

Bill Text: NH HB1677 | 2022 | Regular Session | Enrolled

New Hampshire House Bill 1677

Bill Title: Relative to the administration and settlement of claims of abuse at the youth development center and making an appropriation therefor.

Spectrum: Bipartisan Bill

Status: *(Passed)* 2022-06-03 - Signed by Governor Sununu 05/27/2022; Chapter 122; Eff. 05/27/2022 [\[HB1677 Detail\]](#)

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HB 1677-FN - VERSION ADOPTED BY BOTH BODIES

16Mar2022... 0956h

2022 SESSION

22-3122

04/10

HOUSE BILL 1677

AN ACT relative to the administration and settlement of claims of abuse at the youth development center and making an appropriation therefor.

SPONSORS: Rep. Umberger, Carr. 2; Rep. Wallner, Merr. 10; Rep. Rice, Hills. 37; Rep. Long, Hills. 10; Sen. Bradley, Dist 3

COMMITTEE: Finance

AMENDED ANALYSIS

This bill:

I. Establishes a procedure for the administration and resolution of claims of abuse which may have occurred at the youth development center.

II. Creates the youth development center (YDC) settlement fund and makes an appropriation to the fund for the settlement of founded abuse claims.

III. Creates an exemption from the right-to-know law for all records related to the administration and settlement of abuse claims at the youth development center.

Explanation: Matter added to current law appears in bold italics.

Matter removed from current law appears [in brackets and struckthrough.]

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

16Mar2022... 0956h 22-3122

04/10

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Two

AN ACT relative to the administration and settlement of claims of abuse at the youth development center and making an appropriation therefor.

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

1 Statement of Purpose. The general court hereby finds that the attorney general's investigation into abuse at New Hampshire's youth development center in prior decades has identified a population of New Hampshire citizens with potential claims against the state. The state wishes to acknowledge those claims and the suffering which has been endured by the victims of abuse by establishing a trauma-informed, victim-centered alternative to litigation for the efficient and fair resolution of those claims.

2 New Section; Department of Justice; Youth Development Center Claims Administration and Settlement Fund. Amend RSA 21-M by inserting after section 11 the following new section:

21-M:11-a Youth Development Center Claims Administration and Settlement Fund.

I. In this section:

(a) "Administrator" means an independent, neutral attorney admitted to the practice of law in New Hampshire, chosen in the manner set forth in paragraph III to administer youth development center claims pursuant to this section. The administrator shall have all of the duties and authority granted pursuant to RSA 542, except as otherwise provided in this section.

- (b) "AG designee" means one or more individuals within the attorney general's office designated by the attorney general.
- (c) "Claim" means a request for compensation related to one or more incidents of sexual abuse and/or physical abuse perpetrated upon a former YDC resident by or at the behest of a member of the YDC staff.
- (d) "Claimant" means an individual who has filed a claim.
- (e) "Former YDC resident" means an individual who resided at the YDC at any time.
- (f) "Fund" means the YDC settlement fund established in this section.
- (g) "Investigator" means one or more individuals assigned by the administrator to independently investigate a claim.
- (h) "Physical abuse" means an incident of conduct that would constitute an offense under RSA 631:1, RSA 631:2, or RSA 631:2-a, and that is not justified under RSA 627:6, or a common law cause of action for assault or battery.
- (i) "Sexual abuse" means an incident of conduct which would constitute an offense under RSA 632-A:2, RSA 632-A:3, or RSA 632-A:4, or a common law cause of action for assault or battery that involves sexual contact or sexual penetration as defined by RSA 632-A:1.
- (j) "Unlawful confinement" means placement in isolation as discipline without such process as was due under the circumstances or under conditions of confinement that were grossly out of proportion to the severity of the conduct giving rise to the discipline, or not as punishment, and not for another legitimate penological goal or purpose such as the safety or security of the resident or others.
- (k) "Youth development center" or "YDC" means the youth development center as identified in RSA 621, or its renamed or successor entity, and any predecessor entity performing the function of housing adjudicated delinquent or pre-adjudication detained youth, including the State Industrial School, the Philbrook School, the Tobey Special Education School and the Youth Services Center.

These definitions shall be applicable to claimants, claims, the claims process, and the fund governed by this section. This section is not intended in any way to expand or limit the rights of individuals or the state under any other state statutory or common law.

