

Bill as Introduced

HB 1655-FN - AS INTRODUCED

2010 SESSION

10-2393

01/09

HOUSE BILL **1655-FN**

AN ACT relative to persons with mental illness and the corrections system.

SPONSORS: Rep. Rosenwald, Hills 22; Rep. L. Weber, Ches 2; Rep. Batula, Hills 19;
Rep. Charron, Rock 7; Sen. Lasky, Dist 13

COMMITTEE: Judiciary

ANALYSIS

This bill:

I. Reduces the time period between an order for evaluation for competency to stand trial and the filing of the evaluation report in cases where the defendant is incarcerated.

II. Authorizes the court to select an appropriate remedy when the evaluation report is not filed within the required time period.

III. Reduces the maximum time of continued incarceration after a finding of incompetency to stand trial.

IV. Streamlines the procedure for the involuntary admission of persons found not competent to stand trial.

Explanation: Matter added to current law appears in **bold italics**.
Matter removed from current law appears [~~in brackets and struck through~~].
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Ten

AN ACT relative to persons with mental illness and the corrections system.

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

1 1 Competency; Commitment for Evaluation. Amend RSA 135:17, I to read as follows:

2 I. When a person is charged or indicted for any offense, or is bound over by any district or
3 municipal court to await the action of the grand jury, the district or superior court before which he or
4 she is to be tried, if a plea of insanity is made in court, or said court is notified by either party that
5 there is a question as to the competency or sanity of the person, may make such order for a pre-trial
6 examination of such person by a qualified psychiatrist or psychologist on the staff of any public
7 institution or by a private qualified psychiatrist or psychologist as the circumstances of the case may
8 require, which order may include, though without limitation, examination at the secure psychiatric
9 unit on an out-patient basis, the utilization of local mental health clinics on an in-or out-patient
10 basis, or the examination of such person, should he or she be incarcerated for any reason, at his or
11 her place of detention by qualified psychiatrists or psychologists assigned to a state or local mental
12 health facility. Such pre-trial examination shall be completed ***and the report filed with the court***
13 ***within 60 days after the date of the order for such examination***~~[- unless either party requests an~~
14 ~~*extension of this period*].~~ For the purposes of this paragraph and RSA 135:17-a, III, "qualified"
15 means board-eligible or board-certified in forensic psychiatry or psychology, or demonstrated
16 competence and experience in completing court-ordered forensic criminal evaluations. A licensed
17 out-of-state psychiatrist or psychologist who meets the definition of qualified may also conduct
18 evaluations under this paragraph and RSA 135:17-a, III. ***In the case of a person who has not***
19 ***been released pending trial, the pre-trial examination shall be completed and the report***
20 ***filed with the court within 30 days after the date of the order for such examination.***

21 ***I-a. If the pre-trial examination report is not filed within the time required in***
22 ***paragraph I, the court shall schedule an expedited hearing and at such hearing consider***
23 ***the reasons for the delay and the expected date of completion of the report. Following such***
24 ***hearing, the court shall order an appropriate remedy, which may include but not be***
25 ***limited to the following: modification of bail status, an order granting a defense request to***
26 ***allow a private evaluator to conduct the evaluation, with payment pursuant to RSA 604-A:6***
27 ***if appropriate, sanctions against a party or the department of corrections if found to be***
28 ***acting in bad faith, and dismissal of the case with or without prejudice.***

29 2 Competency Hearing; Commitment for Treatment. Amend RSA 135:17-a, V to read as follows:

30 V. If the court has determined that the defendant has not regained competency, and the
31 court determines that he or she is dangerous to himself or herself or others, the court shall order the

1 person to remain in custody for a reasonable period of time, not to exceed [99] 30 days, to be
2 evaluated for the appropriateness of involuntary treatment pursuant to RSA 135-C:34 or RSA 171-
3 B:2. The court may order the person to submit to examinations by a physician, psychiatrist, or
4 psychologist designated by the state for the purpose of evaluating appropriateness and completing
5 the certificate for involuntary admission into the state mental health services system, the state
6 developmental services delivery system, or the secure psychiatric unit, as the case may be. If a
7 defendant who was charged with a sexually violent offense, as defined in RSA 135-E:2, XI, has not
8 regained competency, the court shall proceed pursuant to RSA 135-E.

9 3 Involuntary Admission; Representation by Attorney General. Amend RSA 135-C:21 to read as
10 follows:

11 135-C:21 Representation by Attorney General. The attorney general or [his] designee shall
12 represent the state of New Hampshire in proceedings conducted pursuant to this chapter in which
13 the state is an interested party. *This section shall not be construed to require designation by*
14 *the attorney general when a county attorney is seeking an emergency or non-emergency*
15 *involuntary admission of a person who has been found incompetent to stand trial in a*
16 *criminal case.*

17 4 Involuntary Admissions; Petition. Amend RSA 135-C:36, I(c) to read as follows:

18 (c) A certificate from a physician who is approved by either a designated receiving
19 facility or a community mental health program approved by the commissioner, who has examined
20 the person sought to be admitted within 5 days of the date the petition is filed and who agrees that,
21 based on this examination, such person satisfies the standard set forth in RSA 135-C:34. *In cases*
22 *involving a petition filed by a prosecuting agency following a finding of incompetency to*
23 *stand trial due to mental illness in a criminal case, a physician's certificate need not be*
24 *included if the petition includes copies of the report of the competency evaluation*
25 *completed pursuant to RSA 135:17 and the order of the court finding the person not*
26 *competent to stand trial.*

27 5 Effective Date. This act shall take effect January 1, 2011.

