Bill as Introduced

HB 1139 – AS INTRODUCED

2000 SESSION

00-2062
01/10

HOUSE BILL ***1139***

AN ACT establishing a committee to study involuntary emergency admission hearings.

SPONSORS: Rep. Manning, Ches 9; Rep. Bickford, Straf 1; Sen. Squires, Dist 12

COMMITTEE: Judiciary

ANALYSIS

This bill establishes a committee to study involuntary emergency admission hearings.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

HB 1139 – AS INTRODUCED

00-2062
01/10

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand

AN ACT establishing a committee to study involuntary emergency admission hearings.

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

1 Committee Established. There is established a committee to study involuntary emergency admission hearings under RSA 135-C.

2 Membership and Compensation.

I. The members of the committee shall be as follows:

(a) Three members of the house of representatives, appointed by the speaker of the house.

(b) Three members of the senate, appointed by the president of the senate.

II. The committee shall seek input from the commissioner of health and human services, or designee, and from any other person or organization the committee deems relevant to its study.

III. Members of the committee shall receive mileage at the legislative rate when attending to the duties of the committee.

3 Duties. The committee shall study involuntary emergency admission hearings under RSA 135-C.

4 Chairperson; Quorum. The members of the study committee shall elect a chairperson from among the members. The first meeting of the committee shall be called by the first-named house member. The first meeting of the committee shall be held within 45 days of the effective date of this section. Four members of the committee shall constitute a quorum.

5 Report. The committee shall report its findings and any recommendations for proposed legislation to the speaker of the house of representatives, the senate president, the house clerk, the senate clerk, the governor, and the state library on or before November 1, 2000.

6 Effective Date. This act shall take effect 60 days after its passage.

Committee Minutes

Date: May 9, 2000
Time: 1:55 PM
Room: LOB 102

The Senate Committee on Public Institutions/Health Human Services held a hearing on the following:

HB 1139 establishing a committee to study involuntary emergency admission hearings.

Members of Committee present:

Senator Squires
Senator Wheeler
Senator Fernald
Senator Krueger
Senator McCarley
Senator Pignatelli

The Chair, Senator James Squires, opened the hearing.

Representative Joseph Manning, Ches. D. 9: Thank you Mr. Chairman. Good afternoon. For the record, I'm Representative Joseph Manning. I represent Cheshire 9, the town of Jaffrey.

A quick lesson on what this bill is all about. When a person – this is sort of a continuation of our hearing from yesterday about IEA – when a person is involuntarily admitted to the NH State Hospital usually that admission is a result of somebody petitioning that they be admitted. In a case of a child, it may be the parent or it may be a husband committing his wife. Usually that will start, hopefully, at the local community mental health center, although it may be at an emergency room someplace but usually most times it would be the community mental health center or sometimes the truant police but in any event, they fill out a petition to have their loved one committed and that petition allows the hospital to take in the patient or the client and at the end of three days, three business days, there is a hearing and this is what this bill is about. The hearing is held within three days to see whether or not that person should have been committed. Whether or not that person was in such a state three days ago that they really should be there. That hearing is in a district court that's held right in the hospital itself and there is a district court judge that hears the case.

If it's in the case of a parent committing their 18 or 19 year old, whatever, to the hospital because they are a danger to themselves or a danger to others. When the hearing is held the parent has the onus of speaking against the child, defending their action before the child and the court. This is an extremely difficult thing to do. To act as prosecutor, if you will, for the child. Often times it's the parents that are (cough) and yet they have to convince the judge the legal and medical reasons for this commitment. They're not lawyers nor are they psychiatrists but they have to make a reasonable presentation. One of the examples that I use is that the parent, the mother, may be so unglued she said "well my daughter won't talk to me." The kid may be extremely depressed and not talking to anybody but all the mother can say is she won't talk to her. Well, what mother amongst us hasn't had their teenager not talk to them at sometime or another? It's not very good legal grounds.

So, what this bill does is that it says that what we need to do is to help that mother, in this instance, present a reasonable case. I'm not quite sure how you can do it because if you go to the Department, the Department doesn't have money to have a legal aid come in with every commitment case. You just, again it's the same problem that we were talking about yesterday. The money isn't there. The mental health centers certainly can't afford it, to send their professionals up to Concord every time they commit somebody. They just don't have the money or the time. I don't know what the answer is but as we found the other day, there are problems with our system and this would be a bill to at least look at this small part of it.

