RSA 169-C adjudication of an abuse/neglect petition. The Supreme Court's non-exhaustive list of factors which "we encourage trial courts to consider" includes:

- (1) the child's age;
- (2) the specific potential harm to the child from testifying;
- (3) the indicia of reliability surrounding any admitted out-of-court statements describing the child's allegations;
- (4) evidence that may lend credibility to the allegations of abuse or neglect, such as consistency of the child's and responding parent's accounts, or evidence of prior injury;
- (5) the incremental probative value of the child's potential in-court testimony; and
- (6) whether there are alternatives to in-court testimony that would enable meaningful examination of the child without jeopardizing the child's well-being, see *Maryland v. Craig*, 497 U.S. 836, 855, 110 S.Ct. 3157, 111 L.Ed. 2d 666 (1990) (noting that special procedures for child testimony in criminal abuse proceedings may be appropriate).

PROTOCOL 1 SCHEDULING THE ADJUDICATORY HEARING

RSA 169-C:15, III (d) (2007)

In all cases, the adjudicatory hearing shall be held and completed and written findings issued within 60 days from the date that the petition was filed with the court. If a child is in an out-of-home placement, the adjudicatory hearing shall be held and completed within 30 days from the date the petition was filed with the court, unless the court makes a written finding of extraordinary circumstances requiring the time limit to be extended.

PROTOCOL 3 CONTINUANCES

Circuit Court/Family Division Rule 1.27

The rule provides that, except for the initial hearing in a case or for an emergency hearing, hearing dates are generally selected by agreement of the parties and the court. Therefore, motions to continue will usually be denied, except for good cause shown. The Court may condition the granting of a motion to continue on a requirement that the moving party obtain a date and time agreeable to all other parties and the court.

PROTOCOL 5 THE COURT’S REQUIREMENT OF DCYF TO MAKE SPECIAL EFFORTS TO LOCATE A NON-ACCUSED, NON-HOUSEHOLD PARENT AND/OR PUTATIVE FATHER(S) AND TO SUBMIT AN AFFIDAVIT DESCRIBING ITS EFFORTS

The Affidavit that DCYF should file is the court’s “Affidavit to Identify and/or Locate a Parent, Legal Guardian or Putative Father” (NHJB-3031-DF) (2018).

PROTOCOL 6 CONDUCTING THE ADJUDICATORY HEARING

RSA 169-C:3, XXVII-a (2017)

Pursuant to RSA 169-C:3, XXVII-a defining “serious impairment” in RSA 169-C:3, XIX (b) “Serious impairment” means a substantial weakening or diminishment of a child’s emotional, physical, or mental health or of a child’s safety and general well-being. The following circumstances shall be considered in determining the likelihood that a child may suffer serious impairment:

- (a) The age and developmental level of the child.
- (b) Any recognized mental, emotional, or physical disabilities.
- (c) School attendance and performance.
- (d) The child’s illegal use of controlled substances, or the child’s contact with other person involved in the illegal use or sale of controlled substances or the abuse of alcohol.

- (e) Exposure to incidents of domestic or sexual violence.
- (f) Any documented failure to thrive.
- (g) Any history of frequent illness or injury.
- (h) Findings in other proceedings.
- (i) The condition of the child's place of residence.
- (j) Assessments or evaluations of the child conducted by qualified professionals.
- (k) Such other factors that may be determined to be appropriate or relevant.

RSA 169-C:12-e (eff. 2016; repealed eff. July 1, 2020)

Evidence of a custodial parent's opioid drug abuse or opioid drug dependence, as defined in RSA 318-B:1, I or RSA 318-B:1, IX, shall create a rebuttable presumption that the child's health has suffered or is very likely to suffer serious impairment. The presumption may be rebutted by evidence of the parent's compliance with treatment for such use or dependence.

RSA 169-C:12 (2017)

In any hearing under RSA 169-C, the court shall not be bound by the technical rules of evidence and may admit evidence which it considers relevant and material. Evidence of prior founded or unfounded reports of abuse or neglect shall be admissible in proceedings under this chapter in order to establish a relevant pattern or course of conduct.

PROTOCOL 7 THE COURT'S WRITTEN ORDER FOLLOWING THE ADJUDICATORY HEARING

RSA 169-C:6-b, I (2008)

The court shall, in its first court ruling that sanctions, even temporarily, the removal of a child from the home, determine whether continuation in the home is contrary to the child's welfare.

RSA 169-C:6-b, II (2008)

The court shall within 60 days of a child's removal from the home, determine and issue written findings as to whether reasonable efforts were made or were not required to prevent the child's removal. In determining whether reasonable efforts were made to prevent the child's removal, the court shall consider whether services to the family have been accessible, available, and appropriate.

