

Bill as Introduced

HB 219 – AS INTRODUCED

2009 SESSION

09-0715

09/03

HOUSE BILL **219**

AN ACT relative to hearings for incapacitated persons admitted to state institutions by their guardians.

SPONSORS: Rep. L. Weber, Ches 2

COMMITTEE: Judiciary

ANALYSIS

This bill establishes certain time frames and procedures for probate courts holding hearings on incapacitated persons admitted to state institutions by their guardians without approval of the Merrimack county probate court prior to the admission.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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

AN ACT relative to hearings for incapacitated persons admitted to state institutions by their guardians.

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

1 1 Powers and Duties of Guardians of Incapacitated Persons; Admission to State Institution.
2 Amend RSA 464-A:25, I(a)(2) to read as follows:

3 (2) A guardian may admit a ward to a state institution without prior approval of the
4 probate court upon written certification by a physician licensed in the state of New Hampshire, or, in
5 the case of placement in New Hampshire hospital, by a psychiatrist licensed in the state of
6 New Hampshire, that the placement is in the ward's best interest and is the least restrictive
7 placement available. Within 36 hours, excluding Saturdays, Sundays, and legal holidays, of such an
8 admission of a ward to a state institution, the guardian shall submit to the *Merrimack county*
9 probate court notice of the admission and the reasons therefor, together with a copy of the certificate
10 by the physician or psychiatrist. *Within 14 business days of receipt of the notice of admission*
11 *the court shall [promptly] examine the filing to determine whether on its face the filing*
12 *justifies an admission, and shall* appoint counsel for the ward [~~and~~], provide copies of the notice
13 and related documents to the ward and the appointed counsel, *and schedule a hearing on the*
14 *matter. The hearing shall be held within 5 business days of receipt of the guardian's notice*
15 *of admission. At such hearing, the guardian shall have the burden of proving, beyond a*
16 *reasonable doubt, that the placement is in the ward's best interest and is the least*
17 *restrictive placement available. Immediately following the hearing, the probate court*
18 *shall issue findings on the question of whether the placement is in the ward's best interest*
19 *and whether it is the least restrictive placement available. If the court finds that the*
20 *placement is either not in the best interest of the ward or is not the least restrictive*
21 *available placement, the court shall order the release of the ward from the placement.*
22 *With the assistance of counsel, a ward may waive the hearing by filing an express written*
23 *waiver with the probate court.* For purposes of proceedings under this subparagraph, the ward
24 shall have the right to legal counsel in the same manner as provided in RSA 464-A:6. The court
25 shall also provide the ward a notice stating that the ward has the right to appointed counsel, the
26 right to oppose the admission by the guardian, and the right to a hearing and to present evidence at
27 that hearing. A guardian may not admit a ward to a state institution for more than 60 days for any
28 single admission or more than 90 days in any 12-month period upon certification of a physician or
29 psychiatrist without filing a petition requesting approval of the probate court.

HB 219 - AS INTRODUCED

- Page 2 -

1 2 Jurisdiction and Venue; Guardianship Proceedings. Amend RSA 464-A:3, II(a) to read as
2 follows:

3 (a) *Except as provided in RSA 464-A:25, I(a)(2)*, venue for guardianship proceedings
4 for a proposed ward is in the county where the proposed ward resides, or the county in which the
5 proposed ward is physically present when the proceedings are commenced.

6 3 Effective Date. This act shall take effect January 1, 2010.

HB 219 – AS AMENDED BY THE HOUSE

13Jan2010... 2009-2490h

2009 SESSION

09-0715

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HOUSE BILL **219**

AN ACT relative to hearings for incapacitated persons admitted to state institutions by their guardians.

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AMENDED ANALYSIS

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1 1 Powers and Duties of Guardians of Incapacitated Persons; Admission to State Institution.
2 RSA 464-A:25, I(a) is repealed and reenacted to read as follows:

3 (a) To the extent that it is consistent with the terms of any order by a court of competent
4 jurisdiction relating to detention or commitment of the ward, the guardian shall be entitled to
5 custody of the ward and may establish the ward's place of abode within or without this state.
6 Admission to a state institution shall be in accordance with the following:

7 (1) A guardian may admit a ward to a state institution with prior approval of the
8 probate court if, following notice and hearing, the court finds beyond a reasonable doubt that the
9 placement is in the ward's best interest and is the least restrictive placement available.
10 Authorization for such admission shall not be time limited unless the court so orders. Authority to
11 admit a ward to a state institution with prior approval under this subparagraph shall not be subject
12 to the limitations contained in RSA 464-A:25, I(a)(2) through (7).

13 (2) A guardian may admit a ward to a state institution without prior approval of the
14 probate court upon written certification by a physician licensed in the state of New Hampshire, or, in
15 the case of placement in New Hampshire hospital, by a psychiatrist licensed in the state of
16 New Hampshire, that the placement is in the ward's best interest and is the least restrictive
17 placement available. Within 36 hours, excluding days when the court is closed, of such an admission
18 of a ward to a state institution, the guardian shall submit to the Merrimack county probate court
19 notice of the admission and the reasons therefor, together with a copy of the certificate by the
20 physician or psychiatrist.