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HB 1655-FN - FISCAL NOTE

AN ACT relative to persons with mental illness and the corrections system.

FISCAL IMPACT:

The Judicial Branch and Department of Corrections state this bill may increase state expenditures by an indeterminable amount in FY 2011 and each year thereafter. The Department of Health and Human Services states this bill will increase state expenditures by \$31,520 in FY 2011, by \$63,680 in FY 2012, by \$64,320 in FY 2013 and by \$64,960 in FY 2014. The New Hampshire Association of Counties states this bill will have an indeterminable fiscal impact on county expenditures in FY 2011 and each year thereafter. There is no fiscal impact on local expenditures or county and local revenue.

METHODOLOGY:

The Judicial Branch states this bill makes changes to law that impacts persons with mental illness and the corrections system. The Branch states this bill will not add any cases to the Branch's caseload but does result in the potential for an additional hearing in cases where a pre-trial report on the defendant's competence to stand trial is not filed timely. These hearings are typically 15 to 30 minute in duration. If it is assumed the hearing takes 20 minutes and the cost of a minute of judicial time is \$1.6195, then the additional cost for this hearing would be \$32.39 (20 minutes * \$1.6195 per judicial minute). The Branch states it does not expect this bill to generate the 309 additional hearings that would be needed to have a fiscal impact in excess of \$10,000.

The Department of Corrections states this bill may increase costs by an indeterminable amount. The Department is not able to determine the number of evaluations that may be ordered by the District or Superior courts or if additional staff would be needed to meet the time constraints to complete the evaluations. The Department also states costs associated with private evaluations that may be ordered by the courts if evaluations are not filed within the required time cannot be determined.

The Department of Health and Human Services states if involuntary admissions of individuals to the New Hampshire Hospital increases as a result of county prosecutors or county officials relying on prior and/ or outdated competency evaluations for defendants housed in county

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12/18/09

correctional facilities, then expenditures will increase. The Department assumes this bill may result in an increase of 10 involuntary admissions a year, with an average length of stay of 8 days. The Department states the average daily cost in FY 2011 is estimated at \$788. The Department assumes a one percent rate increase per year. The Department estimates the following expenditures:

SFY 11 = \$31,520 (\$788 daily rate * 10 additional patients * 8 days/ by 2 based on eff. date)

SFY 12 = \$63,680 (\$796 daily rate * 10 additional patients * 8 days)

SFY 13 = \$64,320 (\$804 daily rate * 10 additional patients * 8 days)

SFY 14 = \$64,960 (\$812 daily rate * 10 additional patients * 8 days)

The Department of Health and Human Services states the federal share of these costs would be 30 percent or \$9,456 in FY 2011, \$19,104 in FY 2012, \$19,296 in FY 2013, and \$19,488 in FY 2014.

The New Hampshire Association of Counties states this bill will have an indeterminable fiscal impact on the county expenditures. This bill may reduce the incarceration time in county correctional facilities by expediting the time period for evaluating competency to stand trial and by reducing the maximum time of incarceration after a finding of competency. This would reduce county expenditures associated with incarceration, which on average is \$35,342 annually per person incarcerated. The county attorneys may have increased expenditures due to the shorter time frames. The Association is not able to determine the fiscal impact as it does not know how many individuals would be impacted by this bill.

Speakers

Hearing Minutes

HOUSE COMMITTEE ON JUDICIARY

PUBLIC HEARING ON 1655-FN

BILL TITLE: relative to persons with mental illness and the corrections system
DATE: JANUARY 28, 2010
LOB ROOM: 208 **Time Public Hearing Called to Order:** 11:00 A.M.
Time Adjourned: 12:15 A.M.

(please circle if present)

Committee Members: Reps. D. Cote, Wall, Potter, Hackel, P. Preston, G. Richardson, B. Browne, Nixon, Thompson, Watrous, Rowe, N. Elliott, DiFruscia, W. O'Brien, Hagan, L. Perkins, Silva, W. Smith and Mead and Read.

Bill Sponsors: Rep. Rosenwald, Hills 22, Rep. L. Weber, Ches 2; Rep. Batula, Hills 19; Rep Charron, Rock 7, Sen. Lasky, Dist. 13

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

***Rep Cindy Rosenthal**, sponsor
Reads from testimony. Technical amendment needed.

Dr Alex de Nesnera, NH Psychiatric-opposed
Last paragraph... disagrees with Page 2 line 17-27. No physicians need to be involved with the discussion about probating a patient.