RSA 169-C:6-b, III (2008)

If the court orders that a child be removed from his or her home at the preliminary hearing under RSA 169-C:15, the adjudicatory hearing under RSA 169-C:18, the dispositional hearing under RSA 169-C:19, or the final hearing under RSA 169-C:21, the court order for removal shall include specific written findings regarding the need for the out-of-home placement. The order shall briefly state the facts the court found to exist that justify ordering the placement.

RSA 169-C:6-b, IV (2008)

If the order does not comply with the requirements of [RSA 169-C:6-b, III], the judge shall make a written finding to justify the out-of-home placement. Providing a copy of the order, redacted to protect the identity of the parties and children, to the members of the house committee having jurisdiction over child and family issues shall not be considered a violation of RSA 169-C:25.

RSA 169-C:18,V-a (2007)

Where an adjudicatory order includes a finding and provides for the out-of-home placement for a child, the order shall set a date for a permanency hearing that is within 12 months of the date of the court's approval of the consent order.

PROTOCOL 8 SOCIAL STUDY

RSA 169-C:18, V (2008)

If the court makes a finding that a child has been abused or neglected, the court shall order a child placing agency to make an investigation and a social study consisting of, but not limited to, the home conditions, family background, and financial assessment, school record, mental, physical and social history of the family, including sibling relationships and residences for appropriateness of preserving relationships between siblings who are separated as a result of court ordered placement, and submit it in writing to the court prior to the final disposition of the case. The court shall determine whether the minor's school district shall be joined pursuant to RSA 169-C:20, and if joined, the court shall review the school district's recommendations. No disposition order shall be made by a court without first reviewing the social study and without first reviewing the school district recommendations required under RSA 169-C:20. Preliminary orders, continued pursuant to RSA 169-C:16, may be entered or modified as appropriate until the dispositional hearing.

CHAPTER 8 – DISPOSITIONAL HEARING

COURT FORMS

- Juvenile Abuse/Neglect Order, Dispositional Hearing (NHJB-2224-DF) (2018)
- Affidavit to Identify and/or Locate a Parent, Legal Guardian or Putative Father (NHJB-3031-DF) (2018)

LEAD CASES

In re J.H.; In re A.H., _____ N.H. _____, _____ A.3d _____ (2018)

Following an RSA 169-C adjudicatory hearing, the trial court found mother neglectful but dismissed DCYF's neglect petition against father due to insufficient evidence. Subsequently, the trial court issued dispositional orders requiring both parents to meet several conditions before the children can be returned to the parents' custody.

Father appealed to the New Hampshire Supreme Court, arguing that the trial court erred in ordering him to participate in case plan conditions unrelated to the fact (mother's drug abuse) that led to the court's finding that the children were neglected. Father's argument suggested that the language "in the manner adjudicated on the initial petition" and "circumstances surrounding the underlying petition" limited the conditions the trial court could impose to those addressing Mother's drug use. The Supreme Court rejected father's argument, citing:

(1) RSA 169-C:21, II, which does not limit the type of conditions that may be imposed on a parent(s);

(2) RSA 169-C:18, V-c which provides that an abused or neglected child may not be returned to the home unless the court finds that the "parents are actively engaged in remedial efforts to address the circumstances surrounding the underlying petition";

(3) RSA 169-C:23, II, which provides that a child in an out-of-home placement may not be returned to the custody of his or her parents unless the "child will not be endangered in the manner adjudicated on the initial petition, if returned home"; and

(4) RSA 169-C:3, XIX (b) defining neglect which, pursuant to the Court's ruling in *In re Juvenile 2006-674*, 156 N.H. 1, 5 (2007), is not the actions taken or not taken by the parent or parents, but rather "it is the likelihood of or actual serious impairment of the child's physical, emotional, and mental well-being" that are the conditions of neglect that must be repaired and corrected in the RSA 169-C process.

PROTOCOL 2 NOTICE

Protocols Relative to Children and Youth in Court RSA 169-C Child Protection Cases (September 2012)

Pursuant to Protocols 2A and 2B in the 2012 *Protocols Relative to Children and Youth in Court RSA 169-C Child Protection Cases*, the dispositional hearing is a hearing that youth (14-20 years of age) and children (5-13 years of age) may attend.

Children and youth attending dispositional hearings should be in accordance with the *Protocols Relative to Children and Youth in Court RSA 169-C Child Protection Cases*, Protocol 4 (Coordinating The Judge's Letter Inviting Children/Youth to Attend RSA 169-C Court Hearings), Protocol 5 (The Court's Expectations of the CASA GAL or GAL and its Role), Protocol 6 (The Court's Expectations of DCYF and its Role), and Protocol 7 (The Court's Role).