II. There is hereby established in the state treasury the YDC settlement fund which shall be kept distinct and separate from all other funds. The fund shall be administered by the attorney general, who shall use the funds for the purpose of administering claims of former YDC residents as defined in this section. The fund shall be nonlapsing and continually appropriated to the department of justice until June 30, 2032, after which date the fund shall lapse to the revenue stabilization reserve account established in RSA 9:13-e, II, unless earlier discontinued by the attorney general, in consultation with the administrator, or as otherwise provided by law. Settlement amounts paid to former YDC residents shall be as determined by the process outlined in this chapter. The attorney general may enter into memoranda of understanding with the judicial branch or any state agency as necessary to compensate them for services performed in furtherance of this chapter.

III. There is further established in the judicial branch a temporary full-time or part-time position known as the youth development center claims administrator, to be appointed by the supreme court. A part-time administrator

may maintain a private, unrelated mediation or legal practice apart from the duties as administrator notwithstanding any other provision of rule or law to the contrary. The supreme court shall appoint an administrator agreed to by the attorney general and counsel for claimants. If the attorney general and counsel for claimants are unable to agree upon an administrator, the supreme court shall select the administrator from the candidates submitted to the court by the attorney general and counsel for claimants, not later than 30 days following the court's receipt of the candidates. The attorney general and counsel for claimants shall each submit two candidates, not later than 30 days following the joint fiscal committee's approval of the claim process and guidelines as provided in paragraph IV. The administrator shall receive compensation at no more than the rate of salary of an active superior court justice and shall, if working full-time, receive the same benefits as other non-judicial employees of the judicial branch. If working part-time, the administrator shall receive compensation at no more than the equivalent per diem rate of an active superior court justice, provided that in any calendar year, the administrator shall not receive more in total compensation than that received by an active superior court justice. The judicial branch shall provide the administrator and any necessary support staff with office space. The salary, benefits, and expenses of the administrator, and any necessary support staff, shall be paid from the fund. The administrator shall report to the chief justice of the supreme court or the chief justice's designee for employment-related purposes, but the supreme court shall have no authority to review the administrator's decisions. At such time as the administrator's duties are concluded, or at such time as full-time service by the administrator is no longer needed to carry out the administrator's duties, the supreme court shall either eliminate the administrator's position or reduce it from a full-time to a part-time position as may be appropriate. The supreme court may remove the administrator if, after a request for removal received from the attorney general or claimants' counsel, or upon the court's own motion, the court determines that good cause for removal exists. Once appointed, the administrator shall process claims as provided herein and may settle claims at such amounts as may be agreed upon between the AG designee and each claimant, or at amounts which are determined by the administrator, giving due consideration to the guidelines adopted by the joint fiscal committee as provided in paragraph IV.

IV.(a) As soon as practical following the effective date of this section, the attorney general, after making good faith efforts to reach agreements with claimants' counsel, and with input from the attorney general's victim/witness advocates, shall develop and present to the joint fiscal committee a claims process consistent with this section including the development of claim forms, identification of necessary or helpful documentation, and guidelines for valuing claims for settlement purposes which take into consideration the following factors:

- (1) The nature and character of the acts of physical abuse and sexual abuse.
- (2) The frequency and duration of those acts.
- (3) Aggravating and mitigating factors such as whether the acts were also accompanied by unlawful confinement, the impact on the claimant relative to others similarly situated, the applicable statute of limitations and other potentially available legal defenses if the claims were pursued as litigation, the legal standards in effect at the time of the acts, whether the acts were previously reported to persons in a position of authority, whether the acts can be corroborated through contemporaneous reports by the claimant to others.

(4) Any other factor that may be relevant.

(b) The guidelines may group similar claims by type and suggest a value or range of values for each type of claim. The goal of the guidelines shall be to ensure the fair and uniform valuation of claims so that the claims of similarly situated claimants are valued similarly. The joint fiscal committee shall review and vote to either approve or object to the proposed claims process and guidelines within 30 days of receipt. If the joint fiscal committee votes to object to the proposed claims process and guidelines, the joint fiscal committee shall

articulate its reasons for objection in writing and claimants' counsel and the attorney general shall present for approval a revised version of the proposed claims process and guidelines that addresses the joint fiscal committee's concerns. The joint fiscal committee shall approve a claims process and guidelines prior to appointment of an administrator as set forth in paragraph III. Once approved, the guidelines shall be binding on the AG designee and the administrator. The claims process and guidelines may be revised periodically as deemed necessary by the administrator, again with input from claimants' counsel and the attorney general, and with the approval of the joint fiscal committee.

V. For all claims involving both sexual and physical abuse or sexual abuse only, no individual claimant shall be paid more than \$1,500,000 in settlement of all claims in the aggregate. For all claims involving physical abuse only, no individual claimant shall be paid more than \$150,000 in settlement of all physical abuse claims in the aggregate.