Rep. Frances Potter. Line 19, can physician's certificate be included? Ans. Concerned that patient will be found incompetent to stand trial and restorable, but then taken directly to the probate court without a determination being made as to whether the person needs to be probated. Hospital could be ignored. Staff not usually involved because the person is in jail. Expressed main concern with #4 on page 2.

Rep. William O'Brien. 14-16 Page 2, Will county attorneys be up to the task? Ans. Always likes to have Attorney General involved.

***Michael Skibbie**, Disability Rights Center - supports
Concerned with dozens per year not able to be prosecuted.
1. Getting evaluation - defense attorney realizes problem 60 days now allow.
2. Court's Process-hearing is scheduled-weeks or months

3. Period of time after finding of competency where the prosecutor has a period where they can make a decision as to whether they are going to seek to have the person committed to the voluntary treatment system.

Total time 6 months - costly for jails, some inmates are hard to manage on expensive medications. It is an expensive publicly funded process. Bill tries to reduce #1, jail environment not good environment. What does judge do when evaluation does not arrive, dismiss case or ignore? Bill directs judge to determine why the delay and to direct a solution. Says there will no additional cost to Health and Human Services, counties and courts

Rep. William O'Brien. Should Attorney General be involved? Ans. Does not see problem with Attorney General not being as involved.

***Dr. Robert MacLeod,** NH Dept of Corrections - opposed
Paraphrased written Testimony. Reducing 60 days to 30 would be hard to meet since the department just increased evaluators to meet 60-day requirement. Recommends Inexpedient to Legislate on 1655 and Ought to Pass on HB 621.

Ann Rice, AG's office-opposed
Should not put into legislation deadlines that can't be met. Department of Corrections has been struggling to meet the deadlines now in statute. There has been additional staff added. Accept the recommendation of Dr. MacLeod and have 45-day window for carcerated (?) folks (less than current statute) and 90 days for the incarcerated. Section 1-a: Court should be able to extend deadline.

Thomas P. Velardi, Dover - supports
Page 2 explains case he handled. Can't make 30-day deadline.

Ken Nielsen, DHHS-opposed
Concerned about 30-day jail detention. Not a lot of time to get file, read it through, get a doctor; in effect only ten (10) days are available. Don't shorten the time frame.

Respectfully submitted,



Philip Preston, Clerk

FROM: Rep. Philip Preston, Clerk
DATE: Public hearing January 28, 2010
SUBJECT: Meeting minutes on HB 1655, relative to persons with mental illness and the corrections system.

HB 1655 relative to persons with mental illness and the corrections system

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Testimony

HB 1655

January 28, 2010

Cindy Rosenwald, Hillsborough 22

Thank you Mr. Chairman. This legislation is the product of a committee of the Chief Justice's Task Force on Criminal Justice and Mental Illness, of which I am a member, and is designed to reduce the unnecessary incarceration of persons with mental illness without reducing public safety. The committee that developed the proposal is primarily composed of psychiatrists, defense attorneys, prosecutors, and disability advocates.

The bill has four components.

1. Clarifies time provisions in current law by specifying that the time limit in the statute is for completion and filing of the report, not merely completion of the evaluation. Some judges have interpreted the statute to only require the meeting between the defendant and the evaluator within the 60 days. It would be more meaningful to use the report's filing as the important event in the statute
2. The bill carves out a shorter time line for people who are incarcerated awaiting trial. A lengthy period of time awaiting the completion of competency procedures is much more prejudicial for a mentally ill defendant who is incarcerated than it is for someone living in the community awaiting trial. It's my understanding that the shorter deadline would affect fewer than half the cases handled by the DOC and they recently doubled their capacity for evaluations by adding a psychologist so that there is now one psychologist and one psychiatrist.
3. The bill sets up a procedure for responding to cases where the deadline for filing the evaluation report is missed. Depending on the reasons for the delay, the court can select from remedies including modification of bail status, allowing a private evaluator to complete the evaluation, or sanctions against a party or the department if the delay is due to someone acting in bad faith. Current law has no remedies for a delayed report, meaning that there may be no recourse when someone with a mental illness is indefinitely incarcerated awaiting completion of an evaluation report. We understand that some courts have ordered remedies as extreme as dismissal while others have not responded at all when the deadline is missed. The bill specifies to the court that it should select an appropriate remedy based on the reasons for the delay.
4. Finally, the bill streamlines the process for commitment under Ch 135-C after a defendant is found incompetent to stand trial. Current law allows up to 90 days; the bill would reduce that to 30 to reduce the length of incarceration of persons whose cases are being terminated or suspended due to a significant mental illness. To accommodate the shorter time frame, the procedural steps for prosecutors seeking commitment in such cases have been reduced.

I hope the committee will support this bill. It does need a technical amendment to section one that removes the reference to "municipal courts." Thank you, Mr. Chairman.