I'm going to ask if I may be excused from further testimony because, fortunately, we have in the hearing room today, Judge Scheffy who is the Judge at our Court at the NH State Hospital. Now, fortunately, he is excellent, knows his stuff, understands that the mother is all shooken up and he is able to take care of her but at times he is on vacation or he's off and somebody else is substituting for him. I have been at hearings where it was obvious that the judge was not – the substitute judge – was not up to snuff in terms of mental illness and couldn't look in this lady's eyes and see – in particularly when you have a judge that's inexperienced in these things – he may be experienced in the law but it puts the parent or the husband or wife or whoever the petitioner is, in a tough spot.

That's basically the bill and rather than ask me questions about that, I'd like to ask you to go onto Judge Scheffy if I might, Mr. Chairman?

Senator James W. Squires, D. 12: Certainly. Thank you Representative. Judge Scheffy.

Judge Brachett Scheffy, IEA Hearings, Concord District Court: Good afternoon. For the record, my name is Brachett Scheffy. I'm a – actually I'm the presiding judge in Henniker District Court but I have, since March of last year, been in the Concord District Court handling the vast majority of the involuntary emergency admission hearings. I'm sensitive to the fact that you all have afternoon schedules and I'm not exactly sure what you want to hear from me. I can talk until you quit for the day but most likely there may be some particular part that you'd be more interested in.

Senator James W. Squires, D. 12: I think that what we need to know is you view of the bill. Is it, in your judgement, appropriate public policy that we pass it and you might want to say why? If you were of the opinion that there's no need to study involuntary emergency admissions, for example, then of course there's no need for the bill. I doubt that is your feeling so if you could just speak to the bill, that would be helpful.

Judge Scheffy: I'd be happy to. The – I guess in terms of the generalities, we are talking about a process that effects a large number of people every year. Last year, for example, we had about 800 admissions through the end of December and extrapolating from this year's numbers, are expecting it will go well over 900 and I have no idea what the reason for that is. I hope it's just a glib on the screen but it may have some societal significance. I really don't know. I don't think that the process of IEA hearings is related in any way. I think it's more likely such things as the closing of Brookside in Nashua or near Nashua. I understand that Pavilion Hospital has cut down the number of adolescent beds. Actually that reminds me of something that I think is worth studying and I'll get to that in a second. In any event, that may be impetus for the increase in numbers. I hope it is because that's a discreet problem that can be addressed with a discreet number of dollars.

I point out the number of people involved because I just want to emphasize that it is a very important role for the courts and that's what IEA process is. It's a traditional function in protecting the rights of people who are involuntarily admitted. There is not a single hearing that goes by that I don't remind myself that my decision is going to result in this person being incarcerated. It may be in a state hospital and I would emphasize that I've grown to have a lot of respect for that hospital and the staff there from top to bottom. It's been really quite astonishing to see the level of care and concern and commitment the staff seems to have to their patients, but my role is to make sure that the law that we have is or has been adhered to thus enabling the State, essentially, to give this person in the locked wards of the state hospital. Again, they're – it reminds me – they're pretty nice wards but they

are locked and people's freedom has been taken away and therefore, absolutely restricted hearings to the statute needs to be made.

Sometimes that can be a little frustrating, to me, and I'll give you an example. Yesterday there was a gentleman there who very clearly from the wording in the petition needed to be there. He had been in crisis, threatened a lot of people. He was strung he was acting a psychotic manner but the petition that had been filed was defective in a number of significant ways and I had no choice but to dismiss that case. I don't like doing that as a practical matter. That's probably not in the patient's best interest but we are talking about rights that people have. They're very closely hind to the rights that defendants in criminal cases have. So, I can't, anymore than I could in a criminal case, decide they haven't really proven in the case against this person but if anybody deserves to be locked up, he does. (laughter) I don't get to make that decision and I hope never do.

So, just from the sake of the significance of the rights that we are depriving people of and the numbers that we're talking about, I think that putting some light on the process certainly would not hurt and it may reveal things that would be helpful additions to the process that we have.