VI. Beginning not later than November 1, 2022, the administrator shall publish notice to the public of the establishment of the YDC settlement fund and the opportunity for former YDC residents to file claims. Such notice shall be published in a newspaper of general circulation in every county in the state, at least once a week for at least 2 consecutive weeks. Such notice shall also be published at least once in a newspaper of national circulation. Such notice shall also be published on such social media platforms as are appropriate in the discretion of the administrator for at least 6 consecutive weeks. Additionally, such notice shall be published to the current residents of all New Hampshire correctional facilities by means of posting or other customary means for such facility, shall be made available by the attorney general via press release, and shall be posted on the attorney general's public website. The publication shall constitute conclusive proof in judicial proceedings of the latest date by which all persons, in the exercise of reasonable diligence, could have discovered both their injuries and the causal relationship of their injuries to the acts or omissions of any employees or agents of the state regarding any incident which might have been the subject of a claim, whether or not such a claim was filed.

VII.(a) Any former YDC resident may file a claim. A claim subject to the procedure established in this section may be filed only by the former YDC resident who was personally subject to sexual abuse or physical abuse. No claim shall be filed for collateral injuries or damages suffered by any other person resulting from sexual abuse or physical abuse of the former YDC resident, including claims for loss of consortium or emotional distress suffered by relatives of the former YDC resident. No claim shall be filed by the executor or administrator of a deceased former YDC resident, but a claim may be filed by the guardian or conservator of a living former YDC resident who is incapacitated. Once a claim has been properly filed by a living former YDC resident, the subsequent death of that claimant shall not extinguish the claim.

(b) Claims may be filed beginning January 1, 2023. Claims shall not be accepted after December 31, 2024.

(c) A former YDC resident's participation in this claims process is voluntary. A former YDC resident who elects not to participate in the claims process retains the right to pursue a claim in a judicial or other forum. A former YDC resident is entitled to consult with counsel before deciding whether to participate in the claims process. The administrator shall identify and publish the names of attorneys willing to consult with former YDC residents concerning their decision to file a claim.

(d) This section constitutes the state's offer to resolve completely and finally all of the former YDC resident's claims through the claims process established. By filing a claim, the claimant agrees that he or she will participate in the claims process, and, if the claimant requests that the administrator decide the claim, agrees to accept the determination of the administrator as final and binding, even if the claimant does not receive any payment from the fund. The submission of a claim shall constitute an agreement in writing to submit the claim to arbitration as provided in RSA 542:1.

(e) By filing a claim, a claimant waives his or her right to simultaneously seek other or additional monetary relief in any forum from the state of New Hampshire or any of its agents or employees, or from any of its political subdivisions or their agents or employees arising out of or relating to any incidents which are or could have been the subject of a claim, except that the claimant does not waive his or her right to seek or continue to seek relief in any forum from an individual whose direct, personal actions constitute sexual abuse or physical abuse, even if said individual was a state employee at the time of the acts. The administrator shall require a claimant to execute appropriate agreements or motions to stay any pending proceedings as a condition to processing claims provided that such documents expressly preserve the right to pursue claims against individual perpetrators as described.

(f) Claims shall be submitted under oath. Claimants shall be entitled to be treated with respect and dignity in the presentment of their claims. Claimants who are believed by the administrator to have deliberately submitted false claims may be referred to an appropriate law enforcement agency. Perpetrators of sexual abuse or physical abuse identified by claimants may be referred to an appropriate law enforcement agency by the administrator, but only with the consent and cooperation of the claimant. A claimant shall not be required to cooperate in a criminal investigation as a condition of participating in the claim process.

(g) Claims and all documents and information created in connection with claims shall be confidential, except that matter which was not previously confidential shall not become so by virtue of being submitted in connection with a claim, or except as otherwise provided in this section or in RSA 91-A. This confidentiality is provided in order to protect the privacy of the claimant, and only for that reason. The claimant shall not be bound by this obligation of confidentiality and may waive it at any time.

VIII.(a) Within 30 days of receipt of a claim, the administrator shall acknowledge its receipt in writing and provide a copy to the AG designee.

(b) Within 60 days of receipt of a claim, the administrator shall review the claim, and indicate whether the claim is considered complete as submitted, or if not, what additional information is required. If the administrator requires additional information, the claimant shall provide that information within 90 days of being notified that additional information is needed, or the claim may be denied as incomplete, provided, that the administrator may grant the claimant an extension of time for good cause shown. The administrator shall also provide any additional documentation received to the AG designee.