SUMMARY OF HOUSE BILL 1655 RELATIVE TO PERSONS WITH MENTAL ILLNESS
AND THE CORRECTIONS SYSTEM

Section 1

- clarifies time provisions in current law, specifying that the time limit in the statute is for completion and filing of the report, not merely completion of the evaluation
 - some judges have interpreted the statute to only require the meeting between the defendant and the evaluator within the 60 days
 - more meaningful to use the report's filing as the important event in the statute, as it is then that the court can proceed with the case
- applies a shorter deadline for evaluations of persons who are incarcerated than for persons who are living in the community awaiting trial
 - a lengthy period of time awaiting the completion of competency procedures is much more prejudicial for a mentally ill defendant who is incarcerated than it is for someone living in the community awaiting trial
 - the shorter deadline would only affect about a third of the evaluation cases handled by the DOC
 - the DOC recently doubled its capacity for evaluations (adding a psychologist so that there is now one psychologist and one psychiatrist – see 2009 senate bill 171)
- sets up a procedure for responding to cases where the deadline for filing the evaluation report is missed
 - depending on the reasons for the delay, the court can select from remedies including modification of bail status, allowing a private evaluator to complete the evaluation, or sanctions against a party or the department if the delay is due to someone acting in bad faith
 - no remedies for a delayed report appear in the current statute, meaning that there may be no recourse when someone with a mental illness is indefinitely incarcerated awaiting completion of an evaluation report
 - some courts have ordered remedies as extreme as dismissal while others have not responded at all when the deadline is missed. The bill specifies to the court that it should select an appropriate remedy based on the reasons for the delay.

Section 2

- reduces the time available to a prosecutor to seek involuntary commitment following a finding of incompetency
 - current law allows up to 90 days; the bill would reduce that to 30 to reduce the length of incarceration of persons whose cases are being terminated or suspended due to a significant mental illness
 - to accommodate the shorter time frame, the procedural steps for prosecutors seeking commitment in such cases have been reduced in sections 3 and 4 of the bill.

Section 3

- explicitly permits county attorneys to file commitment petitions – current law has been interpreted by some to require designation by the attorney general in each case, which takes time

