

LEGISLATIVE COMMITTEE MINUTES

HB1325

Bill as
Introduced

HB 1325 - AS AMENDED BY THE HOUSE

10Mar2022... 0230h

2022 SESSION

22-2532
05/10

HOUSE BILL **1325**

AN ACT relative to release of confidential records of a person appointed a guardian.

SPONSORS: Rep. P. Schmidt, Straf. 19

COMMITTEE: Judiciary

AMENDED ANALYSIS

This bill provides that a person appointed a guardian shall retain the right to access and consent to the release of his or her confidential records unless the terms of the appointment provide otherwise. The bill also provides that the guardian shall provide records to the ward so that the ward may pursue a termination of guardianship request unless the court determines release of such records would be harmful to the ward.

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 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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

AN ACT relative to release of confidential records of a person appointed a guardian.

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

1 1 Guardians and Conservators; Findings; Release of Confidential Records. Amend RSA 464-A:9,
2 IV to read as follows:

3 IV. No person determined to be incapacitated thus requiring the appointment of a guardian
4 of the person and estate, or the person, or the estate, shall be deprived of any legal rights, including
5 the right to marry, to obtain a motor vehicle operator's license, to testify in any judicial or
6 administrative proceedings, to make a will, to convey or hold property, ~~[or]~~ to contract, *or to have*
7 *access to or to grant release of his or her confidential records and papers, including*
8 *medical records*, except upon specific findings of the court. The court shall enumerate in its
9 findings which legal rights the proposed ward is incapable of exercising.

10 2 Guardians and Conservators; Termination of Guardianship; Release of Records to Ward.
11 Amend RSA 464-A:40, II(c) to read as follows:

12 (c) *The guardian shall provide medical, financial, or other records to the ward*
13 *upon the ward's request so that the ward may prepare and pursue a guardianship*
14 *termination motion or request. The guardian may file a petition with the court for an*
15 *order permitting the guardian to withhold such records based on a finding that the*
16 *records would not be relevant to the termination of the guardianship or that their release*
17 *to the ward would be harmful to the interests of the ward. The guardian shall bear the*
18 *burden of establishing to the court that the records should not be released to the ward.*

19 (d) Unless the motion is without merit, the court shall hold a hearing similar to that
20 provided for in RSA 464-A:8 and RSA 464-A:9 at which the guardian shall be required to prove that
21 the grounds for appointment of a guardian provided in RSA 464-A:9 continue to exist.

22 3 Effective Date. This act shall take effect January 1, 2023.

Committee Minutes

SENATE CALENDAR NOTICE

Judiciary

Sen Sharon Carson, Chair
 Sen Bill Gannon, Vice Chair
 Sen Harold French, Member
 Sen Rebecca Whitley, Member
 Sen Jay Kahn, Member

Date: March 30, 2022

HEARINGS

	Thursday		04/07/2022
Judiciary	(Day)	State House 100	(Date)
(Name of Committee)		(Place)	(Time)
9:00 a.m.	HB 629-FN	relative to the home cultivation of cannabis plants and the possession of certain cannabis-infused products.	9:00 a.m.
9:30 a.m.	HB 1677-FN	relative to the administration and settlement of claims of abuse at the youth development center and making an appropriation therefor.	
10:00 a.m.	HB 1673-FN	relative to the scope of the fetal life protection act.	
1:00 p.m.	HB 1346	establishing a commission to study the New Hampshire family court system.	
1:15 p.m.	HB 1325	relative to release of confidential records of a person appointed a guardian.	
1:30 p.m.	HB 1515	relative to the guardian ad litem report requirements.	
1:45 p.m.	HB 1520	relative to procedures for guardians ad litem.	
2:00 p.m.	HB 254	relative to the placement of minors in secure settings.	
2:15 p.m.	HB 1265	relative to the waiver of rules in family court proceedings and requiring the establishment of a family division rule waiver database.	