(c) Once a claim is considered complete, the AG designee shall have 30 days to indicate to the claimant and the administrator its position regarding the claim. The AG designee may agree or disagree with the claim in whole or in part, and shall indicate whether he or she believes the claim should be referred to an investigator. The administrator may grant the AG designee an extension of time to indicate its position for good cause shown.

(d) Following receipt of the AG designee's position, the administrator may refer a claim to an investigator if, in the administrator's independent judgment, an investigation is needed. The administrator shall direct the investigator as to any particular aspects of the claimant's claim for which the administrator seeks further information or verification, and in such case, the investigation shall be limited to that scope. If the administrator elects not to refer a claim to an investigator, then the administrator shall so notify the AG designee and the claimant, and advise the claimant in writing regarding his or her options: to accept the AG designee's position, to request the administrator decide the claim, or to withdraw his or her claim from further processing. Within 30 days of receiving the position of the AG designee, the claimant shall indicate to the administrator and the AG designee whether he or she agrees with the AG designee's position, whether he or she wishes for the administrator to decide the claim, or whether he or she wishes to withdraw his or her claim from further processing. In the absence of an indication from the claimant, the administrator may assume that the claimant is in agreement with the position of the AG designee.

(e) The purpose of an investigation shall be to verify a claim, as submitted, if possible. The investigation shall, to the greatest extent possible, be conducted in a trauma-informed, respectful, and dignified manner. The investigation may include an interview of the claimant, which may be conducted under oath and recorded. The investigator may also request to review additional records related to the claim. The claimant shall be entitled to the assistance of an advocate in connection with the investigation process who shall be allowed to accompany the claimant during any interview. The claimant shall execute such documents or authorizations as may be necessary to permit the investigator to access records. If the claimant is represented by counsel, counsel shall also be allowed to attend any interview of the claimant. A claim may be denied if a claimant refuses to cooperate with the investigation. Except in extraordinary circumstances, investigations should be completed within 90 days of referral.

(f) The investigator shall present a report to the administrator of his or her findings, which shall include a summary of any interviews conducted or records gathered, a copy of any such supporting documentation, records and recordings. The administrator shall provide a copy of the investigator's report and supporting documentation to the claimant and the AG designee once received.

(g) Within 30 days of receiving the investigation report, the AG designee shall indicate to the claimant and the administrator its updated position regarding the claim, and the administrator shall advise the claimant in writing regarding his or her options: to accept the AG designee's position, to request the administrator decide the claim, or to withdraw his or her claim from further processing.

(h) Within 30 days of receiving the updated position of the AG designee, the claimant shall indicate to the administrator and the AG designee whether he or she agrees with the AG designee's position, whether he or she wishes for the administrator to decide the claim, or whether he or she wishes to withdraw the claim from further processing. In the absence of an indication from the claimant, the administrator may assume that the claimant is in agreement with the position of the AG designee. If the claimant and the AG designee are in agreement regarding the disposition of the claim, the administrator shall make an award consistent with the parties' agreement.

(i) The AG designee and the claimant or claimant's counsel may also engage in discussion separate and apart from their stated claim positions in an effort to resolve their disagreements regarding a claim. Such discussions shall be treated in like fashion to settlement discussions conducted under New Hampshire rules of evidence 408, and the administrator shall not be apprised of efforts to compromise in the event that the claim proceeds to a resolution proceeding.

IX.(a) When a claimant requests that the administrator decide the claim, the administrator shall schedule the claim for a resolution proceeding according to the procedures approved by the joint fiscal committee. All resolution proceedings shall take place in the state of New Hampshire, although parties and witnesses may attend by telephone or video conference in the discretion of the administrator. To the greatest extent possible, claims shall be scheduled for resolution in the order that they are received and determined to be complete, except that the administrator may also give consideration to the time for which litigation may have been pending prior to the filing of a claim. By requesting a resolution proceeding, a claimant fully waives his or her right to seek other or additional monetary relief in any forum from the state of New Hampshire or any of its agents or employees, or from any of its political subdivisions or their agents or employees arising out of or relating to any incidents which are or could have been the subject of a claim, except that the claimant does not waive his or her right to seek or continue to seek relief in any forum from an individual whose direct, personal actions constitute sexual abuse or physical abuse, even if said individual was a state employee at the time of the acts. The administrator shall require a claimant to execute appropriate dismissals, waivers, releases, or other documents as a condition of scheduling a resolution proceeding, provided that such documents expressly preserve the right to pursue claims against individual perpetrators as described.

(b) The administrator may require such submissions by the parties as the administrator determines, may consider such information as the administrator deems appropriate, and shall resolve claims based upon written submission, through conciliation, by conducting a hearing, or on any other basis determined by the administrator. The claimant shall be entitled to the assistance of an advocate in connection with the resolution process who shall be allowed to accompany the claimant during any hearing or meeting.