RSA 169-C:19, VI (2007)

Prior to any placement which will require educational services outside the child's home school district, the court shall notify the school district and give the district the opportunity to send a representative to the hearing at which such placement is contemplated. At such hearing the court shall consider the recommendations of the school district and if such an out-of-district placement is ordered the court shall make written findings that describe the reasons for the placement.

PROTOCOL 3 SUBMISSION OF COURT REPORTS

RSA 169-C:12-b (2006)

All reports, evaluations, and other records of DCYF, counselors and the GAL or CASA GAL shall be filed with the court and all other parties at least five (5) business days prior to any hearing.

PROTOCOL 4 THE COURT'S REQUIREMENT OF DCYF TO MAKE SPECIAL EFFORTS TO LOCATE A NON-ACCUSED, NON-HOUSEHOLD PARENT AND/OR PUTATIVE FATHER(S) AND TO SUBMIT AN AFFIDAVIT DESCRIBING ITS EFFORTS

The Affidavit that DCYF should file is the court's "Affidavit to Identify and/or Locate a Parent, Legal Guardian or Putative Father" (NHJB-3031-DF) (2018).

PROTOCOL 5 SOCIAL STUDY

RSA 169-C:18, V (2008)

If the court makes a finding that a child has been abused or neglected, the court shall order a child placing agency to make an investigation and a social study consisting of, but not limited to, the home conditions, family background, and financial assessment, school record, mental, physical and social history of the family, including sibling relationships and residences for appropriateness of preserving relationships between siblings who are separated as a result of court ordered placement, and submit it in writing to the court prior to the final disposition of the case. The court shall determine whether the minor's school district shall be joined pursuant to RSA 169-C:20, and if joined, the court shall review the school district's recommendations. No disposition order shall be made by a court without first reviewing the social study and without first reviewing the school district recommendations required under RSA 169-C:20. Preliminary orders, continued pursuant to RSA 169-C:16, may be entered or modified as appropriate until the dispositional hearing.

PROTOCOL 6 CONTENT OF THE DCYF REPORT

RSA 169-C:19, III (a) (2007)

Legal custody may be transferred to a child placing agency or relative provided, however, that no child shall be placed with a relative until a written social study of the relative's home, conducted by a child placing agency, is submitted to the court. Where a child is in an out-of-home placement, the court shall include in its order the concurrent plan for the child.

PROTOCOL 9 DISPOSITION OF AN EDUCATIONALLY DISABLED CHILD

RSA 169-C:19, VI (2007)

Prior to any placement which will require educational services outside the child's home school district, the court shall notify the school district and give the district the opportunity to send a representative to the hearing at which such placement is contemplated. At such hearing, the court shall consider the recommendations of the school district and if such an out-of-district placement is ordered the court shall make written findings that describe the reasons for the placement.

RSA 169-C:18, V (2008)

If the court makes a finding that a child has been abused or neglected, the court shall order a child placing agency to make an investigation and a social study consisting of, but not limited to, the home conditions, family background, and financial assessment, school record, mental, physical and social history of the family, including sibling relationships and residences for appropriateness of preserving relationships between siblings who are separated as a result of court ordered placement, and submit it in writing to the court prior to the final disposition of the case. The court shall determine whether the minor's school

district shall be joined pursuant to RSA 169-C:20, and if joined, the court shall review the school district's recommendations. No disposition order shall be made by a court without first reviewing the social study and without first reviewing the school district recommendations required under RSA 169-C:20. Preliminary orders, continued pursuant to RSA 169-C:16, may be entered or modified as appropriate until the dispositional hearing.

RSA 169-C:20, I (2008)

At any point during the proceedings, the court may, either on its own motion or that of any other person, and if the court contemplates a residential placement, the court shall immediately join the legally liable school district for the limited purposes of directing the school district to determine whether the child is educationally disabled, pursuant to RSA 186-C, or of directing the school district to review the services offered or provided under RSA 186-C if the child has already been determined to be educationally disabled.

PROTOCOL 10 THE COURT'S WRITTEN ORDER FOLLOWING THE DISPOSITION HEARING

RSA 169-C:6-b, I (2008)

The court shall, in its first court ruling that sanctions, even temporarily, the removal of a child from the home, determine whether continuation in the home is contrary to the child's welfare.

RSA 169-C:6-b, II (2008)

The court shall within 60 days of a child's removal from the home, determine and issue written findings as to whether reasonable efforts were made or were not required to prevent the child's removal. In determining whether reasonable efforts were made to prevent the child's removal, the court shall consider whether services to the family have been accessible, available, and appropriate.