Senator James W. Squires, D. 12: The level you said, 900, that's 17 a week. This is the only place now that adolescents will be coming. Do you really hear 17 cases a week on the average? I guess you are.

Judge Scheffy: Yes. Well, we had 8 yesterday and 6 today. I don't think we're going to have any problem with the average this week. I've got 3 scheduled for tomorrow and we'll have another session on Friday and I don't know how many will be at that one.

Senator James W. Squires, D. 12: Senator Wheeler.

Senator Katherine W. Wheeler, D. 21: Thank you Mr. Chairman. My question had been to ask Judge Scheffy to sort of describe how the hearing takes place. What happens in a hearing?

Judge Scheffy: I'd be glad to. First of all, I'd like to say it's a slight variance of what Representative Manning said. I think most petitioners – most of the people who have signed the petition that results in the person being committed – are mental health professionals. Typically a person is in some sort of crisis, ends up, perhaps, in a police station but much more likely at the emergency room at the local hospital. An emergency services clinician, I believe and I'm not positive of this but I believe under contract with the state, goes to the ER and talks with the person, makes a mental health evaluation.

If in consultation with others or by himself or herself decides that the commitment is necessary, will sign the petition. It then goes to a physician and the physician makes an assessment of medical issues and also makes a certification that the person ought to go to the state hospital, if that's the place. If that recommendation is to the state hospital because there are other hospitals that can take people who are involuntarily committed. I sure that no other place in the state has the locked facilities or the level of security might be a better way of putting it, that the state hospital has. So that's where the most significant cases come. But the hospital in Berlin is a designated receiving facility and one of the hospitals in the Portsmouth area is as well. In any case, if the person is committed, he/she is brought to the state hospital and is entitled to what we call a probable cause hearing within 3 days of the admission. That's when I become involved because I conduct these probable cause hearings.

Typically the petitioner will be in the court room. The patient will be brought up from the ward accompanied by a mental health worker and the person will be represented by, usually, one of three lawyers who are under contract with the state to provide representation of the patients. The petitioner will generally almost always go first and give testimony as to why the petition was filed, what the crisis was, what observations he/she made either in the ER or what occurred from the family or police of whoever else was involved in the particular crisis.

After that is over, the attorney for the patient will question the petitioner. There may be other people there to testify and they do so and are similarly cross-examined. I hesitate to even use the word cross-examination. It is cross-examination in the real sense but I have a great deal of respect for the attorneys who are doing it. They are sensitive to – particularly where it's family members – they are sensitive to the fact the petitioners are not lawyers and they haven't done anything bad but they do, in my view, do a good job of eliciting the sort of the information that they ought to. There's some situations where a petitioner may arrange to have someone committed and it's a weak case. It, perhaps, was the best thing that they could do in the middle of the night.

One situation that's frequently troubling and this would be another item to look at, I think, is the fact that the state hospital of not accepting voluntary admissions after hours. I don't want to guarantee what after hours means. It does mean not on weekends and it does mean after 6:00 or 7:00 at night. I'm not sure what the cut off is but the point is that sometimes the ivoluntaryness (sic) of an involuntary admission is not real clear to me. That is to say the patient in crisis in an ER or somewhere may have been willing to go to a hospital. Sometimes the involuntaryness (sic) is that they don't want

to go to the state hospital and they would be willing to go to another hospital. I suspect that that's a carry over of the visions of the Laconia State School or one of the buildings that is boarded up at the corner of Fruit Street and Pleasant Street. I hope they're pleasantly surprised when they get to the facility that we have.

In any case, that is an issue that concerns me but that – sometimes people will go voluntarily. If they are involuntary then that sets off, I believe I'm right about this, the protocol of being transported by the sheriff's department or by the police department. I think you were dealing with a bill on transportation issues yesterday or recently. That's always been something that's very troubling to me. I can't come up with an answer, although I think that bill maybe a partial answer but only a partial answer.