21 (3) The Merrimack County probate court shall review the guardian's notice within
22 48 hours of the filing of the notice, excluding days when the court is closed, to determine whether the
23 notice on its face appears to establish that the placement is in the ward's best interest and is the
24 least restrictive placement available. If the court concludes that the notice is insufficient, the court
25 shall order the immediate release of the ward from the state institution. If the court concludes that
26 the notice is sufficient, counsel for the ward shall be appointed no later than 48 hours following the
27 court's review of the guardian's notice, excluding days when the court is closed. Notice of the
28 appointment shall be transmitted to the ward, to the guardian, and to counsel. Counsel's notice
29 shall be transmitted in writing and electronically or in another manner which is likely to give actual

1 notice of the appointment to counsel at the earliest practicable time. For purposes of proceedings
 2 regarding admissions to state institutions without prior court approval, the ward shall have the
 3 right to legal counsel in the same manner as provided in RSA 464-A:6. The court shall also provide
 4 the ward a notice stating that the ward has the right to appointed counsel, the right to oppose the
 5 admission by the guardian, and the right to a hearing and to present evidence at that hearing.

6 (4) Counsel for a ward admitted to a state institution who has been appointed
 7 pursuant to subparagraph (3) shall deliver a written report to the court within 5 days of his or her
 8 appointment which shall declare whether the ward requests a hearing on the propriety of the
 9 admission. Unless the ward waives a hearing, counsel's report shall include a request for a hearing
 10 on behalf of the ward. A copy of counsel's report shall be sent to the ward and to the guardian. If the
 11 court does not receive a written report from counsel within 5 days of counsel's appointment, the court
 12 shall order an appropriate sanction, which may include substitution of counsel, an order to show
 13 cause, or scheduling of a hearing on the propriety of the admission without awaiting a report from
 14 counsel.

15 (5) Upon receipt of a request for a hearing, the court shall schedule a hearing on the
 16 admission to a state institution without prior approval of the probate court, at which the guardian
 17 shall have the burden of proving, beyond a reasonable doubt, that the placement is in the ward's best
 18 interest and is the least restrictive placement available. The hearing shall be held within 10 days,
 19 excluding days when the court is closed, from the date that the request is received.

20 (6) A guardian may not admit a ward to a state institution for more than 60 days for
 21 any single admission or more than 90 days in any 12-month period upon certification of a physician
 22 or psychiatrist without filing a petition requesting approval of the probate court.

23 (7) At any time, the ward or counsel for the ward may request a hearing on the
 24 admission to a state institution without prior approval of the probate court, at which the guardian
 25 shall have the burden of proving, beyond a reasonable doubt, that the placement is in the ward's best
 26 interest and is the least restrictive placement available. The hearing shall be held within 15 days,
 27 excluding days when the court is closed, from the date that the hearing is requested.

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 29 follows:

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 31 a proposed ward is in the county where the proposed ward resides, or the county in which the
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33 3 Effective Date. This act shall take effect January 1, 2011.

CHAPTER 288
HB 219 - FINAL VERSION

13Jan2010... 2009-2490h
05/05/10 1738s

2010 SESSION

09-0715
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HOUSE BILL **219**

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

1 288:1 Powers and Duties of Guardians of Incapacitated Persons; Admission to State Institution.

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CHAPTER 288
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8 pursuant to subparagraph (3) shall deliver a written report to the court within 5 days of his or her
9 appointment which shall declare whether the ward requests a hearing on the propriety of the
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12 court does not receive a written report from counsel within 5 days of counsel's appointment, the court
13 shall order appropriate relief, including but not limited to substitution of counsel, an order to show
14 cause, or scheduling of a hearing on the propriety of the admission without awaiting a report from
15 counsel.

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33 proposed ward is physically present when the proceedings are commenced.

34 288:3 Effective Date. This act shall take effect January 1, 2011.

35 Approved: July 13, 2010

36 Effective Date: January 1, 2011

Amendments

Senate Judiciary
April 29, 2010
2010-1738s
09/03

Amendment to HB 219



1 Amend RSA 464-A:25, I(a)(4) as inserted by section 1 of the bill by replacing it with the following:

2

3 (4) Counsel for a ward admitted to a state institution who has been appointed
4 pursuant to subparagraph (3) shall deliver a written report to the court within 5 days of his or her
5 appointment which shall declare whether the ward requests a hearing on the propriety of the
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10 cause, or scheduling of a hearing on the propriety of the admission without awaiting a report from
11 counsel.