RSA 169-C:12-d (2016)

The court may order alcohol or drug testing at any stage of the proceedings where substance abuse is an ongoing issue in the case, where alcohol or drug use is a disputed issue of fact, or where there is reason to believe that alcohol or drug use may be substantially interfering with a parent's ability to adhere to the case plan. Unless otherwise ordered by the court, the frequency and type of such testing shall be at the discretion of DCYF.

RSA 169-C:18, V-c (2015)

If a preliminary order provided for an out-of-home placement of the child, the child shall not be returned to the home unless the court finds that there is no threat of imminent harm to the child and the parent or parents are actively engaged in remedial efforts to address the circumstances surrounding the underlying petition.

RSA 169-C:19, II-a (2005)

Notwithstanding RSA 169-C:25, a copy of each protective order issued pursuant to RSA 169-C:19, II(a)(1) shall be transmitted to the administrative office of the courts electronically or by facsimile. The administrative office of the courts shall enter information regarding the protective order into the state database, which shall be made available to the police and sheriff's departments statewide. It shall also update the database upon expiration or termination of the order.

RSA 169-C:19, III (a) (2007)

An order of protection may be issued setting forth conditions of behavior by a parent, relative, sibling, guardian, custodian or a household member. Such order may require any such person to:

- (1) Stay away from the premises, another party, or the child.
- (2) Permit a parent or other named person to visit supervised or otherwise, or have contact with the child at stated periods and under such conditions as the court may order.
- (3) Abstain from harmful conduct with respect to the child or any person to whom custody of the child is awarded.
- (4) Correct specified deficiencies in the home that make the home a harmful environment for the child.
- (5) Refrain from specified acts of commission or omission that make the home or contact with the child a harmful environment for the child.

RSA 169-C:24, I (2008)

The court shall conduct an initial review hearing within 3 months of the dispositional hearing to review the status of all dispositional orders issued under this chapter. The court may conduct additional review hearings upon its own motion or upon the request of any party at any time.

Federal Law

Pursuant to 42 U.S.C. 671(a)(15) and 42 U.S.C. 672 (i)(2)) under Part E. Federal Payments for Foster Care and Adoption Assistance, the court is required to make a determination that a child who remains in his/her home and receives preventative services is at "imminent risk of removal" absent such services. This determination is required every six (6) months.

CHAPTER 9 – APPEAL OF FINAL DISPOSITIONAL ORDER

LEAD CASES

In Re Juvenile, 2002-511-A+B, 149 N.H. 592, 827 A.2d 195 (2003)

Following a family division finding of neglect against the children's mother and placing the children with their father, the mother appealed de novo to the superior court which entered a finding of neglect against her. Subsequently, the superior court conducted a dispositional hearing resulting in the superior court closing the RSA 169-C neglect case, awarding legal custody of the children to their father, and directing that all further proceedings concerning visitation and custodial rights be considered within the jurisdiction of the parents' marital case.

Mother appealed to the N.H. Supreme Court, contending that RSA 169-C:19 and RSA 169-C:21 required the court to specify conditions for reunification with her children in its dispositional order notwithstanding the children being placed with their father, and that failure to do so deprived her of both her statutory rights and procedural due process. The Supreme Court agreed, and remanded the case to the superior court.

Note: At oral argument, the State (DCYF) took the position, for purposes of this case, that the requirement of RSA 169-C:21, II attaches when a child is removed from the home *regardless of where the child is subsequently placed* [emphasis added]. In view of this, the Supreme Court did not consider whether placement with a parent constitutes an exception to the application of RSA 169-C:21, II.

In re J.H.; In re A.H., _____ N.H. _____, _____ A.3d _____ (2018)

Following an RSA 169-C adjudicatory hearing, the trial court found mother neglectful but dismissed DCYF's neglect petition against father due to insufficient evidence. Subsequently, the trial court issued dispositional orders imposing conditions on both parents which the parents were required to meet prior to the children being returned to their custody. When the father again requested custody of the children at the 3-month review hearing, the trial court scheduled a RSA 169-C:19-e fitness hearing.

Father, asserting his status as a presumptively fit parent following dismissal of the neglect petition against him, filed an appeal with the N.H. Supreme Court, challenging the trial court's dispositional orders insofar as they pertained to him, and the court's authority to conduct a fitness hearing in his case.

The Court preliminarily addressed whether father's appeal of the RSA 169-C dispositional order was properly before the Court, noting that RSA 169-C:28 provides that an appeal under RSA 169-C may be taken to the superior court by

any party having an interest within 30 days of the final dispositional order. The Court noted it had yet to determine whether a party may limit the scope of an appeal to the superior court when seeking a RSA 169-C:28 de novo review of a dispositional order only. Because this issue was insufficiently briefed in father's appeal, the Court declined to resolve it, and, instead, treated his appeal as a writ of certiorari and addressed the merits of father's challenges to the trial court's orders.