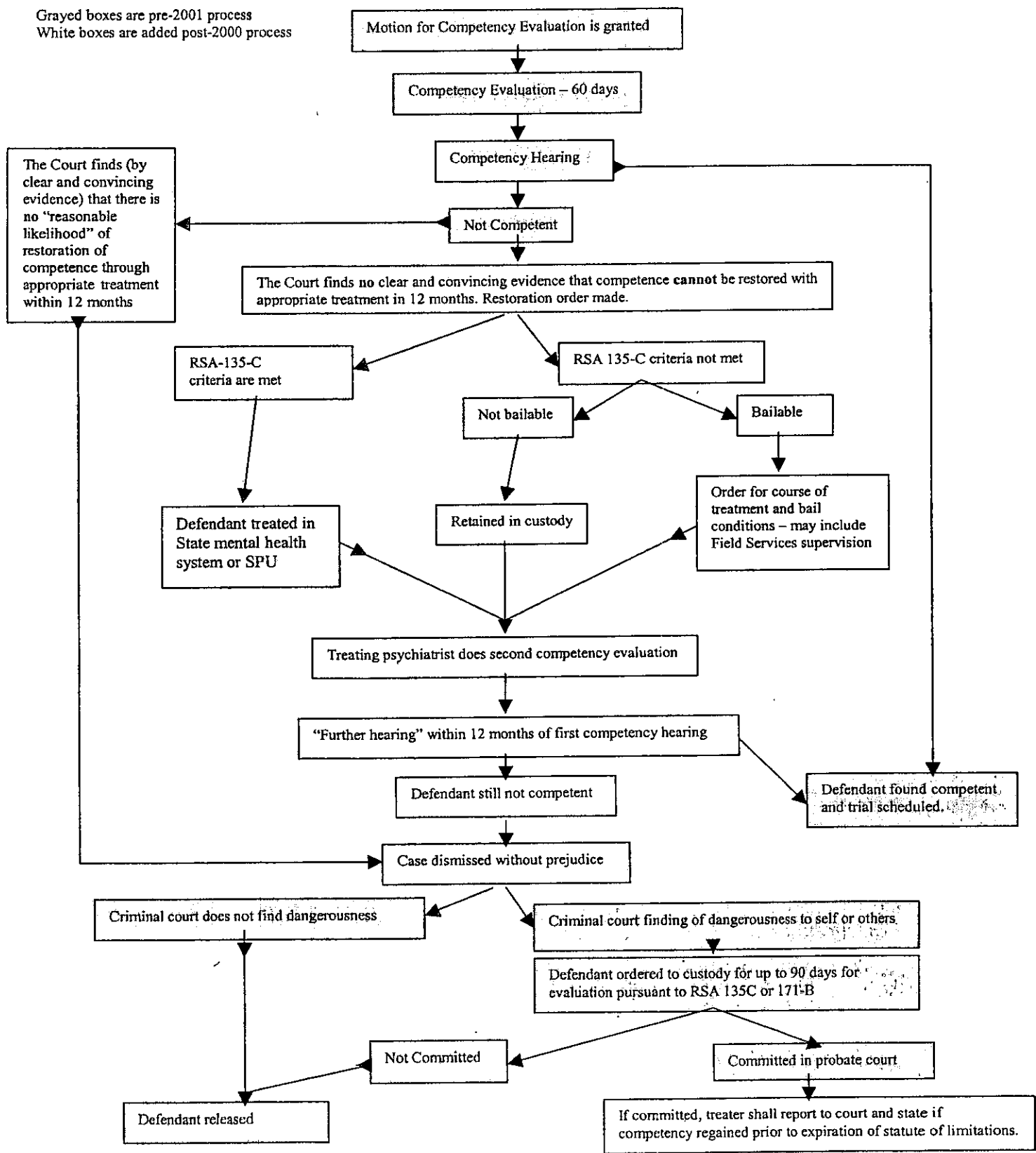
Section 4

- will allow a petition to be filed based on the incompetency finding rather than awaiting an additional evaluation between the incompetency finding and the probate petition.
- It should be noted that the probate court orders its own independent psychiatric evaluation in each case, and that evaluation step will remain in place (thus the concern in the fiscal note that this will result in commitments based solely on competency evaluations is misplaced)

RSA 135-17 Competency Flowchart

James Adams MD – Chief Forensic Examiner , D.O.C. 1/10/01

Grayed boxes are pre-2001 process
 White boxes are added post-2000 process



Non-Emergency Involuntary Admission Following Incompetency Finding

RSA 135-C:21 **Prosecutor must secure designation from attorney general to handle involuntary admission proceedings**

This provision would be amended to allow any county attorney to seek involuntary admission of a person following a finding of incompetency to stand trial (section 3 of the bill)

RSA 135-C:36 Petition filed with
1) specific factual allegations;
2) **certificate of examining physician that admission standard met**
3) list of witnesses
4) etc.

The certificate requirement would be amended to allow a prosecutor to submit the evaluation finding the person not competent to stand trial (section 4 of the bill)

RSA 135-C:37 Hearing Date set within 15 business days

RSA 135-C:39 custody maintained as prior to filing of petition

RSA 135-C:40 Examination of person by psychiatrist designated by probate court

RSA 135-C:43, 45 Hearing followed by order of probate court regarding involuntary admission

**Office of
Clerk of Superior Court
Rockingham County**

**Raymond W. Taylor, Clerk
Cynthia A. Perreault, Deputy Clerk
Julie A. Introcaso, Deputy Clerk**

**10 Route 125
Brentwood, NH**

**MAILING ADDRESS
Rockingham County
Courthouse
P.O. Box 1258
Kingston, NH 03848-125
Tel: (603) 642-5256**

January 27, 2010

Representative David Cote
Chair, House Judiciary Committee
Legislative Office Building, Room 208
Concord, NH 03301

Re: HB 1655, Competency Evaluations

Dear Representative Cote:

I am writing as the Co-Chair of Chief Justice Broderick's Task Force on Mental Illness and Criminal Justice in support of HB 1655. As you may know, the task force has been meeting for approximately a year and has pursued several initiatives to improve the criminal justice system's response to individuals with mental illness. One of those subcommittees has produced the current legislation now before your committee for consideration.

The changes contained in the bill are designed to reduce the unnecessary incarceration of persons with mental illness without compromising public safety. Currently, criminal justice-involved individuals with mental illness who may not be competent to stand trial may wait in jail for over 60 days before an evaluation of their ability to stand trial is conducted. Among other things, this bill will streamline the evaluation process to ensure that those individuals do not unnecessarily languish in county jails where they are unable to receive treatment during their wait. In addition to ensuring prompt evaluations, the legislation should result in savings to the county jails and, as a result to the taxpayers.

I appreciate that we may need to continue discussions with the Department of Corrections, whose Commissioner is a member of the task force, to ensure that the timelines contained in the bill are reasonable, but I am confident that the cooperation among the stakeholders thus far will produce positive results.

If you have any questions about the bill, please do not hesitate to contact me.

Sincerely yours,

Tina L. Nadeau
Superior Court Justice



STATE OF NEW HAMPSHIRE
DEPARTMENT OF CORRECTIONS
DIVISION OF MEDICAL and FORENSIC SERVICES

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William Wrenn
Commissioner
William McGonagle
Asst. Commissioner
Dr. Robert MacLeod
Director

Testimony
Dr. Robert MacLeod
Director Medical and Forensic Services
New Hampshire Department of Corrections
House Judiciary Committee - January 28, 2010
Chair: Rep. David Cote
HB1655- 11:00 A.M. LOB 208

AN ACT relative to persons with mental illness and the corrections system

The New Hampshire Department of Corrections oversees the Forensic Competency Services for the State. As such, the Department receives referrals from district and superior courts for defendants in which their capacity to understand court proceedings are in question. The services is currently staffed with one forensic psychiatrist and one psychologist qualified to perform such evaluations. The recent addition of a second evaluator was the result of an ongoing increase in referrals. In 2009, the Department conducted 305 evaluations of which 90 individuals were incarcerated. The national trend for competency referrals is 6.5% and given some very preliminary historical data, we seem to be consistent with that statistic.