EXECUTIVE SESSION MAY FOLLOW

Sponsors:

HB 629-FN

Rep. McGuire
 Rep. Sylvia

Rep. True
 Rep. McWilliams

Rep. Verville

Rep. T. Lekas

HB 1677-FN

Rep. Umberger
 Sen. Bradley

Rep. Wallner

Rep. Rice

Rep. Long

HB 1673-FN

Rep. M. Smith
 Rep. Kenney
 Sen. Rosenwald

Rep. Simpson
 Rep. Amanda Bouldin
 Sen. Whitley

Rep. Altschiller
 Rep. Rogers
 Sen. Sherman

Rep. Toll
 Rep. K. Murray

HB 1346

Rep. Gay
 Rep. Harley
 Rep. Homola

Rep. Stapleton
 Rep. Bernardy
 Rep. Woods

Rep. Rung
 Rep. Wuelper

Rep. McWilliams
 Rep. Greeson

HB 1325

Rep. P. Schmidt

HB 1515

Rep. Gay

Rep. Kofalt

Rep. Post

HB 1520

Rep. Belanger

Rep. Andrew Bouldin

Rep. B. Boyd

Sen. Bradley

HB 254

Rep. Rice

Sen. Carson

HB 1265

Rep. Gay

Rep. Bernardy

Rep. DiLorenzo

Rep. Stapleton

Rep. Cali-Pitts

Rep. Long

Rep. Moran

Rep. Prout

Rep. Long

Sen. Hennessey

Rep. Stapleton

Rep. Greeson

Rep. Post

Rep. Langley

Rep. Bernardy

Rep. M. Pearson

Rep. McGuire

Sen. Gannon

Rep. Wallner

Sen. Rosenwald

Rep. Rung

Rep. Langley

Sen. Reagan

Rep. Booras

Rep. McWilliams

Rep. Amanda Bouldin

Rep. Johnson

Sen. Watters

Rep. M. Smith

Rep. Harley

Rep. Kofalt

Jennifer Horgan 271-7875

Sharon M Carson
Chairman

Senate Judiciary Committee

Jennifer Horgan 271-7875

HB 1325, relative to release of confidential records of a person appointed a guardian.

Hearing Date: April 7, 2022

Time Opened: 1:41 p.m.

Time Closed: 1:47 p.m.

Members of the Committee Present: Senators Carson, Gannon, French, Whitley and Kahn

Members of the Committee Absent : None

Bill Analysis: This bill provides that a person appointed a guardian shall retain the right to access and consent to the release of his or her confidential records unless the terms of the appointment provide otherwise. The bill also provides that the guardian shall provide records to the ward so that the ward may pursue a termination of guardianship request unless the court determines release of such records would be harmful to the ward.

Sponsors:

Rep. P. Schmidt

Who supports the bill: Honorable Dan Itse; Karen Rosenberg, Disability Rights Center-NH

Who opposes the bill: Representative Belanger

Summary of testimony presented in support:

Karen Rosenberg (Disability Rights Center-NH)

- This bill is for individuals who have been determined to be incompetent and have appointed guardians, but whose situation may change or who may want to pursue supported decision making as an alternative to guardianship.
- The language will allow those individuals to get the records they may require to establish their ability to manage their own affairs or how they would benefit from an alternative to guardianship.
- The bill does provide safeguards if someone is under guardianship seeking these records, but the guardian has concerns.
- In that instance the guardian would have the ability to bring that to the court for the judge to make a determination.
- This dovetails nicely with the supported decision-making bill that passed last year applying to RSA 464-D:1.

- Senator Whitley asked if people are not able to get access to these records currently.
 - Right now, when a judge determines a person is incompetent, a decision could be made at that juncture that that individual is not entitled to those records. If that person's situation changes there is no way for them to gain access to those records.
- Senator Whitley asked if she is aware of situations where someone may get a guardianship for their entire life, but there are some supports they have received, or a maturity happens that would cause them to seek a smaller guardianship.
 - Does hear about situations where individual's situations change, where they may regain competency. Also the new law that went into effect this summer plays into this.