Committee Minutes

**SENATE CALENDAR NOTICE
JUDICIARY**

- ✓ Senator Deborah Reynolds Chairman
- ✓ Senator Bette Lasky V Chairman
- ✓ Senator Matthew Houde
- ✓ Senator Sheila Roberge
- Senator Robert Letourneau

For Use by Senate Clerk's Office ONLY	
<input type="checkbox"/> Bill Status	
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<input type="checkbox"/> Calendar	
Proof: <input type="checkbox"/> Calendar	<input type="checkbox"/> Bill Status

Date: April 15, 2010

HEARINGS

Tuesday

4/27/2010

JUDICIARY

SH 103

2:00 PM

(Name of Committee)

(Place)

(Time)

EXECUTIVE SESSION MAY FOLLOW

2:00 PM	HB50	(New Title) relative to proceedings of medical injury claims screening panels.
2:30 PM	HB1257	changing requirements for extensions of time for hearings by pretrial screening panels for medical injury claims.
2:45 PM	HB191	relative to liability of a landowner giving permission to ride bicycles on his or her property.
3:00 PM	HB219	relative to hearings for incapacitated persons admitted to state institutions by their guardians.
3:15 PM	HB325	(New Title) establishing standards for adequate service of process and establishing a commission to study service of process by laypersons.
3:30 PM	HB1127	relative to service of process on commercial tenants.

B-05

Sponsors:

HB50

Rep. Robert Rowe

HB1257

Rep. David Nixon

HB191

Rep. Gene Chandler

Sen. John Gallus

HB219

✓ Rep. Lucy Weber

HB325

Rep. Jordan Ulery

HB1127

Rep. Shawn Jasper

Rep. Robert Rowe

Rep. Anthony DiFruscia

Rep. James Craig

Rep. Edward Butler

Rep. Karen Umberger

Rep. Thomas Buco

Rep. Robert Rowe

Rep. William O'Brien

Gail Brown 271-3076

Sen. Deborah Reynolds

Chairman

Judiciary Committee

Hearing Report

TO: Members of the Senate

FROM: Susan Duncan, *Senior Legislative Aide*

RE: Hearing report on **HB 219** – *AN ACT relative to hearings for incapacitated persons admitted to state institutions by their guardians.*

HEARING DATE: April 27, 2010

MEMBERS OF THE COMMITTEE PRESENT: Senators Reynolds,
Lasky, Roberge and Houde

MEMBERS OF THE COMMITTEE ABSENT: Senator Letourneau

Sponsor(s): Representative Weber

What the bill does: This bill establishes certain time frames and procedures for probate courts holding hearings on incapacitated persons admitted to state institutions by their guardians.

Who supports the bill: Representative Weber; Attorney Michael Skibbie for the Disabilities Rights Center; Attorney Pat Quigley for the NH Probate Courts and Attorney John MacIntosh for the NH Bar Association

Who opposes the bill: No one

Summary of testimony received:

- Representative Weber introduced the legislation and asked that Attorney Skibbie please testify first.
- Senator Reynolds asked if anyone had testified on behalf of NH Hospital. Representative Weber responded that they did but that she would not want to speak on their behalf. She explained that changes were made from the original bill to enable Merrimack County Probate Court because they handle almost all of these – and to make it easier for the Hospital.
- Attorney Skibbie testified in support and distributed a letter indicating that the Office of the Public Guardian is in support of this legislation.
- He explained that this process is the one area where a citizen can be confined without a judge reviewing it. He explained that most of these individuals do end up in NH Hospital.

- He explained how the bill would establish a procedure that would provide for timely appointment of legal counsel and specific timeframes during which various actions need to occur.
- He said that if the person is compliant, no one may ever know that the individual had been confined by the actions of his or her guardian. In these cases, weeks could go by with no scrutiny.
- He said that the bill is a compromise from what they had originally requested.
- Senator Reynolds asked about page two of the bill whereby only the Merrimack County Probate Court is named and that, for instance, for her constituents in North Haverhill, this wouldn't be at all convenient. Attorney Skibbie acknowledged that this would be a distance – but that Merrimack County Probate Court is a fulltime court, whereas some of the other probate courts are not – and also that they handle almost all of these placements. He also noted that most of these placements are at NH Hospital, so that folks will be here anyway.
- Attorney Skibbie spelled out the various timeframes contained within the bill as to what has to happen and when and then said that they do not want a system where someone falls off the grid.
- He noted that some of the attorneys had concerns with the phrasing “sanction” (page 2, line 12) and that it is fine to substitute “relief.”
- He said that the bill deals with a problem in the current judicial scheme so that the cases stay here rather than end up being spread out all over the State.
- Attorney Quigley testified in support and apologized that Judge King was not available (he was hearing cases in Coos Court). She said that their only concern is the review by the court for faster deadlines.
- Senator Reynolds, in noting that the Glencliff Home is a state institution, and asked if for practical purposes, why it wouldn't be easier. She asked if the timelines were addressed by Judge King in the House hearing. Attorney Quigley responded that with the quicker timelines, it may be easier.
- Attorney MacIntosh testified regarding the reference earlier to “sanction” and asked that the language be amended to “relief.” He said that the Bar Association has no position regarding the underlying policy.
- Representative Weber testified in support and explained that the reason it was Merrimack County was because of their ability to find attorneys to cover patients at NH Hospital.

Fiscal Impact: Not applicable.

Action on April 29, 2010: Senator Lasky moved "Ought to Pass with Amendment." Senator Houde seconded the motion. The Committee voted 5 to 0 in support. Senator Reynolds will report the bill out of Committee.

sfd

[file: HB 219]

Date: April 29, 2010

Date: April 27, 2010
Time: 3:05 p.m.
Room: State House Room 103

RHB

The Senate Committee on Judiciary held a hearing on the following:

HB 219 relative to hearings for incapacitated persons admitted to state institutions by their guardians.