The concerns we have with HB 1655 are as follows:

- Section I: *Such pre-trial examination shall be completed and the report filed with the court within 60 days after the date of the order for such examination[~~unless either party requests an extension of this period~~].*
 - The deletion of 'unless either party requests an extension of this period' may be problematic given that there are a number of variables that may result in exceeding the window of time to conduct the evaluations. Such variations include defendants not showing up for the appointment and those incarcerated refusing to be transported to the appointments, defendants who are not able to be at the appointment due to an unanticipated circumstance such as a medical emergency, and courts requiring our evaluator to appear in court on short notice.
- Section I: *In the case of a person who has not been released pending trial, the pre-trial examination shall be completed and the report filed with the court within 30 days after the date of the order for such examination.*
 - Although the Department appreciates the timeliness of performing evaluations, particularly for those on pre-trial status in a county jail, our staff is often hard pressed to meet the current 60 day requirement. As you will note on the fiscal impact section the Department stated that this bill may increase state expenditures by an indeterminable



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William Wrenn
Commissioner

William McGonagle
Asst. Commissioner

Dr. Robert MacLeod
Director

amount in FY 2011 and each year thereafter. Since that submittal, Forensic Health Services, the contractual entity providing the service for the DOC has opined that decreasing to 30 days for those incarcerated will require the Department to add at least one additional evaluator not currently budgeted at cost of approximately \$200,000 per year. If the Department does not meet the 30 day window then the court may order, as a remedy, a private evaluation at a potential cost of between \$2500 and \$5000 per evaluation.

- Section I-a: *If the pre-trial examination report is not filed within the time required in paragraph I, the court shall schedule an expedited hearing and at such hearing consider the reasons for the delay and the expected date of completion of the report. Following such hearing, the court shall order an appropriate remedy, which may include but not be limited to the following: modification of bail status, an order granting a defense request to allow a private evaluator to conduct the evaluation, with payment pursuant to RSA 604-A:6 if appropriate, sanctions against a party or the department of corrections if found to be acting in bad faith, and dismissal of the case with or without prejudice.*

- The Department is disappointed that the proposed statute would specifically single out the department of corrections for sanctions. The courts have always had discretionary authority when it pertains to remedial action.

HB 621 which addresses some of the elements in HB 1655 is headed to conference as a result of its passage from the Senate yesterday. The Department advocated for and the Senate agreed to amend HB 621 that included decreasing the window of time for those incarcerated to 45 day and increasing those defendants not incarcerated to 90 days relative to competency evaluations. This redistribution will be a budget neutral mechanism for evaluation of incarcerated individuals more promptly.

The Department suggests that the two legislative initiatives (HB621 and HB1655) that contain similar goals to address the needs of our incarcerated individuals can only complicate an already complex issue and result in contradictory legislation. As such, a more productive approach may be to ITL HB 1655 and reconcile HB 621 when it arrives at the Committees of Conference sometime early spring. For example, one element that the Department can support in HB 1655 is found in Section 4 (c) and it reads:

In cases involving a petition filed by a prosecuting agency following a finding of incompetency to stand trial due to mental illness in a criminal case, a physician's certificate need not be included if the petition includes copies of the report of the



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William Wrenn
Commissioner

William McGonagle
Asst. Commissioner

Dr. Robert MacLeod
Director

competency evaluation completed pursuant to RSA 135:17 and the order of the court finding the person not competent to stand trial.

Thank you for your time today and I am available to answer any questions the Committee may have.



NAMI New Hampshire

New Hampshire's Voice on Mental Illness

To: Chair, David Cote
House, Judiciary Committee

Re: HB 1655
Written Testimony presented by Michael J. Cohen,
Executive Director, NAMI NH

January 29, 2010

Dear Committee Members,

My name is Michael Cohen. I am the Executive Director of the National Alliance on Mental Illness NH. We represent families and consumers working to improve the quality of life of all persons affected by mental illness and severe emotional disorders. A primary focus of our mission is to educate the public about mental illness, to improve their understanding of its impact on individuals and families, and to advocate for improved access to and coverage for quality treatment.

For too long NAMI NH has seen persons with mental illness spend additional time in jail, not get the treatment they deserve because there are not the administrative procedures and/or resources to assure speedy evaluation of competency and access to treatment. We support this bill because it allow for shorter time to assure evaluation and access to treatment.

If the court needs to take action to expedite a hearing it is important that there is clear opportunity to discuss the remedy with appropriate psychiatrist knowledgeable of the forensic and clinical issues facing the individual. This is important so the individual can get a competent evaluation from the appropriate professional. This is especially true for the amended RSA 135-C36, 1 (c). It is critical that if previous outdated competency evaluation are used to determine competency it can inappropriate effect the course of treatment as well as raise the cost for involuntary admissions. We caution against the use of outdated assessment. The county prosecutors should consults with the hospital admitting psychiatrist to determine whether or not the assessment is accurate and done competently.

Getting the right assessment is the first step in the process to effective treatment. If this is done competently and quickly everyone wins, the person with the illness, the criminal justice system and the treatment providers.