CHAPTER 10 – REVIEW HEARING

COURT FORMS

- Juvenile Abuse/Neglect Order, Review Hearing (NHJB-2244-DF) (2018)
- Affidavit to Identify and/or Locate a Parent, Legal Guardian or Putative Father (NHJB-3031-DF) (2018)

PROTOCOL 1 SCHEDULING THE REVIEW HEARING

RSA 169-C:24, I (2008)

The court shall conduct an initial review hearing within 3 months of the dispositional hearing to review the status of all dispositional orders issued under RSA 169-C. The court may conduct additional review hearings upon its own motion or upon the request of any party at any time.

PROTOCOL 2 NECESSARY PARTIES AT THE REVIEW HEARING

Circuit Court/Family Division Rule 4.4

Foster parents, pre-adoptive parents, and/or relatives providing care for a child are entitled to notice of all review hearings, permanency hearings and post-permanency hearings and shall be allowed to be heard at these hearings, but shall not be given party status unless otherwise granted by the court.

RSA 169-C:20, I (2008)

At any point during the proceedings, the court may, either on its own motion or that of any other person, and if the court contemplates a residential placement, the court shall immediately, join the legally liable school district for the limited purposes of directing the school district to determine whether the child is a child with a disability or of directing the school district to review the services offered or provided under RSA 186-C if the child had already been determined to be a child with a disability. If the court orders the school district to determine whether the minor is a child with a disability, the school district shall make this determination by treating the order as the equivalent of a referral by the child's parent for special education, and shall conduct any team meetings or evaluations that are required under law when a school district receives a referral by a child's parent.

RSA 169-C:20, II (2008)

Once joined as a party, the legally liable school district shall have full access to all records maintained by the district court under this chapter. The school district shall also report to the court its determination of whether the minor is a child with a disability, and the basis for such determination. If the child is determined to be a child with a disability, the school district shall make a recommendation to the court as to where the child's educational needs can be met in accordance with

state and federal education laws. In cases where the court does not follow the school district's recommendation, the court shall issue written findings explaining why the recommendation was not followed.

PROTOCOL 4 SUBMISSION OF COURT REPORTS

RSA 169-C:12-b (2006)

All reports, evaluations, and other records of DCYF, counselors and the GAL or CASA GAL shall be filed with the court and all other parties at least five (5) business days prior to the review hearing.

PROTOCOL 5 THE COURT'S REQUIREMENT OF DCYF TO MAKE SPECIAL EFFORTS TO LOCATE A NON-ACCUSED, NON-HOUSEHOLD PARENT AND/OR PUTATIVE FATHER(S) AND TO SUBMIT AN AFFIDAVIT DESCRIBING ITS EFFORTS

The Affidavit that DCYF should file is the court's "Affidavit to Identify and/or Locate a Parent, Legal Guardian or Putative Father" (NHJB-3031-DF) (2018).

PROTOCOL 6 LETTER OR REPORT FROM FOSTER PARENTS, PRE-ADOPTIVE PARENTS OR RELATIVE CAREGIVERS

New Hampshire Family Division Circuit Court Rule 4.4

When a child is placed out of home, foster parents, pre-adoptive parents and/or relatives providing care for a child are entitled to notice of all review hearings, permanency hearings and post-permanency hearings and shall be allowed to be heard at these hearings, but shall not be given party status unless otherwise granted by the Court.

PROTOCOL 7 THE COURT'S INQUIRY AT THE REVIEW HEARING

RSA 169-C:18, V-a (2007)

Where an adjudicatory order includes a finding and provides for the out-of-home placement of a child, the order shall set a date for a permanency hearing that is within 12 months of the date of the adjudicatory finding.

RSA 169-C:24-b, I (2008)

The court shall, pursuant to RSA 169-C:24-b, I, hold and complete a permanency hearing within 12 months of the finding of abuse/neglect.

PROTOCOL 8 THE COURT'S WRITTEN ORDER FOLLOWING THE REVIEW HEARING

RSA 169-C:24, II (2008)

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

RSA 169-C:18, V-c (2015)

If a preliminary order provided for an out-of-home placement of the child, the child shall not be returned to the home unless the court finds that there is no threat of imminent harm to the child and the parent or parents are actively engaged in remedial efforts to address the circumstances surrounding the underlying petition. The court order shall include the facts supporting the placement.

Federal Law

Pursuant to 42 U.S.C. 671(a)(15) and 42 U.S.C. 672 (i)(2) under Part E. Federal Payments for Foster Care and Adoption Assistance, the court is required to make a determination that a child who remains in his/her home and receives preventative services is at "imminent risk of removal" absent such services. This determination is required every six (6) months.

