2023 SESSION

23-0621
06/04

HOUSE BILL ***169***

AN ACT relative to termination of guardianship.

SPONSORS: Rep. Jonathan Smith, Sull 5; Rep. Gordon, Rock 7; Rep. J. MacDonald, Carr 6; Rep. Crawford, Carr 3; Rep. Burroughs, Carr 2; Rep. Bradley, Dist 3

COMMITTEE: Judiciary

ANALYSIS

This bill changes the burden of proof for termination of guardianship proceedings.

- -

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

23-0621
06/04

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Three

AN ACT relative to termination of guardianship.

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

1 Guardianship of Minors and Estates of Minors; Termination of Guardianship; Burden of Proof. Amend RSA 463:15, V(b) and (c) to read as follows:
(b) In a proceeding to terminate a guardianship established by consent, the burden of proof shall be on the guardian to demonstrate by the ***preponderance of the evidence*** that the guardianship is necessary to provide for the essential physical and safety needs of the minor and that termination of the guardianship will adversely affect the minor's psychological well-being.
(c) In a proceeding to terminate a guardianship established by consent, the burden of proof shall be on the guardian to demonstrate by the ***preponderance of the evidence*** that substitution or supplementation of parental care and supervision is necessary to provide for the essential physical and safety needs of the minor and that termination of the guardianship will adversely affect the minor's psychological well-being.

(c) Subparagraph (b) shall not apply if guardianship of the person was granted to a grandparent as the result of the parent's substance abuse or dependence. In such cases, the burden of proof shall be on the parent to demonstrate by [~~a preponderance of the~~] ***clear and convincing*** evidence that substitution or supplementation of parental care and supervision is no longer necessary to provide for the essential physical and safety needs of the minor and termination of the guardianship will not adversely affect the minor's psychological well-being.

2 Effective Date. This act shall take effect January 1, 2024.

CONSENT CALENDAR

February 1, 2023

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Committee on Judiciary to which was referred HB 169,

AN ACT relative to termination of guardianship.

Having considered the same, report the same with the following resolution: RESOLVED, that it is

INEXPEDIENT TO LEGISLATE.

Rep. Katelyn Kuttab

FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

COMMITTEE REPORT

Committee:	**Judiciary**
Bill Number:	**HB 169**
Title:	**relative to termination of guardianship.**
Date:	**February 1, 2023**
Consent Calendar:	**CONSENT**
Recommendation:	**INEXPEDIENT TO LEGISLATE**

STATEMENT OF INTENT

This bill would change the burden of proof required to be sustained by the guardian in a petition to terminate a guardianship established by consent from clear and convincing evidence to preponderance of the evidence. It also would change the burden of proof placed upon a parent seeking to terminate a guardianship granted to grandparents as a result of a parent's substance abuse from preponderance of the evidence to clear and convincing evidence. Although the Judiciary Committee recognizes the importance of protecting every child, based on the controlling U.S. and New Hampshire Supreme Court precedents, the proposed changes very likely would be unconstitutional.

Vote 19-0.

Rep. Katelyn Kuttab
FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

CONSENT CALENDAR

Judiciary

HB 169, relative to termination of guardianship. **INEXPEDIENT TO LEGISLATE.**

Rep. Katelyn Kuttab for Judiciary. This bill would change the burden of proof required to be sustained by the guardian in a petition to terminate a guardianship established by consent from clear and convincing evidence to preponderance of the evidence. It also would change the burden of proof placed upon a parent seeking to terminate a guardianship granted to grandparents as a result of a parent's substance abuse from preponderance of the evidence to clear and convincing evidence. Although the Judiciary Committee recognizes the importance of protecting every child, based on the controlling U.S. and New Hampshire Supreme Court precedents, the proposed changes very likely would be unconstitutional. **Vote 19-0.**

Original: House Clerk
Cc: Committee Bill File

HOUSE COMMITTEE ON JUDICIARY

PUBLIC HEARING ON HB 169

BILL TITLE: **relative to termination of guardianship.**

DATE: **January 18, 2023**

LOB ROOM: **206 - 208** **Time Public Hearing Called to Order:** **11:57 am**

Time Adjourned: **12:00 pm**

Committee Members: Reps. Lynn, Wallace, Kuttab, Andrus, Testerman, Stapleton, Tripp, Greeson, K.Perez, M.Smith, Horrigan, DiLorenzp, M.Paige, Devine, Lanza, Manos and Turer.

