

# Vermont Legislative Council

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## MEMORANDUM

To: Senate Committee on Health and Welfare  
From: Erik FitzPatrick  
Date: February 19, 2014  
Subject: S.287; Burdens of Proof

The Senate Committee on Health and Welfare has asked for the following summary of the evidentiary burdens of proof that have been discussed in the context of S.287. Please let me know if you need anything else.

### Preponderance of the Evidence

The preponderance of the evidence means a degree of evidence that, while not sufficient to free the mind wholly from all reasonable doubt, is still more convincing than the opposing evidence, and is sufficient to incline a fair and impartial mind to one side of the issue rather than the other. *Black's Law Dictionary* at 252; *McCormick on Evidence* at 514. This is the burden of proof used in most civil trials, in which the jury is instructed to find for the party that, on the whole, has the stronger evidence, however slight the edge may be. *Id.*

### Clear and Convincing Evidence

Clear and convincing evidence means evidence indicating that the thing to be proved is highly probable or reasonably certain. *Black's Law Dictionary* at 250; *McCormick on Evidence* at 515. This is stronger evidence than a preponderance (the standard applied in most civil trials) but less evidence than beyond a reasonable doubt (the standard for criminal trials).

### Probable Cause

The probable cause standard is incapable of precise definition or quantification into percentages because it deals with probabilities and depends on the totality of the circumstances. *State v. Quigley*, 179 Vt. 567, 574 (2005), citing *Maryland v. Pringle*, 540 U.S. 366 (2003). However, the various efforts to define the term typically rely on the same concept: probable cause means there are reasonable grounds for a belief, and that the belief must be based on particular facts and circumstances. *Quigley*, 179 Vt. at 574; *State v. Hawkins*, 67 A.3d 230, 235 (Vt. 2013).