CHAPTER 11 – PERMANENCY HEARING

COURT FORMS

- Permanency Hearing Order (NHJB-2230-DF) (2018)
- Post-Permanency Hearing Order (NHJB-2253-DF) (2018)
- Motion to Close Juvenile Abuse/Neglect Case (NHJB-2708-DF) (2018)
- Affidavit to Identify and/or Locate a Parent, Legal Guardian or Putative Father (NHJB-3031-DF) (2018)

LEAD CASES

In re Juvenile 2007-084, 156 N.H. 186, 931 A.2d 1239 (2007)

An adjudicatory hearing was held for the respondent on September 23, 2004, at which the respondent stipulated to a finding of neglect. On August 18, 2005 the district court held a permanency hearing, and on August 29 and September 2, 2005 the court issued an order directing DCYF to file TPR petitions. On appeal from an order of the probate court terminating his parental rights, respondent contended that he was not given the statutorily (RSA 170-C:5, III) required twelve months to correct the conditions leading to the finding of neglect. The Supreme Court vacated and remanded the probate court's termination of parental rights order based on RSA 170-C:5, III, requiring that the conditions be corrected within twelve months which the Supreme Court concluded cannot be determined until twelve months have elapsed.

In re Juvenile 2006-674, 156 N.H. 1, 931 A.2d 585 (2007)

The Supreme Court affirmed the probate court's finding in termination of parental rights case that the non-petitioned parent's limitations left the juvenile "in the same conditions of neglect that he was experiencing at the outset of this case in the district court", namely, without a parent "able to provide him with the care, comfort and control necessary to meet all of his physical, emotional and mental health needs, without causing a grave risk of impairment to his well being".

In re Juvenile 2006-833, 156 N.H.482, 937 A.2d 297 (2007)

The mother filed a petition for writ of certiorari challenging a Family Division permanency hearing order directing DCYF to file a petition to terminate her parental rights based on her failure to correct the conditions of neglect. The mother's mental health was a primary concern throughout the RSA 169-C proceedings, including mother's request for an order that DCYF cover the co-pays on her mental health medications. DCYF responded it was not able to assist clients with payment of prescriptions, and the Family Division court ordered DCYF to assist mother in the effort to obtain financial aid for her medications. DCYF sent mother a prescription card which could be used to obtain a discount on medications and a list of pharmacies which accept the card.

Subsequently, the family division issued a permanency order finding, among other things, DCYF had made reasonable efforts to assist mother reunify with her child. The Supreme Court denied mother's petition for writ of certiorari, noting "...we have recognized that the State's ability to provide adequate services is constrained by its staff and financial limitations [citation omitted]."

In re Haley K., 163 N.H. 247, 37 A.3d 377 (2012)

The trial court terminated incarcerated father's parental rights, pursuant to RSA 170-C:5, III (failure to correct the conditions of neglect or abuse under RSA 169-C). The Supreme Court affirmed the termination order, noting in its opinion:

There is one dispute between the parties concerning the level of the respondent's compliance with the dispositional orders. As we have previously observed, however, compliance or noncompliance with orders issued in the neglect case is not dispositive; rather, it is but one factor the trial court may consider in addressing the broader issue of whether the conditions leading to the original finding of neglect had been corrected [citation omitted here]. At the end of twelve months, the respondent remained incarcerated, and Haley remained in foster care because there was no other option for her placement...it is not his incarceration alone that was dispositive of the court's finding. Rather, he failed to make adequate provisions for his child's care and support during his incarceration. Much like a military parent who is deployed overseas, the respondent's physical unavailability did not absolve him of his parental obligation to provide for the care of his child.

In re C.M., 166 N.H. 764, 103 A.3d 1192 (2014)

In cases where the superior court's [de novo] dispositional order is not significantly different from the circuit court's dispositional order, the twelve-month period specified in RSA 170-C:5, III runs from the date of the circuit court's adjudicatory order.

Petition of New Hampshire Division for Children, Youth and Families.

____ N.H. ____ (2018)

The New Hampshire Supreme Court held that, following the dismissal of a termination of parental rights petition against the child's mother for insufficient evidence, the circuit court erred as a matter of law in ruling that RSA 170-C:11, IV mandated closure of the child's RSA chapter 169-C child protection case and guardianship with DHHS as the child's permanency plan. The case was remanded to the circuit court for proceedings consistent with the Supreme Court's opinion.

The opinion includes extensive commentary on the Adoption and Safe Families Act (ASFA) and permanency hearings in particular, including:

Congress enacted ASFA, in part, to speed critical decision-making for all children in foster care... . The ASFA 'promotes stability and permanence for abused and neglected children by requiring timely decision making in proceedings to determine whether children can safely return to their families or whether they should be moved into safe and stable adoptive homes or other family arrangements outside of the foster care system...