Members of Committee present: Senator Reynolds
Senator Lasky
Senator Houde
Senator Roberge

The Chair, Senator Deborah R. Reynolds, opened the hearing on HB 219 and invited the prime sponsor, Representative Lucy Weber, to introduce the legislation.

Representative Weber: Thank you, Madam Chairman. For the record, I am Lucy Weber, representing Cheshire 2, Alstead, Marlow, Nelson, Roxbury, Sullivan, Stoddard and Walpole.

I would like to urge the adoption of HB 219 that has to do with incapacitated persons who are admitted by their guardians to the state hospital and I would say it is a bill that is a compromise between a lot of different interests and, in the interest of time, I think what I would do is simply yield to Mike Skibbie if I could and have him explain it to you because he works with it all the time and is far more familiar with any questions you might have than I would be. But, I think it represents a good compromise and urge you to adopt it.

Senator Deborah R. Reynolds, D. 2: Thank you, Representative. I won't ask you a lot of technical questions, but I guess, in the House, did anybody from the New Hampshire Hospital testify? Do you know?

Representative Weber: Yes. They did.

Senator Deborah R. Reynolds, D. 2: Okay. Were they for it?

RWB

Representative Weber: I don't think they were entirely...They liked this version better than the first version, but it was a product of compromise where a lot of people liked it better than the first version. But, I wouldn't presume to speak for them.

Senator Deborah R. Reynolds, D. 2: Thank you. Thank you very much.

Representative Weber: I should say that the changes that were made from the original bill were all made to make it easier for people at the New Hampshire Hospital and for the Probate Court to deal with the changes and that's why we moved the site of all of these actions to the Merrimack District Court, which actually sits at the Hospital one day a week. But, again, I would defer all of that to the folks who work with this on a daily basis.

Senator Deborah R. Reynolds, D. 2: Merrimack County Probate Court.

Representative Weber: Yes.

Senator Deborah R. Reynolds, D. 2: Okay. Thank you very much, Representative. Why don't we hear from Mr. Michael Skibbie? Welcome. Why don't you come forward and offer your testimony? Thanks for being here.

Attorney Michael Skibbie: Thanks for having me. Good afternoon. Michael Skibbie from the Disabilities Rights Center.

I'm passing around a letter that I was asked to deliver a copy of to you. It is a letter from the head of the Office of Public Guardian that is in support of this bill. **Please see Attachment #1 - April 27, 2010 letter from Linda Mallon, Executive Director, Office of Public Guardian.**

Basically, to explain what is going on here, I think probably the best place to start is that this is the one area that I know of where a citizen in the state can be confined without a judge ever reviewing the basis for their confinement. This is sort of the second largest way into the New Hampshire Hospital or similar state institution. Most of the people who end up at the New Hampshire Hospital go through a probate commitment process because they are alleged to be dangerous due to a mental illness.

This bill deals with the admission of a person to the New Hampshire Hospital by their guardian so that there isn't necessarily a finding of dangerousness due to mental illness in these kinds of cases, but rather a decision by the guardian that they need to be institutionalized. Then, the way, if I can just briefly walk you through the way this works, is that within thirty-six hours,

JRB

under current law, the guardian needs to notify the Probate Court that issued the guardianship that they have been placed at New Hampshire Hospital. Then all the Court needs to do in each case then is in response to appoint counsel, but there is no absolute deadline for when they do that appointment of counsel. Current statute merely says that the need to appoint counsel promptly, whatever that means.

And then, nothing else need happen unless the person requests that the court hold a hearing on the propriety of their admission to New Hampshire Hospital. So, if the person is a very compliant person who doesn't appear to object to what is happening to them, then the court may never hear that there may not be a basis for putting this particular person in an institution. So, basically what happened is that there were a couple of cases that came to my office's attention where we realized that several weeks could go by before there was any scrutiny of the propriety of this person's confinement at New Hampshire Hospital and, in response to those concerns, we asked that this bill be introduced.

This is actually the second go around on this legislation and I think, as a result of some of the initial changes that we were proposing, the Office of the Public Guardian and the Probate Court raised some concerns about their resources. And, so we came together and came up with this compromise.

So, let me just explain. You don't have a line out copy, I don't think.

Senator Deborah R. Reynolds, D. 2: Just real quick. I don't mean to interrupt you, but it looks like, on page 2 of the bill, beginning on line 15, (5), (6) and (7) are new and everything else is existing law. Is that right?

Attorney Skibbie: No. I have more on my copy so that I can quickly point out to you the changes.

One line 1, I'm sorry, page 1, line 18, you will see that the notices now all go to the Merrimack County Probate Court. The reason that we're doing that is that some of the outlying probate courts are part-time and so, if we want things to happen quickly, they need to be sure to go to a full-time court and that's the most full-time of them all, I think, because they handle a lot of New Hampshire Hospital matters.