There are a lot of situations where it is just a shame to have someone already in crisis have to be handcuffed and put in the back of a cruiser. Having said that, I – a very significant number of those who are brought to the state hospital are brought there by the Concord Police and I know that they are very sensitive to the fact that they do present a scary picture to their patients and I know that Chief Hallessey is very concerned about that and he's active. In fact, he's active in the Committee that I'm on. It's sort of a liaison committee. He's very concerned about having his officers trained to be sensitive to the needs of the people and they get a lot of experience. Just the fact that they're here in Concord and the state hospital is here, there's a lot of income and outgo within the city of Concord. So, the Concord Police Department is probably in a better position than most to get up to speed on what's appropriate treatment. It's still they're handcuffed and put in a cruiser and there's – I don't know what the alternative is. It's just it's very unfortunate that – I think one alternative is to medicate them to the point where they don't pose any possible threat to the person that's transporting them. That's not a good alternative. There are many who are unpredictable and we can't be asking officers to just take it on faith that this person, perhaps that nobody knows, is going to be well behaved in the back of the cruiser. It's just it's very difficult.

Senator James W. Squires, D. 12: Senator Fernald.

Senator Mark Fernald, D. 11: Judge Scheffy, you said that there were 800+ admissions in 1999. Does current law require hearings in Concord District Court on every single one? Whether it's voluntary or involuntary, are they all subject to hearings?

Judge Scheffy: It's only involuntary and that's the number that I was giving you. That is not the total number of admissions to the state hospital.

Senator Mark Fernald, D. 11: Alright. The 800 is the involuntary?

Judge Scheffy: That's correct.

Senator Mark Fernald, D. 11: And that 800 is emergency involuntary? Or is there such a thing as a non-emergency involuntary?

Judge Scheffy: Not really. You might – Probate process in that category because if somebody has been committed under the IEA process it is for a maximum of ten days from the day of admission not the day of the hearing and so, if the hospital staff feels that the person remains a threat to himself or others they will petition the Probate Court. So, that's an involuntary, non-emergency hearing but it's not part of the process that I'm dealing with.

Senator James W. Squires, D. 12: Senator Fernald.

Senator Mark Fernald, D. 11: Do you feel that under the current statute there are deficiencies in the statute that either are hampering whatever the petition process or that are hampering what you needed as a judge when you rule in these involuntary admission cases? This is a study committee to study the process and I guess I'm curious to your opinion as to the statute as it exists today, both from the point of view from the petitioner and the point of view of a judge.

Judge Scheffy: I think the statute is basically ok. I am troubled by the type of thing that Representative Manning was talking about a family member as petitioners having to deal with opposing their family member and the same might be said of mental health professionals opposing, sometimes, their clients. That doesn't happen too often but it does happen where a person is in a regularly scheduled therapy session makes some threats of suicide or homicide and a therapist all of a sudden is an adversary and that is unfortunate. It would be nice if there were more of a possibility for what we might call a plea-bargain where a petitioner might be able to, essentially, negotiate with the attorney or the patient and work out some sort of deal. The purpose being to avoid this confrontation between the petitioner and the patient. I wouldn't want to sit here and say that that wouldn't carry worse problems then the ones that we're facing. So, I'm sure that's a good idea. I think it probably makes sense to look at that as a possibility in the course of some sort of study.

Senator James W. Squires, D. 12: Senator McCarley.

Senator Caroline McCarley, D. 6: As a follow on to what happens in the process, at the end of this hearing for which, for the sake of this discussion, you as a judge were to determine that the petitioner was in order and everything else, this person then remains for 7 more days or is there a calling as to how much longer this individual remains at the hospital?

Judge Scheffy: If I find probable cause, it is as of the date of the admission and that 3 days maybe, in terms of calendar days, four or five if there's a weekend in there. But in any event, what I do is to essentially delegate to the state hospital the authority to keep that person up to a maximum of ten days. So the state hospital always has the option of releasing someone prior to the end of the ten day period.

Senator Patricia Krueger, D. 16: Mr. Chairman?

Senator James W. Squires, D. 12: Yes.

Senator Patricia Krueger, D. 16: Judge, I have two quick questions. Can anyone bring forward someone for involuntary admission. Question 1. How often have you found that in fact the patient is right and shouldn't be there and there's an agenda whereby someone has brought him/her forth for this involuntary admission and you have not agreed with that? Not for the technical issues that you brought up earlier but on merit.