Pursuant to RSA 169-C:24-b, when a child who has been found to be neglected or abused has been in an out-of-home placement for 12 or more months, the court must hold a permanency hearing. RSA 169-C:24-b (2014). Thereafter, if the standard for the child's return to the parent is not met, the court 'shall identify a permanency plan' for the child. RSA 169-C:24-b,II (2014)...

The legislature expressly included that the statutory scheme set forth in RSA 169-C and 170-C comply with the ASFA. See N.H.S. Jour., 1157 (1999) (stating the purpose of amendments to RSA chapters 169-C and RSA 170-C are 'to initiate New Hampshire's compliance with' the ASFA, which is 'designed and intended to...promote the safety, permanency and well being of children in out-of-home placements); N.H.S.Jour. 650 (2007) (stating that amendments to RSA chapter 169-C are intended to move children 'faster from foster care to permanent placement' and bring 'the state laws in line with' the ASFA).

The Supreme Court additionally noted that "[l]ike the ASFA, RSA 169-C:24-b lists, in order of preference, four nonexclusive options for a permanency plan: (1) reunification with the parent or parents; (2) termination of parental rights when an adoption is contemplated; (3) legal guardianship; or (4) another planned permanent living arrangement [citations omitted here]."

PROTOCOL 1 OPTIONS FOR PERMANENCY

RSA 169-C:24-b, II (2008)

At a permanency hearing the court shall determine whether and, if applicable, when the child will be returned to the parent or parents, pursuant to RSA 169-C:23. If the standard for return, pursuant to RSA 169-C:23 is not met, the court shall identify a permanency plan other than reunification for the child. Other options for a permanency plan include:

- (a) Termination of parental rights or parental surrender when an adoption is contemplated;
- (b) Guardianship with a fit and willing relative or another appropriate party (see below); or
- (c) Another planned permanent living arrangement (APPLA).

Adoption and Safe Families Act (ASFA) (1997)

As amended by the Preventing Sex Trafficking and Strengthening Families Act (Pub.L. 113-183), ASFA limits APPLA as a permanency plan to certain youth 16 years of age or older.

PROTOCOL 2 SCHEDULING THE 12-MONTH PERMANENCY HEARING

RSA 169-C:24-b, I (2008)

For a child that has been in an out-of-home placement for 12 or more months, the court shall hold and complete a permanency hearing within 12 months of the finding. For a child that enters an out-of-home placement subsequent to a finding, the court shall hold and complete a permanency hearing within 12 months of the date the child enters the out-of-home placement.

RSA 169-C:3, XX-a (2007)

A child is considered to be in an out-of-home placement when a child is placed in substitute care with someone other than the child's biological parent or parents, adoptive parent or parents, or legal guardian.

PROTOCOL 3 CONTINUANCES

Circuit Court/Family Division Rule 1.27

Except for the initial hearing in a case or for an emergency hearing, hearing dates are generally selected by agreement of the parties and the court. Therefore, motions to continue will usually be denied, except for good cause shown. The Court may condition the granting of a motion to continue on a requirement that the moving party obtain a date and time agreeable to all other parties and the court.

PROTOCOL 4 NOTICE

Circuit Court/Family Division Rule 4.4

Foster parents, pre-adoptive parents and/or relatives providing care for a child are entitled to notice of all review hearings, permanency hearings and post-permanency hearings and shall be allowed to be heard at these hearings, but shall not be given party status unless otherwise granted by the Court.

PROTOCOL 5 PRESENCE OF AGE-APPROPRIATE CHILDREN AT THE PERMANENCY HEARING

Adoption and Safe Families Act (ASFA) (1997)

The Adoption and Safe Families Act (ASFA) requires that the case plan developed for youth 14 years of age and older in foster care, and any revisions or additions to the plan, shall be developed in consultation with the youth and, at the option of the youth, with up to 2 members of the case planning team who are chosen by the youth and who are not a foster parent of, or caseworker for, the

youth. This provision extends to the permanency plan being developed for the youth. ASFA further provides that DCYF shall implement procedures to ensure that, at each permanency hearing at which APPLA is the proposed or court-approved permanency plan, the court asks the youth about the desired permanency outcome for the youth.

Protocols Relative to Children and Youth in Court RSA 169-C Child Protection Cases (September 2012)

Pursuant to Protocol 2 A of the *Protocols Relative to Children and Youth in Court RSA 169-C Child Protection Cases*, a permanency hearing is a hearing that youth (14-20 Years of Age) may attend and/or otherwise participate in. Pursuant to Protocol 2 B, a permanency hearing is a hearing that children (5-13 years of age) may attend on a case-by-case basis.