Summary of testimony presented in opposition:

Representative Belanger

- This is currently being done.
- Would request the bill be voted ITL.

jch

Date Hearing Report completed: April 7, 2022

Speakers

Senate Remote Testify

Judiciary Committee Testify List for Bill HB1325 on 2022-04-07

Support: 0 Oppose: 0

Voting Sheets

Senate Judiciary Committee
EXECUTIVE SESSION RECORD
2021-2022 Session

Bill # 1325

Hearing date: _____

Executive Session date: _____

Motion of: IS Vote: 5-0

Committee Member	Made by	Second	Yes	No
Sen. Carson, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Gannon, V-Chair	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. French	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Kahn	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Whitley	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Motion of: consent Vote: 5-0

Committee Member	Made by	Second	Yes	No
Sen. Carson, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Gannon, V-Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. French	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Kahn	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Whitley	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Motion of: _____ Vote: _____

Committee Member	Made by	Second	Yes	No
Sen. Carson, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Gannon, V-Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. French	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Kahn	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Whitley	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Reported out by: Carson

Notes: has merit needs more work

Committee Report

FOR THE CONSENT CALENDAR

JUDICIARY

HB 1325, relative to release of confidential records of a person appointed a guardian.

Interim Study, Vote 5-0.

Senator Sharon Carson for the committee.

This bill would provide that a person appointed a guardian shall retain the right to access and consent to the release of his or her confidential records unless the terms of the appointment provide otherwise. The bill would further provide that the guardian shall provide records to the ward so that the ward may pursue a termination of guardianship request unless the court determines release of such records would be harmful to the ward. Although the Committee believes the bill has merit, it is in need of further examination, and therefore the Committee recommends the bill go to Interim Study.

HB1325

Bill Details

Title: relative to release of confidential records of a person appointed a guardian.

Sponsors: *(Prime)* Peter Schmidt (D)

LSR Number: **22-2532**

General Status: **SENATE**

House:

Committee: Judiciary

Due Out: 3/10/2022

Status: PASSED/ADOPTED WITH AMENDMENT

Senate:

Committee: Judiciary

Floor Date: 4/14/2022

Status: INTERIM STUDY

Bill Docket

Body	Description
H	Introduced 01/05/2022 and referred to Judiciary
H	Public Hearing: 01/13/2022 01:30 pm LOB 206-208
H	Executive Session: 01/13/2022 01:30 pm LOB 206-208
H	Committee Report: Ought to Pass with Amendment # 2022-0230h (Vote 21-0; CC)
H	Amendment # 2022-0230h: AA VV 03/10/2022 HJ 5
H	Ought to Pass with Amendment 2022-0230h: MA VV 03/10/2022 HJ 5
S	Introduced 02/24/2022 and Referred to Judiciary; SJ 5
S	Hearing: 04/07/2022, Room 100, SH, 01:15 pm: SC 14
S	Committee Report: Referred to Interim Study, 04/14/2022; Vote 5-0; CC; SC 15
S	Refer to Interim Study, MA, VV; 04/14/2022; SJ 8

Other Referrals

Senate Inventory Checklist for Archives

Bill Number: HB1325

Senate Committee: Judiciary

Please include all documents in the order listed below and indicate the documents which have been included with an "X" beside

Final docket found on Bill Status

Bill Hearing Documents: {Legislative Aides}

Bill version as it came to the committee

All Calendar Notices

Hearing Sign-up sheet(s)

Prepared testimony, presentations, & other submissions handed in at the public hearing

Hearing Report

Revised/Amended Fiscal Notes provided by the Senate Clerk's Office

Committee Action Documents: {Legislative Aides}

All amendments considered in committee (including those not adopted):

___ - amendment # ___ ___ - amendment # ___

___ - amendment # ___ ___ - amendment # ___

Executive Session Sheet

Committee Report

Floor Action Documents: {Clerk's Office}

All floor amendments considered by the body during session (only if they are offered to the senate):

___ - amendment # ___ ___ - amendment # ___

___ - amendment # ___ ___ - amendment # ___

Post Floor Action: (if applicable) {Clerk's Office}

Committee of Conference Report (if signed off by all members. Include any new language proposed by the committee of conference):

Enrolled Bill Amendment(s)

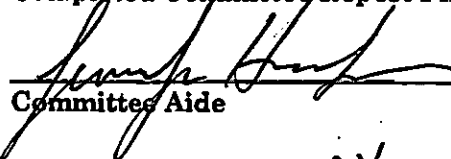
Governor's Veto Message

All available versions of the bill: {Clerk's Office}

___ as amended by the senate ___ as amended by the house

___ final version

Completed Committee Report File Delivered to the Senate Clerk's Office By:


Committee Aide

Date

Senate Clerk's Office AK