Judge Scheffy: The answer to the first question, I don't know what the statute says so I would presume that anyone bringing a petition needs to be over 18 and reasonably mentally sound. I'm not sure that the statute specifies bringing a petition. There's certainly no restriction. Occasionally police officers, often family members, frequently spouses or children, parents but the majority, still, would be mental health professionals and it would be nice if virtually all of them were mental health professionals who did that crisis evaluation so that there's an insulation between the family or therapist or whatever.

Your other question, I'm going to start keeping statistics on that but I can't say that I've got numbers to back it up but my belief is that somewhere around 15% of the petitions I will find no probably cause on. Most often that would be what I would consider an over-reaction to the situation and an abundance of caution which is another way of saying the same thing and I don't fault the petitioners for bringing them, except on some very rare cases and that does happen. (turn over tape) There is a noticeable number and by no means is this a large minority but it's a significant number and I think that, in my view, says that the process is working reasonably well. I would

think that if I found probably cause on absolutely every petition, somebody's losing....

Senator Patricia Krueger, D. 16: A follow-up? So therefore one might assume then from your answer you would also hope that the study committee would also like into not just advocacy for the person who is bringing forth the petition giving the example of the wife or mother who didn't want to speak against her husband or child but in fact also clarify the need to reinforce the protection of law to the patient. I remember at St. Elizabeth's, for example, I mean people were there. Eleven thousand people were there who were involuntarily committed because they had diseases or disorders that nowadays would not be considered admissible.

Judge Scheffy: In answer to your question, I – as I said at the onset – the rights that we are depriving people are significant and so I wouldn't want them diminished in anyway.

Senator Patricia Krueger, D. 16: Thank you very much.

Senator James W. Squires, D. 12: Thank you.

Judge Scheffy: Just as a follow-up, I don't whether this whole committee would be studying it or some sub-committee, I'd be more than happy to meet with it or have you come over to the Courthouse, Courtroom at anytime and discuss it on an informal basis. Whatever you'd like. I'd be more than happy to help.

Senator James W. Squires, D. 12: What will happen, Judge, is that the Speaker appoints three members, the President of the Senate appoints three members and that will constitute the committee. They may want, in fact I hope they do, come over and at least observe the hearings and see.

Judge Scheffy: They're welcome at anytime.

Senator James W. Squires, D. 12: Thank you. I will close the hearing on House Bill 1139.

Hearing closed at 2:05 pm.

Respectfully submitted,

Merideth A. Chandler,
Committee Secretary

Speakers

SENATE PI-HHS COMMITTEE

Date 05/09/00 Time 1:30 PM Public Hearing on HB 1139

Appearing in FAVOR: (Please print) **Please check box at left to speak.**

Speaking?	Name	Address	Representing
☑	Rep Joseph P Manning		Chas. Dist. #9
☑	Brackett Scheffy	Judge at Involuntary Emergency Admission hearings at Concord Dist. Ct.	
☐	Susan Lange	DHHS / Div of Behavioral Health	271-5073
☐			
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Appearing in OPPOSITION: (Please Print) **Please check box at left to speak.**

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Testimony

State of New Hampshire

HOUSE OF REPRESENTATIVES

CONCORD

MEMORANDUM

TO: **Honorable C. Jeanne Shaheen, Governor**
Honorable Donna Sytek, Speaker of the House
Honorable Beverly A. Hollingworth, President of the Senate
Karen O. Wadsworth, House Clerk
Gloria M. Randlett, Senate Clerk
Michael York, State Librarian

FROM: **Rep. Sandra B. Keans, Chair**
1 Sweetbriar Lane
Rochester NH 03867-3735

DATE: **October 31, 2000**

RE: **Final Report on HB 1139**
establishing a committee to study involuntary emergency admission hearings.

Pursuant to Chapter 221:1, Laws of 2000, enclosed please find the report of the committee charged with studying involuntary emergency admission hearings.

Please feel free to contact me with any questions or comments.

SBK/jal
Cc: Study Committee Members
Marie-Hélène Bailinson, Committee Researcher

Chapter Study on HB 1139
Establishing a committee to study involuntary emergency admission hearings.

