



National Alliance on Mental Illness

# NAMI | New Hampshire

## Jane Doe Case to be Heard by NH Supreme Court

*NAMI NH (National Alliance on Mental Illness) Submits Friend of the Court (Amicus) Brief*  
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### Contact:

Ken Norton, Executive Director

NAMI New Hampshire

[knorton@NAMINH.org](mailto:knorton@NAMINH.org)

This Thursday, March 25, 2021, the NH Supreme Court will hear an appeal of the case of “Jane Doe” who was examined in an emergency room and found to be in a mental health crisis requiring an inpatient Involuntary Emergency Admission (IEA). Ms. Doe was held in an emergency department against her will for seventeen days before being transferred to New Hampshire Hospital, our state’s acute psychiatric hospital.

This practice is known as emergency department “boarding” because patients receive minimal treatment while waiting for admission to an inpatient facility. Since boarding began in New Hampshire in 2012, **NAMI NH Executive Director Ken Norton has decried emergency department boarding as “wrong medically, legally, ethically, morally and economically.” It is the most visible symptom of what Governor Sununu has called a “mental health crisis” in our state.**

After her admission to New Hampshire Hospital, Jane Doe filed a petition for her release in Merrimack County Superior Court. Judge Brian Tucker ordered Jane Doe released after determining the state failed to hold a hearing, as required by law, within three days of her being **detained** to determine if legally there was probable cause for her involuntary admission. New Hampshire’s Department of Justice, acting on behalf of the Department of Health and Human Services, appealed the decision to the New Hampshire Supreme Court saying in essence that the state is not required to hold a hearing until three days after the person has been **admitted** to a designated psychiatric inpatient unit.

Based on data provided by Concord District Court, the brief submitted by NAMI NH estimated that since boarding began in 2012, over eight thousand New Hampshire residents have been subjected to emergency department boarding. The situation has worsened during the pandemic with the month of February 2021 setting record high numbers including 51 children waiting on a single day, and multiple days where the combined number of adults and children was in the eighties.

The NAMI NH brief outlines how emergency departments are not a safe place physically or mentally for people in a mental health crisis to be held for long periods of time. People who have been boarded in emergency departments have described it as being traumatizing and dehumanizing. Some people are held in tiny windowless rooms, some are separated from other patients only by a curtain, some are held in gurneys on hallways, and some are held in special pods adjacent to emergency departments. In an unknown number of cases, some individuals become aggressive and/or assaultive while boarding, resulting in their arrest.

Although NAMI NH’s brief did not argue legal case law, Executive Director Ken Norton stated **“our brief to the NH Supreme Court reiterated our long-stated position, which we believe is consistent with New Hampshire RSA 135C that people in a mental health emergency should get immediate access to mental health treatment.”**

A class action suit filed in 2018 by the American Civil Liberties Union of NH (ACLU NH) regarding emergency department boarding is ongoing. ACLU NH also filed an amicus brief with the NH Supreme Court on the Jane Doe case as did the NH Hospital Association.

Oral arguments in the case will be heard on March 25, 11:30 and can be watched live here: <https://www.courts.state.nh.us/videos/supreme/index.htm>

A copy of the Amicus brief filed by NAMI NH can be found here: <https://tinyurl.com/NAMINHAMicusBrief2021>

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