(c) Any hearing conducted by the administrator shall be scheduled for not more than 3 hours unless good cause is shown regarding the need for more time and shall be conducted in a victim-centered, trauma informed way, to the greatest extent possible. If the claimant is represented by counsel, counsel shall also be allowed to attend and participate in any hearing.

(d) At any hearing, any witnesses who testify shall be sworn.

(e) The administrator shall issue a written decision to the parties within 30 days of the conclusion of the resolution process. The administrator's decision regarding the claim shall be final and non-appealable, and the provisions of RSA 542:8, RSA 542:9, and RSA 542:10 shall not apply, provided, however, that either the claimant or the AG designee may request the administrator to reconsider a decision on grounds that it contains mathematical mistakes or miscalculations.

X. Upon the rendering of any final decision to approve payment of any part of a claim, whether made by the administrator pursuant to the agreement of the claimant and the AG designee or pursuant to a determination by the administrator following a resolution proceeding, the payment shall be made from the YDC settlement fund established in paragraph II. In addition, the claimant may request, and the administrator shall hold a face-to-face meeting with the claimant where the claimant may speak with the administrator without the AG designee present. The conduct of such a meeting shall not be considered a part of a resolution process and shall be not be available if a resolution process is requested until after it is completed.

XI. Any agreement between the claimant and the AG designee and any determination by the administrator may include a determination that a claim should be paid in annual installments over a period of up to 10 years. A claimant may indicate that he or she does not wish to receive installment payments, and the administrator shall honor the claimant's wishes in this regard. Additionally, a claimant may request that he or she receive the award in the form of periodic payments under a structured settlement that (i) is the subject of a qualified assignment that satisfies the conditions of Internal Revenue Code Section 130 and releases the fund from any liability for the periodic payments; and (ii) is funded by an annuity contract issued by a life insurance company domiciled in the United States, licensed in New Hampshire and rated A or better by A.M. Best. Upon receipt of such a request, the administrator shall accommodate the processing of an award in said fashion. Additionally, the administrator may maintain and provide to claimants a list of licensed structured settlement specialists who have indicated a desire to assist in establishing periodic payments to meet a claimant's anticipated needs.

XII. If the administrator determines that a shortfall in the YDC settlement fund is likely to occur, the administrator, in consultation with the attorney general, shall request additional funds from the legislature.

XIII. The costs of administration of the fund and any costs of the attorney general which are outside of the ordinary operational expenses of the department of justice shall be paid from the fund.

XIV. The administrator may approve all fees and costs of attorneys who represent claimants in proceedings before the administrator. The administrator shall not approve any request of an attorney for fees or costs which are not reasonable. The administrator shall not approve an attorney's fee in excess of 33 1/3 percent of the

amount of the award. All costs and attorney's fees paid to a claimant's attorney shall be paid from the amount awarded to the claimant.

XV. The administrator, in consultation with the attorney general, shall quarterly submit a report to the speaker of the house of representatives, the president of the senate, the joint fiscal committee and the governor providing information as to the number and nature of claims made and settled, the amounts requested and paid in settlement to date, the claim amounts pending, an estimate of the likely amounts which will be approved and paid, the administrative costs which have been paid, and an estimate of future administrative costs to be paid. The report shall be structured to protect the privacy and anonymity of the claimants. The attorney general shall also post the report on the department of justice's public website.

3 New Paragraph; Access to Governmental Records and Meetings; Exemptions. Amend RSA 91-A:5 by inserting after paragraph XII the following new paragraph:

XIII. Records of the youth development center claims administration and the YDC settlement fund pursuant to RSA 21-M:11-a, with the exception of settlement agreements, which shall remain subject to RSA 91-A:4, VI, and, after a claim has been finally resolved, such other records the release of which would not constitute a violation of other provisions of law or an unwarranted invasion of a claimant's privacy.

4 Appropriation. Notwithstanding RSA 9:13-e, the sum of \$100,000,000 for the biennium ending June 30, 2023, is hereby appropriated from the revenue stabilization reserve account to the YDC settlement fund established in RSA 21-M:11-a, II for the purpose of administering and settling claims as provided in RSA 21-M:11-a. The appropriation shall be nonlapsing, provided that any moneys in the YDC settlement fund not expended as of June 30, 2032 shall lapse to the revenue stabilization reserve account, unless the fund is earlier terminated by the attorney general, in consultation with the administrator, or as otherwise provided by law.

5 Effective Date. This act shall take effect upon its passage.

LBA

22-3122

Amended 5/3/22