FINAL REPORT

October 31, 2000

The committee heard testimony about the many individuals who participate in the involuntary emergency admissions process. The committee received input from Rep. Joseph Manning, sponsor of the bill; Judge Brackett Scheffy of the Concord District Court who presides at Probable Cause hearings; Dr. James Adams and Kathleen Anderson, ARNP of the Secure Psychiatric Unit at the Department of Corrections; Rick Axtman, an experienced Services Clinician and Dr. Paul McGuire of Riverbend Community Mental Health Services in Concord; Dr, Udo Rauter of the New Hampshire Hospital and Susan Langle of the Division of Behavioral Health. In addition, committee members attended the Annual Conference of the National Alliance for the Mentally ill of New Hampshire on October 21, 2000, which focused on Criminal Justice and Mental Health Issues.

The committee heard testimony that for the most part the IEA system works well. It would be preferred if family members or therapists did not need to assume a prosecution role or testify "against" the person needing admission as this role may strain important and supportive relationships. Family advocates, clinicians and Health & Human Services staff recognize that this sometimes creates difficulty for people who bring petitions in these situations. The committee determined that resource limitations do not permit the provision of counsel to petition or to enable mental health center staff to appear as petitioners in every case. The committee recommends that the Department of Health & Human Services take steps to support family member petitions including:

- Complete a Handbook for petitioners explaining the IEA process
- Continue to provide guidance on request to people who have questions about the process
- Explore the use of teleconferencing as a means to have mental health center staff testify at Probable Cause hearings from a remote location
- Encourage Mental Health Center staff to avoid using family members as petitioners whenever possible.

In addition to discussing the IEA process the committee had the opportunity to discuss issues of concern about the interface of the criminal justice and mental health systems. Concerns about how probationers or parolees are referred for needed mental health care were discussed. Several of the individuals who spoke to the committee strongly urged steps to ensure that individuals who need to be admitted are transported to a hospital by a means other than law enforcement officers. Judge Scheffy, in particular, noted that such

mechanisms of transportation and the handcuffs that are part of law enforcement transports are unnecessary in many instances and humiliate and traumatize individuals who are already in crisis.

The committee found that more information should be gathered about the training of police officers to interact with mental illness. The committee learned about the Crisis Intervention Team developed in Memphis, Tennessee in which officers receive special training in diffusing crisis and encoring that individuals in a mental health crisis receive the treatment they need rather than being arrested. Of note, through the implementation of the CIT program, dramatic reductions in police officer injuries and related workers compensation expenses have been noted. The committee recommends further exploration of how this type of training might be utilized in New Hampshire.

The committee received a recommendation for further legislation that would permit Advanced Registered Nurse Practitioners to assume responsibility for signing an IEA certificate and for authorizing emergency treatment. The committee supports this proposed legislation and notes that this would be of benefit in rural areas of New Hampshire.

One last note, because of the time constraints placed on the committee by the impeachment process, the chair is submitting this report without each member having signed off.

Respectfully submitted,

Sandra B Keans

Sandra B. Keans
Strafford County, District 16

Committee Report

Date: May 9, 2000 Time: 1:30 PM

The Senate Committee on Public Institutions/Health Human Services held its hearing in Room 102, LOB, Concord, New Hampshire.

BILL NO.: HB 1139 TITLE: establishing a committee to study involuntary emergency admission hearings.

Members of the Committee present:

Senator Squires
Senator Wheeler
Senator Fernald
Senator Krueger
Senator McCarley
Senator Pignatelli

Those appearing in favor:

Name and Address	Representing
See Attached.	

Those appearing in opposition:

Name and Address	Representing
See Attached.	

REPORT OF THE COMMITTEE:

- ☒ Ought to Pass
- ☐ Ought to Pass w/ Amendment
- ☐ Inexpedient to Legislate
- ☐ Rereferred
- ☐ Interim Study
- ☐ Continued Hearing
- ☐ Postponed Hearing

STATE OF NEW HAMPSHIRE

SENATE

REPORT OF THE COMMITTEE

Date: May 9, 2000

THE COMMITTEE ON Public Institutions/Health Human Services

to which was referred House Bill 1139

AN ACT establishing a committee to study involuntary emergency admission hearings.

VOTE: 6-0

Having considered the same, report the same without amendment and recommend that the bill: **OUGHT TO PASS.**

Senator Katie Wheeler
For the Committee