Vote yes to pass HB1655 FN

15 Green Street ★ Concord, NH 03301

InfoLine: (800) 242-NAMI ★ PH: (603) 225-5359 ★ FX: (603) 228-8848

E-Mail: info@naminh.org ★ www.naminh.org

AFFILIATES ★ Berlin ★ Claremont ★ Concord ★ Derry ★ Dover ★ Franklin ★ Greater Salem ★ Keene
Laconia ★ Lebanon ★ Littleton ★ Manchester ★ Nashua ★ North Country ★ Peterborough ★ Portsmouth

Voting Sheets

HOUSE COMMITTEE ON JUDICIARY

EXECUTIVE SESSION on HB 1655-FN

BILL TITLE: relative to persons with mental illness and the corrections system

DATE: February 16, 2010

LOB ROOM: 208

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. Weber

Seconded by Rep. Wall

Vote: 11-5 (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote: (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE: NO

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Philip Preston, Clerk

HOUSE COMMITTEE ON JUDICIARY

EXECUTIVE SESSION on HB 1655-FN

BILL TITLE: relative to persons with mental illness and the corrections system

DATE:

February 16, 2010

LOB ROOM: 208

Amendments:

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

Motions:

OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.

Webster

Seconded by Rep.

Wall

Vote: 11/5 (Please attach record of roll call vote.)

Motions:

OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote: (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE:

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent:

Refer to Committee Report

Respectfully submitted,

Rep. Philip Probst, Clerk

JUDICIARY

Bill #: HR 1055 Title: _____

PH Date: ____/____/____ Exec Session Date: 02 / 16 / 10

Motion: OTP Amendment #: _____

MEMBER	YEAS	NAYS
Cote, David E, Chairman	Y	
Wall, Janet G, V Chairman	Y	
Potter, Frances D	Y	
Hackel, Paul L	Y	
Preston, Philip, Clerk	Y	
Richardson, Gary B	Y	
Weber, Lucy M	Y	
Brown, Brandon S Read Robn	Y	
Nixon, David L	Y	
Thompson, Robert B	Y	
Watrous, Rick H	Y	
Rowe, Robert H		N
Elliott, Nancy J		N
DiFruscia, Anthony R		
Mead, Robert D		N
O'Brien, William L		N
Hagan, Joseph M		
Perkins, Lawrence B		
Silva, Peter L		
Smith, William B		N

TOTAL VOTE:
Printed: 12/18/2009

11#Y

5N

Committee Report

REGULAR CALENDAR

February 18, 2010

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Majority of the Committee on JUDICIARY to which was referred HB1655-FN,

AN ACT relative to persons with mental illness and the corrections system. Having considered the same, report the same with the recommendation that the bill OUGHT TO PASS.

Rep. Lucy M Weber

FOR THE MAJORITY OF THE COMMITTEE

**MAJORITY
COMMITTEE REPORT**

Committee: JUDICIARY
Bill Number: HB1655-FN
Title: relative to persons with mental illness and the
corrections system.
Date: February 18, 2010
Consent Calendar: NO
Recommendation: OUGHT TO PASS

STATEMENT OF INTENT

The bill is a product of Chief Justice Broderick's Task Force on Mental Illness and Criminal Justice. The goal of the bill is to reduce the time that mentally ill persons who are incompetent to stand trial spend in jail while evaluation procedures are taking place. First, the bill shortens the time period allowed for pre-trial examination from 60 days to 30 days in the case of persons who are not released pending trial. Second, the bill gives the courts broad latitude to determine an appropriate remedy if the required report is not filed in the allotted time. Third, the bill removes a current formality that requires the attorney general to name the county attorney as the attorney general's designee in each case in which a county attorney seeks an involuntary admission of a person found incompetent to stand trial. Fourth, in a case where the competency evaluation concludes that the person is incompetent to stand trial, and the court so ordered, the bill eliminates the requirement of a reevaluation to satisfy the requirement that a person must be evaluated within 5 days immediately prior to an involuntary admission. The majority was persuaded that passage of the bill would result in speedier transfers to the state hospital for necessary treatment, would not harm public safety, and would reduce county expenditures due to shorter periods of inappropriate incarceration. DHHS provided a fiscal note stating that their costs could rise by approximately \$31,000 in FY 11 and \$63,00 in FY 2012 and thereafter. This figure was based on the assumption that the bill would result in 10 additional involuntary commissions per year. It is difficult to determine from reading the bill how it would result in additional admissions, as it simply streamlines the process for transferring a mentally ill person from jail to the state hospital. Quicker and more appropriate evaluation and treatment should result in overall cost savings in the long run.