So, then on line 22, you will see that there is language that requires that the court shall review what they receive from the guardian. Under current law, there is no judicial review of that notice. So, what this contemplates is that the court will take a look at the papers and see if this appears to have a

LYB

problem and if there is a problem, then the court could act promptly to release that person.

Senator Deborah R. Reynolds, D. 2: Mike, can I just ask you a quick question? I'm familiar with petitions for guardianships, but line 21 review the guardian's notice. Is that the pleading?

Attorney Skibbie: That's the notice that the Guardian delivers to the court once they have admitted their ward to the hospital.

Senator Deborah R. Reynolds, D. 2: So, the notice from the Guardian saying, I have done this.

Attorney Skibbie: I put John Smith in the Hospital and they have to attach a physician's certificate to it.

Senator Deborah R. Reynolds, D. 2: Okay.

Attorney Skibbie: And then you will see, on line 26, still on page 1, then forty-eight hours after that review is the deadline for appointing counsel. So, rather than just the prompt language, we now have an absolute deadline of thirty-six hours for the notice, forty-eight hours to review the notice, and then forty-eight hours after that to appoint counsel. So, within a week, we are going to have counsel appointed.

Then, if you flip over to page 2, we now have new language starting on line 7 which basically says that the lawyers in these cases need to let the court know what's up within five days. Under current law, there is no deadline. So, depending on the workload and other priorities of a lawyer in one of these cases, they may take several weeks to get back to the court about whether the person objects to their confinement. So, now what we have is basically a business week – five days to let the court know.

Now, at the end of that paragraph, you will see a sentence that deals with what the court must do if they never hear back from the lawyer. What this basically says is the court must do something. They must either issue an order to show cause why you haven't heard, why the lawyer hasn't responded to the court, you substitute counsel or you could just go ahead and order a hearing, at which you will inquire into the propriety of the confinement. And, the reason for that language is that we don't want to have a system where like, under current law, a case just goes into a black hole and you have somebody sitting at the New Hampshire Hospital who would like to have a hearing to challenge their confinement, but there is no automatic scheduling of such a hearing if you don't ever hear back from the lawyer, then you don't

JJB

know what to do. So, this basically says to the court, do something if you don't hear from the lawyer.

Now, I was approached before the hearing by Mr. MacIntosh from the Bar Association with concerns about the phrasing of this because it suggests that they are implicit in a finding of misconduct because of the word sanction. The intention of the drafters of this compromise was not to conclude one way or the other, but rather to make sure that something happens in these cases if you don't hear back from the lawyers in five days. So, we don't have any objection to rephrasing that and I believe what the preferred language of the Bar Association is something like the court shall order appropriate relief, including but not limited to that, so that you avoid using the word sanction, but you still signal to the court that something should happen.

Then the last change is on line 18 of page 2 which basically asks that the hearing shall be within ten days of the request.

So, if you add up all of these deadlines and the case takes as long as permitted, you're ending up with roughly three weeks after counsel is appointed. If you want to think about it as lining up roughly with the involuntary commitment statute, that's roughly what we have now. It is three weeks after filing of the petition for a final hearing. So, it is roughly analogous to that kind of due process protection that we have for an involuntary commitment hearing.

The last change is that there is an omission in the redrafting of this bill of a section that basically permits a guardian to readmit their ward successively without going back to court. The people who were involved in the negotiations didn't feel it was necessary to permit a guardian to ever admit their ward to the Hospital without going back to court. So, that was removed in the redraft.

That is basically it and I'm happy to answer any questions. I think that this does deal with a problem in our current statutory scheme that, as I said, would allow someone to be confined without any judicial scrutiny. I think this is a pretty good accommodation of the resource concerns of the people involved and I think, in some scenarios, this actually will make it a better system for the New Hampshire Hospital because the cases will be here instead of Coos County Probate Court, for example, and so you won't be sending a psychiatrist from the New Hampshire Hospital up to do these hearings. It will be more efficient for their resources. The Office of Public Guardian certainly, which does a large share of these, will be able to use their resources more efficiently by doing them locally as well.

We did ask the sponsor what New Hampshire Hospital's position was on the bill. Their testimony had to do with an earlier version of the bill, as I recall, where we were asking that they actually notify the court when they receive someone so that the court would know that they should be hearing from a guardian, but that language was not included in the version that is before you know. I don't think this will affect their operation at all, except to reduce travel time.

Senator Deborah R. Reynolds, D. 2: My concern, though, has to do with sort of an inverse situation that you have a resident of North Haverhill who is trying to get, who is the guardian and trying to get somebody admitted who needs hospitalization having to drive to Concord now to file that.

I understand that Merrimack County, but I'm just wondering how convenient this is going to be for the other nine counties.

Attorney Skibbie: I think it was the expectation that there would be contact with the institution here in Concord.

Senator Deborah R. Reynolds, D. 2: What institution?

Attorney Skibbie: The New Hampshire Hospital.

Senator Deborah R. Reynolds, D. 2: Well, I understand that, but the point is that a family member who might be the guardian is now going to have to drive physically to Merrimack County Probate Court to file this. I'm just wondering if anybody has concerns about the convenience of doing that.