PROTOCOL 6 SUBMISSION OF COURT REPORTS

RSA 169-C:12-b (2007)

All reports, evaluations, and other records from the department of health and human services, counselors, and guardians ad litem in proceedings under this chapter shall be filed with the court and all other parties at least 5 business days prior to any hearing. If a report, evaluation, or other record is not filed at least 5 business days prior to the hearing, a party may request, and the court shall grant, a continuance to a date certain which shall not be more than 10 days from the date of filing. Once filed with the court and given to all other parties, the report, evaluation, or other record need not be refiled during the proceeding. Failure to comply with the provisions of this section shall not be grounds for dismissal of the petition.

RSA 169-C:25, I(b) (2008)

A grandparent may seek access to court records in the RSA 169-C abuse/neglect case(s).

PROTOCOL 7 DCYF'S AFFIDAVIT AND THE CONTENT OF THE DCYF REPORT

Affidavit to Identify and/or Locate a Parent, Legal Guardian or Putative Father (2018)

Pursuant to the 2003 *Protocols Relative to Abuse and Neglect Cases and Permanency Planning*, where a non-accused, non-household parent and/or a putative father(s) has not been identified, the court shall require DCYF to submit an affidavit describing its efforts to date to identify and/or locate a parent, legal guardian or putative father. To meet this requirement, DCYF should submit at all appropriate hearings the court's "Affidavit to Identify and/or Locate a Parent, Legal Guardian or Putative Father".

The Affidavit includes the following sources for DCYF to consider in its ongoing efforts to identify and/or locate a parent, legal guardian or putative father: New Hampshire Bridges & New Heights, Division of Child Support Services, Criminal records Check, Known Relatives and Friends, the other parent, current and prior employers, telephone book/directory assistance, internet searches (i.e. Google, Yahoo, MSN, social media, etc.), police departments, social security administration, inmate locator, county house of corrections, federal parent locator search, New Hampshire putative father registry, last known address, and any other attempts.

RSA 169-C:24(a)(IV) (2005)

The state shall submit a sworn statement prior to any district court hearing in which the court is to determine whether there have been reasonable efforts to prevent placement, reunify the family, or make and finalize a new permanent home for the child. Such statement shall be submitted to the court and to the parties at least 5 days prior to the hearing, and shall describe such reasonable efforts made by the state or the rationale for not making such efforts.

PROTOCOL 8 GUARDIAN AD LITEM (GAL) OR CASA GUARDIAN AD LITEM (CASA GAL) REPORT

Circuit Court/Family Division Rule 4.5

The child's Court Appointed Special Advocate (CASA), guardian ad litem (GAL), and/or attorney, shall consult in an age-appropriate manner with the child about the child's views of the proposed permanency plan and/or transition plan. The CASA, GAL or attorney shall report about the consultation to the court in writing and/or orally at a permanency hearing. Such consultation shall not preclude the child, at the child's own request or the request of the Court, from attending and/or being heard at a permanency hearing.

PROTOCOL 12 THE COURT'S INQUIRY AT THE PERMANENCY HEARING

RSA 169-C:24-b, II (2008)

At a permanency hearing, the court shall determine whether, and, if applicable, when the child will be returned to the parent or parents, pursuant to RSA 169-C:23. If the standard for return pursuant to RSA 169-C:23 is not met, the court shall identify a permanency plan other than reunification for the child. Other options for a permanency plan include:

- (a) Termination of parental rights or parental surrender when an adoption is contemplated;
- (b) Guardianship with a fit and willing relative or another appropriate party;
or
- (c) Another planned permanent living arrangement.

PROTOCOL 13 THE COURT'S WRITTEN ORDER FOLLOWING THE PERMANENCY HEARING

RSA 169-C:24-b, III (2008)

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

Federal Law

Pursuant to 42 U.S.C. 671(a)(15) and 42 U.S.C. 672 (i)(2)) under Part E. Federal Payments for Foster Care and Adoption Assistance, the court is required to make a determination that a child who remains in his/her home and receives preventative services is at "imminent risk of removal" absent such services. This determination is required every six (6) months.

PROTOCOL 14 THE POST-PERMANENCY HEARINGS

Upon the court issuing a permanency hearing order for APPLA, the court and the parties shall proceed in accordance with the *Protocols Relative to RSA 169-C Post-Permanency Hearings for Older Youth With a Permanency Plan of Another Planned Permanent Living Arrangement (APPLA)* (October 2015).

Upon the court issuing a permanency hearing order for adoption, the court and the parties shall proceed in accordance with the *Protocols Relative to Termination of Parental Rights, Surrender of Parental Rights, Voluntary Mediation and Adoptions Involving RSA 169-C Cases* (January 2018).