

CHAPTER 23
SB 103 – FINAL VERSION

03/05/2015 0499s

2015 SESSION

15-0979
05/09

SENATE BILL **103**

AN ACT relative to guardian ad litem reports and relative to the definition of incapacity for purposes of filing a guardianship petition.

SPONSORS: Sen. Avard, Dist 12; Sen. Birdsell, Dist 19; Sen. Cataldo, Dist 6; Sen. Carson, Dist 14; Rep. Oigny, Rock 34; Rep. Itse, Rock 10; Rep. Burt, Hills 39; Rep. Baldasaro, Rock 5; Rep. K. Rice, Hills 37

COMMITTEE: Judiciary

AMENDED ANALYSIS

This bill:

I. Requires the parties to have access to the reports and recommendations of the guardian ad litem unless the court explicitly finds that such disclosure is not in the child's best interest.

II. Clarifies the filing date of a petition for guardianship.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Fifteen

AN ACT relative to guardian ad litem reports and relative to the definition of incapacity for purposes of filing a guardianship petition.

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

1 23:1 Parental Rights and Responsibilities; Guardian Ad Litem Reports. Amend RSA 461-A:16,
2 III to read as follows:

3 III. Guardians ad litem shall respect communications between themselves and the child and
4 shall disclose such information only [~~in accordance with applicable rules and,~~] as required by the
5 court, in rendering a report with the guardian ad litem's recommendations [~~or in an ex parte~~
6 ~~proceeding to enable the court to make an informed decision~~]. ***All parties to the case shall have***
7 ***access to, and receive a copy of, any report or recommendation made by the guardian ad***
8 ***litem unless the court explicitly finds that such disclosure is not in the child's best interest.***

9 When the child's ability to make adequately considered decisions in connection with the
10 representation is impaired, whether because of minority, mental disability, or some other reason, the
11 guardian ad litem shall be the holder of the privilege and shall have the authority to waive the
12 privilege, but only if the guardian ad litem reasonably believes that the child cannot adequately act
13 in the child's own interest.

14 23:2 Guardians and Conservators; Definition of Incapacity; Petition Filing Date. Amend RSA
15 464-A:2, XI to read as follows:

16 XI. "Incapacity" means a legal, not a medical, disability and shall be measured by functional
17 limitations. It shall be construed to mean or refer to any person who has suffered, is suffering or is
18 likely to suffer substantial harm due to an inability to provide for his personal needs for food,
19 clothing, shelter, health care or safety or an inability to manage his or her property or financial
20 affairs. Inability to provide for personal needs or to manage property shall be evidenced by acts or
21 occurrences, or statements which strongly indicate imminent acts or occurrences. All evidence of
22 inability must have occurred within 6 months prior to the filing of the petition and at least one
23 incidence of such behavior must have occurred within 20 days of the filing of the petition for
24 guardianship. ***Evidence of such filing shall be the date the petition was mailed to the court,***
25 ***as evidenced by a receipt from the United States Postal Service or, if hand delivered, by the***
26 ***court's date stamp on the petition.*** Isolated instances of simple negligence or improvidence, lack
27 of resources or any act, occurrence or statement if that act, occurrence or statement is the product of
28 an informed judgment shall not constitute evidence of inability to provide for personal needs or to
29 manage property.

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1 23:3 Effective Date. This act shall take effect upon its passage.

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3 Approved: May 5, 2015

4 Effective Date: May 5, 2015