Attorney Skibbie: I think what I was trying to say before though was that they will probably be face to face with New Hampshire Hospital representatives as part of the admission process because they are executing the actual voluntary admission on behalf of their ward. So, I think the expectation was that they would be here and they could file the petition, the notice with the court either simultaneously or shortly after the actual admission. I think that that was the expectation. Most of these, I believe, are done by professional guardians, so you're right, some of them are done by family guardians, I'm sure.

Senator Deborah R. Reynolds, D. 2: Any other questions? Seeing none, thank you very much for your testimony.

Attorney Skibbie: Thank you.

RHB

Senator Deborah R. Reynolds, D. 2: Why don't we hear from Pat Quigley on behalf of the New Hampshire Probate Courts? Welcome.

Attorney Pat Quigley: Good afternoon, Madam Chair and members of the Committee. I'm Pat Quigley. I am the staff attorney over at the Probate Court and I'm here instead of the Administrative Judge, Judge King, who is unable to be here today because he has a hearing in Coos County.

I will indicate to the Committee that in fact the Probate Court Judge King did participate in the discussions regarding the current version of HB 219. The Probate Court didn't feel that there was a particular problem with the prior statute or the current statute, excuse me. In fact, there haven't been a lot of complaints.

At the last go around, there was a communication that there was one case that had been delayed some amount of time and the Deputy Register from the Merrimack County Probate Court did in fact come and indicate the reasons for the delay in that particular case was that the ward had fired two, so essentially had three court-appointed counsel and that accounted for the delay. So, I don't want the Committee to be under the impression that the Probate court doesn't treat these as very important cases that need really immediate attention and, in fact, the courts do appoint counsel immediately. The current statute says that they have to hold a hearing within fifteen days after the counsel has asked for a hearing and, in fact, the court has been good about doing that, we understand, in all of the various counties.

Again, Judge King participated in the agreement, the proposal, understanding the concern of various constituents about timing and particularly having a judge initial review. So, he was more than willing to work on improvements.

At this point, the only concern that the Probate Court has is that they are willing to do the review by the court and adhere to faster deadlines is that the section of the bill that talks about, which was discussed previously, about the appointment of counsel and then counsel has to report to the court within five days. In every other situation which there is a time line as you go through, you will see that it is that the guardian must submit a notice to the court within thirty-six hours, excluding those days when the court is closed and the judge must review the notice within forty-eight hours, again excluding days when the court is closed and that the court must appoint an attorney within forty-eight hours, excluding days when the court is closed.

Then, counsel is appointed and has five days. Mr. Skibbie suggested that that was a business week. That might not be. If an attorney is appointed on

a Friday of a long weekend, in fact they may be required to do work over the weekend. It certainly shortens the time period they have to meet with the ward, make a determination of the appropriateness of placement, whether it is in the best interests of the ward and whether it is the least restrictive placement. Again, particularly given, as it has been proposed, is that counsel should be sanctioned if there wasn't a report submitted within those five calendar days. That's really the only concern that the Probate Court has at this point and we are willing to adhere to this more specific deadlines.

Senator Deborah R. Reynolds, D. 2: You know, my concern, and I'm going back to the venue issue on the first page of the bill because, you know, Glencliff is a state institution that is in my district. So, you have somebody who is admitted to Glencliff and then a family member has to drive to Concord to file the petition. I'm just not sure this is, in practice, going to be easier for some of the people in our state to have the Merrimack County Probate Court the sole venue. I'm wondering if the court considered flexibility in terms of an either/or situation. It seems to me that it would be easier for some people to simply go to their county probate court, file this and if the state hospital is involved, obviously it should be the Merrimack County Probate Court, but I can think of some instances where that might not be the case and people are going to have to drive to Concord now. So, I guess I'm wondering if that was addressed by Judge King at all?

Attorney Quigley: I think the issue that came forward really pertained to wards who have been admitted to the New Hampshire Hospital and that's why it had been suggested that it be changed to Merrimack County. Again, we haven't seen that it has been an issue in the current statute, but with the quicker timeline, it may be. Merrimack is a full-time court; there are a few others that are full-time as well. If a judge needs to review the notice within forty-eight hours, that may be difficult in those smaller courts. So, given the timelines as stated in this proposal, it would be difficult.

Senator Deborah R. Reynolds, D. 2: Any other questions of Attorney Quigley? Seeing none, thank you very much for your testimony.

Attorney Quigley: Thank you.

Senator Deborah R. Reynolds, D. 2: Attorney MacIntosh, did you want to testify in support of the bill? You hadn't indicated either way on behalf of the Bar Association?

Attorney John MacIntosh: Madam Chair, members of the committee, my name is John MacIntosh. I am here representing the New Hampshire Bar Association, which doesn't take a position on the policy aspects of this bill,

JMB

although I will say, from personal experience, I think that the idea of having these hearings largely conducted at Merrimack County makes sense on a couple of bases.

One, this court, meaning the Court in Merrimack County, is well familiar with the processes and procedures involving the New Hampshire Hospital, as are many of the attorneys who do work in that area, both for the involuntary emergency admissions, the short-term admissions and the long term admissions under 135-C.