Bill Sponsors:

Rep. Jonathan. Smith	**Rep. Cordelli**	**Rep. J. MacDonald**
Rep. Crawford	**Rep. Burroughs**	**Sen. Bradley**

TESTIMONY

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

Rep. Jonathan Smith
- Supports bill
- Linda Morgan (grandmother) had custody for 6 yrs., as parents were substance addicted. Parents became clean and sought to take back custody and won. Child was removed from home of all they ever knew.

Rep. Turer
- Question: Why not any relative, only grandparents? Good question, unsure.

***Linda Morgan**
- Supports bill
- Read and Submitted written testimony: Preston in (Gov.) Sununu's office stated (Gov.)Sununu would support.
- August 29, 2022 -granddaughter (Maya) was removed from home, 2 hours away, suffers greatly. Saw granddaughter Christmas Eve, doesn't know when will see again.

Beth Morrison DHHS, and Brian Clark DHHS/ DCYF
- Need section B to remain same - clear and convincing. Carve out, use as permanency plans

Respectfully submitted,

Rep. Katlyn Kuttab, Clerk

House Remote Testify

Judiciary Committee Testify List for Bill HB169 on 2023-01-18

Support: 4 Oppose: 0 Neutral: 0 Total to Testify: 0

Export to Excel

Name	City, State Email Address	Title	Representing	Position	Testifying	Non-Germane	S
Bartlett, Christy	CONCORD, NH christydbartlett@gmail.com	A Member of the Public	Myself	Support	No	No	
Gil, Eileen	Tuftonboro, NH megilx@yahoo.com	A Member of the Public	Myself	Support	No	No	
Gil, Margaret Eileen	Mirror Lake, NH megilx@yahoo.com	A Member of the Public	Myself	Support	No	No	
Gil, Lawrence	Mirror Lake, NH lawrencewgil1947@gmail.com	A Member of the Public	Myself	Support	No	No	

Margaret Eileen Gil

As a grandparent who assumed permanent Guardianship of our grandson at 1 year old, I support the changes in this bill. Some grandparents such as we were always keeping the best interest of the child in mind. In our case we knew neither Father or Motherb would be capable of reassuming parenting. Our only option to avoid the threat of termination was to move tp adopt. Not every family has the wherewithal or finances to take that route.

Lawrence Gil

As a grandparent who assumed permanent Guardianship of our grandson at 1 year old, I support the changes in this bill. Some grandparents such as we were always keeping the best interest of the child in mind. In our case we knew neither Father or Motherb would be capable of reassuming parenting. Our only option to avoid the threat of termination was to move tp adopt. Not every family has the wherewithal or finances to take that route.

HB 169

Dear Governor Sununu,

I am writing to you today to ask that you consider making changes to the Guardianship guidelines here in our state.

Though each case is unique in its standing, the guidelines are overall.

As I cannot speak for each case in the state, and each case has its own story, I can speak for mine.

I have had my granddaughter in my home under my care for five (7) years now, she is six (8) years old and she is autistic.

I have had permanent guardianship for three and a half (5 1/2) years now. I am the only caregiver she has known and I have provided for her academic, spiritual, physical, social, financial, emotional and mental health needs with no help from either family or parent.

Both parents are addicts in recovery. After several attempts by both, they may or may not be successful, as you know there is always the possibility of relapse and recovery is a lifelong battle. Both parents still have their parental rights, as it stands either parent could ask the court to reverse the guardianship.

If this were to happen, my granddaughter would be taken out of the only home she has known, away from the only caregiver she has had, away from her community that she has established roots in and that has enveloped her with an environment of both support and love, away from her daily routines that keep her growing successfully, away from her church family and church that she thrives in, away from her school and support network and services/ providers, away from her friends, away from her family, and away from everything she has learned to trust and love over the past five (7) years, and be placed in to a very different community, with people that she is not familiar with and who are strangers to her, into a different home, with a different caregiver, with different routines etc.

I don't believe this is the best choice that could be made for her wellbeing, after five (7) years of nurturing, providing for, love and support, seeing to services and providers, encouraging her success each day and seeing that she has all she needs to continue to grow into a successful young girl, despite her autism,

that, that be taken away, it would be so unfair to her and such a disadvantage after she has come so far overcoming the effects of early childhood trauma, neglect and abuse she suffered in her first year and a half of life.