Vote 11-5

Original: House Clerk
Cc: Committee Bill File

Rep. Lucy M Weber
FOR THE MAJORITY

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

JUDICIARY

HB1655-FN, relative to persons with mental illness and the corrections system. **OUGHT TO PASS.** Rep. Lucy M Weber for the **Majority** of JUDICIARY. The bill is a product of Chief Justice Broderick's Task Force on Mental Illness and Criminal Justice. The goal of the bill is to reduce the time that mentally ill persons who are incompetent to stand trial spend in jail while evaluation procedures are taking place. First, the bill shortens the time period allowed for pre-trial examination from 60 days to 30 days in the case of persons who are not released pending trial. Second, the bill gives the courts broad latitude to determine an appropriate remedy if the required report is not filed in the allotted time. Third, the bill removes a current formality that requires the attorney general to name the county attorney as the attorney general's designee in each case in which a county attorney seeks an involuntary admission of a person found incompetent to stand trial. Fourth, in a case where the competency evaluation concludes that the person is incompetent to stand trial, and the court so ordered, the bill eliminates the requirement of a reevaluation to satisfy the requirement that a person must be evaluated within 5 days immediately prior to an involuntary admission. The majority was persuaded that passage of the bill would result in speedier transfers to the state hospital for necessary treatment, would not harm public safety, and would reduce county expenditures due to shorter periods of inappropriate incarceration. DHHS provided a fiscal note stating that their costs could rise by approximately \$31,000 in FY 11 and \$63,00 in FY 2012 and thereafter. This figure was based on the assumption that the bill would result in 10 additional involuntary admissions per year. It is difficult to determine from reading the bill how it would result in additional admissions, as it simply streamlines the process for transferring a mentally ill person from jail to the state hospital. Quicker and more appropriate evaluation and treatment should result in overall cost savings in the long run. **Vote 11-5.**

Original: House Clerk
Cc: Committee Bill File

HB 1655

HB 1655, relative to persons with mental illness and the corrections system

Majority report ^{not} OTP 11-5 Regular calendar

The bill is a product of Chief Justice Broderick's Task Force on Mental Illness and Criminal Justice. The goal of the bill is to reduce the time that mentally ill persons who are incompetent to stand trial spend in jail while evaluation procedures are taking place. First, the bill shortens the time period allowed for pre-trial examination from 60 days to 30 days in the case of persons who are not released pending trial. Second, the bill gives the courts broad latitude to determine an appropriate remedy if the required report is not filed in the allotted time. Third, the bill removes a current formality that requires the attorney general to name the county attorney as the attorney general's designee in each case in which a county attorney seeks an involuntary admission of a person found incompetent to stand trial. Fourth, in a case where the competency evaluation concludes that the person is incompetent to stand trial, and the court so ordered, the bill eliminates the requirement of a reevaluation to satisfy the requirement that a person must be evaluated within 5 days immediately prior to an involuntary admission. The majority was persuaded that passage of the bill would result in speedier transfers to the state hospital for necessary treatment, would not harm public safety, and would reduce county expenditures due to shorter periods of inappropriate incarceration. DHHS provided a fiscal note stating that their costs could rise by approximately \$31,000 in FY 11 and \$63,00 in FY 2012 and thereafter. This figure was based on the assumption that the bill would result in 10 additional involuntary commissions per year. It is difficult to determine from reading the bill how it would result in additional admissions, as it simply streamlines the process for transferring a mentally ill person from jail to the state hospital. Quicker and more appropriate evaluation and treatment should result in overall cost savings in the long run.

Cossette, Nancy

From: David E. Cote [davidecote@comcast.net]
Sent: Thursday, February 18, 2010 8:54 AM
To: Cossette, Nancy
Cc: Weber, Lucy; Cianci, James
Subject: Fwd: Blurb--HB 1655

Nancy-- these are the edits for Lucy's blurb on 1655. Thanks to one and all.

Begin forwarded message:

```
> From: "David E. Cote" <davidecote@comcast.net>
> Date: February 18, 2010 8:32:57 AM EST
> To: Lucy McVitty Weber <lwmcv@comcast.net>
> Subject: Re: Blurb--HB 1655
>
>
> Minor typos:
>
> line 1: Chief Justice Broderick
>
> On line 5, I presume that it should read "who are not released pending trial."
>
> On line 10, "seeks AN involuntary admission..." ?
>
>
> On Feb 18, 2010, at 6:53 AM, Lucy McVitty Weber wrote:
>
>> David,
>>
>> Attached for your review please find the blurb for HB 1655.
>>
>> Nancy,
>>
>> David still needs to approve this.
>>
>> Thank you both,
>>
>> Lucy
>>
>>
>> Rep. Lucy McVitty Weber
>> 217 Old Keene Road
>> Walpole NH 03608
>> 603-756-4338
>> lwmcv@comcast.net
>>
>> <HB 1655.doc>
>
```

HB 1655 Minority Report. Regular Calendar

Minority Supports ITL

This bill would allow courts to release individuals charged with crimes or dismiss some of the charges if the courts or prosecuting agencies cannot meet a shortened period (from 60 to 30 days for persons being held for trial) to determine the competency of defendants when their competency to go to trial has been brought into question. The minority was not satisfied that in this time of apparent financial strains in the courts that the courts can satisfy this mandate and that we would not be faced with the prospect of criminals escaping prosecution for the most technical of reasons. In addition, the bill allows the possible use of prior and/or outdated competency evaluations for defendants held in correctional facilities, which the Department of Health and Human Services estimates will result in 10 additional involuntary admissions into New Hampshire Hospital a year. Aside from the unfairness of holding individuals based on possibly outdated evaluations of competency, the Department also estimated increased expenditures of approximately \$31,500 a year resulting from this change. The Department of Corrections likewise noted costs may increase, but is unsure of the amount.

William L. O'Brien