The Bar Association's quarrel, as Attorney Skibbie put it out, is physically with line 12, page 2, which in its original form talks about appropriate sanction. Sanction implies a penalty for violating a regulation or a law and thus the recommended change at line 12 that the court shall order, take out and, shall order appropriate relief, including but not limited to, I think that addresses our concerns.

Senator Deborah R. Reynolds, D. 2: Thank you very much. Any questions of Attorney MacIntosh? Thank you for your testimony. Representative Weber, did you want to...?

Representative Weber: I just wanted to address one quick issue with respect to your question about ease of litigants getting to the Merrimack District. This isn't about the guardians themselves, but one of the reasons we put Merrimack in as the site was that we had a significant amount of concern on the part of the clerks of probate in the smaller districts about their ability to find an attorney from Cheshire or Coos or in the part-time courts to find a judge, to find an attorney, to get from Coos to Merrimack to do the filing, to get to the state hospital to do the evaluation. That was it. That it was thought that because the most attorneys who are familiar with this and because the ward is often, or most often, in the state hospital, that this would be the easiest way in terms of complying with the timelines for attorney appointment. That was one of the motivating factors in that change was the concern of the registers, the clerks of probate, registers of probate.

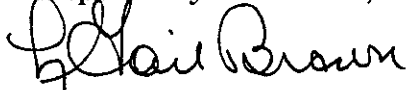
Senator Deborah R. Reynolds, D. 2: Thank you very much for your testimony.

Representative Weber: Thank you.

Senator Deborah R. Reynolds, D. 2: Did anyone else want to testify relative to HB 219? Seeing none, I am going to close the hearing. Thank you for coming.

Hearing concluded at 3:30 p.m.

Respectfully submitted,

A handwritten signature in black ink that reads "L. Gail Brown". The signature is written in a cursive style with a large initial "L" and "B".

L. Gail Brown
Senate Secretarial Supervisor
9/13/10

1 Attachment



Attachment # 1

April 27, 2010

Michael Skibbie, Esq.
Disabilities Rights Center
18 Low Avenue
Concord, NH 03301

RE: HB 219

Dear Mike,

I am writing to convey the Office of Public Guardian's support of HB 219, as amended. This bill reflects the compromise of a group of stakeholders who worked collaboratively to draft the language in a manner which enhances the due process protections of adults under guardianship while not unduly straining the probate court system.

The Office of Public Guardian is especially supportive of the proposal that all matters regarding Voluntary by Guardian admissions be reviewed by the Merrimack County Probate Court. Almost all of these admissions are to New Hampshire Hospital (NHH). If primary jurisdiction over the guardianship is with another county, there can be considerable time and expense on the part of both the state and the guardian. These include: arranging transportation by NHH Security for the ward to attend the hearing; the additional time it takes for a psychiatrist or other clinician from NHH to travel to the hearing; and the additional time for a court-appointed attorney from the county which has jurisdiction to travel to NHH to meet with their client.

Finally, the increased clarity of the language regarding timelines assures optimal due process safeguards for the individual under guardianship and greater uniformity of response by both counsel and the probate court.

Thank you for sharing this letter with the Senate Judiciary Committee.

Respectfully,


Linda Mallon, Esq.
Executive Director

Speakers

Voting Sheets

Senate Judiciary Committee

EXECUTIVE SESSION

Bill # HB 219

Hearing date: 4/27/10

Executive session date: 4/28/10

Motion of: Amendment

VOTE: _____

Made by Reynolds
Senator: Lasky
 Houde
 Letourneau
 Roberge

Seconded Reynolds
by Senator: Lasky
 Houde
 Letourneau
 Roberge

Reported Reynolds
by Senator: Lasky
 Houde
 Letourneau
 Roberge

Motion of: OTPA

VOTE: 5-0

Made by Reynolds
Senator: Lasky
 Houde
 Letourneau
 Roberge

Seconded Reynolds
by Senator: Lasky
 Houde
 Letourneau
 Roberge

Reported Reynolds
by Senator: Lasky
 Houde
 Letourneau
 Roberge

<u>Committee Member</u>	<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Reported out by</u>
Senator Reynolds, Chairman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Lasky, Vice-Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Houde	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Letourneau	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Roberge	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

* Amendments: _____

Notes: _____

Committee Report

STATE OF NEW HAMPSHIRE
SENATE
REPORT OF THE COMMITTEE

Date: April 29, 2010

THE COMMITTEE ON Judiciary

to which was referred House Bill 219

AN ACT relative to hearings for incapacitated persons admitted to
state institutions by their guardians.