I am asking you to consider some kind of guidelines that if a child is in a safe, healthy environment under guardianship, especially in permanent guardianship cases, for a period of time whether that is twelve, eighteen, or twenty four months, whatever that may look like, that if the guardian is willing to keep the guardianship established permanently, that the child will not risk leaving a stable, loving, nurturing environment they can thrive in and not be bounced into other environments or situations that could potentially cause them physical or mental harm.

The state is aware that the pandemic we are in at this time has caused much social and emotional turmoil for our children, not being able to consistently be at school, in a safe environment throughout the day, away from their daily routines and services, without their daily education and some in harmful situations, as there has been support added to our school systems on the return of students into their schools as we reopened this fall.

Imagine a child who cannot begin to comprehend the situation and having to change their environment all together.

It is a tremendously scary thing for those individuals and I believe we are adding to the Adverse Childhood Effects (ACES) by doing so, as well as the strain on their mental health that it causes and doing a disservice to these young individuals.

I feel that overall, though our goal and hope is to eliminate the strain put on our children in New Hampshire, in any case, that by continuing with the process as it is, will only continue to build ACEs, mental health issues and drug abuse in the future, which is an ever-growing circle that needs to be broken.

Our children are being told in some cases, that no matter what it is that they would like in life, no matter what they believe is most comfortable and in some cases safe for them, that, that actually does not matter overall, because they are at risk of being removed from a safe, loving, nurturing environment and being placed into something that may not be what is best suited for their individual needs and wellbeing. And in doing so we are actually creating a horrific circle which will continue to put a strain on our mental health system and create future turmoil and continue the conflict of addiction from today's children. They are not given the choice process in their daily lives, so how can they determine good choices, or if they voice what is most comfortable or fulfilling to them, that their voice does not

matter, and the poor choices of today can lead to unlawfulness in our youth as well as addiction.

Also, in looking at the Americans Disability Act, a lot has happened over the years. In our state alone by 2010 it was clear we had a serious drug problem in New Hampshire, by 2015 it moved from a crisis situation and was declared an epidemic. Now we have a pandemic we are faced with, yet past revisions in the ADA do not seem accurate for what we and our children have been faced with, by this, I feel, clearly that we are letting our disabled citizens of New Hampshire down. The ADA is a complete umbrella, but even an umbrella holds multiple secure tips to support its own canopy.

I believe it is time for a change in these areas and I believe that time is now.

We deserve better for our state and its people and I know that you care for each and every one of us.

I am asking you today, to please consider changes for the wellbeing of our children of New Hampshire and to help provide for the better future that each and every one of them deserves.

I look forward to your response in the coming days.

With sincere gratitude,

Linda Morgan

P.O. Box 564 Center Ossipee, N.H. 03814

jcandme24-7@hotmail.com

603-986-9771

HOUSE COMMITTEE ON JUDICIARY

EXECUTIVE SESSION on HB 169

BILL TITLE: relative to termination of guardianship.

DATE: February 1, 2023

LOB ROOM: 206-208

MOTIONS: INEXPEDIENT TO LEGISLATE

Moved by Rep. Kuttab Seconded by Rep. Manos Vote: 19-0

CONSENT CALENDAR: YES

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep Katelyn Kuttab, Clerk

STATE OF NEW HAMPSHIRE
OFFICE OF THE HOUSE CLERK

2023 SESSION

1/10/2023 9:53:34 AM
Roll Call Committee Registers Report

Judiciary

Bill #: HB169 **Motion:** ITL **AM #:** N/A **Exec Session Date:** 1Feb23

Members	YEAS	Nays	NV
Lynn, Bob J. Chairman	✓		
Wallace, Scott Vice Chairman	✓		
Alexander, Joe H.	✓		
Andrus, Louise	✓		
Testerman, Dave	✓		
~~Stapleton, Walter A.~~ Absent			X
Tripp, Richard P.	✓		
Greeson, Jeffrey	✓		
Kuttab, Katelyn Clerk	✓		
Perez, Kristine	✓		
Smith, Marjorie K.	✓		
Horrigan, Timothy O.	✓		
DiLorenzo, Charlotte I.	✓		
~~Kenney, Cam E.~~ Eaton, Daniel	✓		
Paige, Mark	✓		
~~McBeath, Rebecca Susan~~ Brennan, Angela	✓		
Devine, Shelley	✓		
Lanza, Judi	✓		
Manos, Zoe R	✓		
Turer, Eric S	✓		
TOTAL VOTE:	19	0	1