Having considered the same, the committee recommends that the Bill:

OUGHT TO PASS WITH AMENDMENT

BY A VOTE OF: 5-0

AMENDMENT # 1738s

Senator Deborah R. Reynolds
For the Committee

L. Gail Brown 271-3076

New Hampshire General Court - Bill Status System

Docket of HB219

Docket Abbreviations

Bill Title: relative to hearings for incapacitated persons admitted to state institutions by their guardians.*Official Docket of HB219:*

Date	Body	Description
01/07/2009	H	Introduced 1/7/2009 and Referred to Judiciary; HJ 8 , PG.125
01/22/2009	H	==CANCELLED== Public Hearing: 2/4/2009 10:00 AM LOB 208
02/03/2009	H	Public Hearing: 2/19/2009 10:00 AM LOB 208
03/04/2009	H	Executive Session: 3/9/2009 11:00 AM LOB 208
03/10/2009	H	Retained in Committee
09/14/2009	H	Retained Bill - Subcommittee Work Session: 10/6/2009 10:30 AM LOB 208
10/06/2009	H	==CANCELLED== Retained Bill - Subcommittee Work Session: 10/20/2009 10:30 AM LOB 208
10/16/2009	H	==CANCELLED== Retained Bill - Subcommittee Work Session: 10/27/2009 10:30 AM LOB 208
10/20/2009	H	Retained Bill - Subcommittee Work Session: 11/3/2009 11:00 AM LOB 208
10/21/2009	H	Retained Bill - Subcommittee Work Session: 11/17/2009 9:45 AM LOB 206
10/21/2009	H	Retained Bill - Executive Session: 11/17/2009 10:00 AM LOB 208
11/20/2009	H	Majority Committee Report: Ought to Pass with Amendment #2490h for Jan 6 RC (vote 13-6); HC 2 , PG.95
11/20/2009	H	Proposed Majority Committee Amendment #2490h; HC 1 , PG.7-8
11/20/2009	H	Minority Committee Report: Inexpedient to Legislate; HC 2 , PG.95-96
01/06/2010	H	Special Ordered to Next Session Date in Regular Calendar Order; HJ 6 , PG.310
01/13/2010	H	Amendment #2490h Adopted, VV; HJ 9 , PG.407-408
01/13/2010	H	Ought to Pass with Amendment #2490h: MA VV; HJ 9 , PG.407-408
03/24/2010	S	Introduced and Referred to Judiciary; SJ 11 , Pg.259
04/15/2010	S	Hearing: April 27, 2010, Room 103, State House, 3:00 p.m.; SC16
04/29/2010	S	Committee Report: Ought to Pass with Amendment 1738s, 5/5/10; SC18
05/05/2010	S	Committee Amendment 1738s, AA, VV; SJ 17 , Pg.389
05/05/2010	S	Ought to Pass with Amendment 1738s, MA, VV; OT3rdg; SJ 17 , Pg.389
05/05/2010	S	Passed by Third Reading Resolution; SJ 17 , Pg.398
05/19/2010	H	House Concurs with Senate AM #1738s (Rep Cote): MA VV; HJ 46 , PG.2226
06/02/2010	H	Enrolled; HJ 51 , PG.2322
06/02/2010	S	Enrolled; SJ 21 , Pg.776
07/15/2010	H	Signed by the Governor 07/13/2010; Effective 01/01/2011; Chapter 0288

NH House

NH Senate

Contact Us

New Hampshire General Court Information Systems
107 North Main Street - State House Room 31, Concord NH 03301

Other Referrals

COMMITTEE REPORT FILE INVENTORY

HB 219 ORIGINAL REFERRAL _____ RE-REFERRAL

1. THIS INVENTORY IS TO BE SIGNED AND DATED BY THE COMMITTEE SECRETARY AND PLACED INSIDE THE FOLDER AS THE FIRST ITEM IN THE COMMITTEE FILE.
2. PLACE ALL DOCUMENTS IN THE FOLDER FOLLOWING THE INVENTORY IN THE ORDER LISTED.
3. THE DOCUMENTS WHICH HAVE AN "X" BESIDE THEM ARE CONFIRMED AS BEING IN THE FOLDER.
4. THE COMPLETED FILE IS THEN DELIVERED TO THE CALENDAR CLERK.

DOCKET (Submit only the latest docket found in Bill Status)

COMMITTEE REPORT

CALENDAR NOTICE on which you have taken attendance

HEARING REPORT (written summary of hearing testimony)

HEARING TRANSCRIPT (verbatim transcript of hearing)

List attachments (testimony and submissions which are part of the transcript) by number [1 thru 4 or 1, 2, 3, 4] here: _____

SIGN-UP SHEET

ALL AMENDMENTS (passed or not) CONSIDERED BY COMMITTEE:

- AMENDMENT # 1738 _____ - AMENDMENT # _____
_____ - AMENDMENT # _____ _____ - AMENDMENT # _____

ALL AVAILABLE VERSIONS OF THE BILL:

AS INTRODUCED _____ AS AMENDED BY THE HOUSE
 FINAL VERSION _____ AS AMENDED BY THE SENATE

_____ PREPARED TESTIMONY AND OTHER SUBMISSIONS (Which are not part of the transcript)

List by letter [a thru g or a, b, c, d] here: _____

EXECUTIVE SESSION REPORT

_____ OTHER (Anything else deemed important but not listed above, such as amended fiscal notes):

IF YOU HAVE A RE-REFERRED BILL, YOU ARE GOING TO MAKE UP A DUPLICATE FILE FOLDER

DATE DELIVERED TO SENATE CLERK

9/20/10

[Signature]
COMMITTEE SECRETARY