

Bill as Introduced

HB 1318 - AS INTRODUCED

2010 SESSION

10-2154
04/03

HOUSE BILL **1318**

AN ACT relative to post-conviction DNA testing.

SPONSORS: Rep. Cushing, Rock 15

COMMITTEE: Criminal Justice and Public Safety

ANALYSIS

This bill makes changes to the statute governing post-conviction DNA testing.

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 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Ten

AN ACT relative to post-conviction DNA testing.

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

1 1 Post-Conviction DNA Testing of Biological Material. Amend RSA 651-D:2, I(a) to read as
2 follows:

3 (a) Explain why the identity of the petitioner was or should have been a significant issue
4 during court proceedings *notwithstanding the fact that the petitioner may have pled guilty or*
5 *nolo contendere, or made or is alleged to have made an incriminating statement or*
6 *admission as to identity.*

7 2 Post-Conviction DNA Testing of Biological Material. Amend RSA 651-D:2, IV(c) to read as
8 follows:

9 (c) Designate the New Hampshire state police forensic laboratory to conduct the test.
10 *However, the court, upon a showing of good cause, may order testing by another laboratory*
11 *or agency certified by the American Society of Crime Laboratory Directors or the National*
12 *Forensic Science Training Center, if requested by the petitioner.*

13 3 Preservation of Biological Material for DNA Testing. RSA 651-D:3 is repealed and reenacted
14 to read as follows:

15 651-D:3 Preservation of Biological Material for DNA Testing.

16 I. Every appropriate governmental entity shall retain and catalogue each item of physical
17 evidence that contains biological material secured in connection with a criminal case in the amount
18 and manner sufficient to develop a DNA profile from the biological material contained in or included
19 on the evidence for the period of time that any person is incarcerated, or civilly committed, or on
20 parole or probation, or subject to registration as a criminal offender under RSA 651-B. This
21 paragraph shall apply whether or not a petitioner has filed a petition for post-conviction DNA testing
22 under this chapter.

23 II. In cases where a petition for post-conviction DNA testing has been filed under this
24 chapter, the state shall prepare an inventory of the evidence related to the case and submit a copy of
25 the inventory to the petitioner and the court.

26 III. This section shall apply to biological evidence that is in the custody of a law enforcement
27 agency in the state on the effective date of this section.

28 4 New Section; Victim Services. Amend RSA 651-D by inserting after section 4 the following
29 new section:

30 651-D:5 Victim Services. When post-conviction DNA testing is being considered by the court,
31 the state shall, upon request, reactivate victim services for the victim of the crime being

HB 1318 - AS INTRODUCED

- Page 2 -

1 reinvestigated during the reinvestigation of the case, during the pendency of the proceedings, and, as
2 determined by the court after consultation with the victim and/or victim advocate, following final
3 adjudication of the case.

4 5 Repeal. RSA 651-D:2, IV(d), relative to designation of an alternate laboratory for DNA testing,
5 is repealed.

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

HB 1318 - AS AMENDED BY THE HOUSE

03Mar2010... 0731h

2010 SESSION

10-2154
04/03

HOUSE BILL **1318**

AN ACT relative to victim services while the court is considering post-conviction DNA testing.

SPONSORS: Rep. Cushing, Rock 15

COMMITTEE: Criminal Justice and Public Safety

AMENDED ANALYSIS

This bill makes victim services available, upon request, to a victim of the crime being reinvestigated while the court is considering post-conviction DNA testing.

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 1318 - AS AMENDED BY THE HOUSE

03Mar2010... 0731h

10-2154
04/03

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Ten

AN ACT relative to victim services while the court is considering post-conviction DNA testing.

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

1 1 New Section; Victim Services. Amend RSA 651-D by inserting after section 4 the following
2 new section:

3 651-D:5 Victim Services. When post-conviction DNA testing is being considered by the court,
4 the state shall, upon request, reactivate victim services for the victim of the crime being
5 reinvestigated during the reinvestigation of the case, during the pendency of the proceedings, and, as
6 determined by the court after consultation with the victim and/or victim advocate, following final
7 adjudication of the case.

8 2 Effective Date. This act shall take effect 60 days after its passage.

CHAPTER 299
HB 1318 - FINAL VERSION

03Mar2010... 0731h
05/12/10 1934s
02Jun2010... 2340eba

2010 SESSION

10-2154
04/03

HOUSE BILL **1318**

AN ACT relative to post-conviction DNA testing, eligibility for victim's compensation for a victim of a crime in which a petition for post-conviction DNA testing was filed, and victim services while the court is considering post-conviction DNA testing.

SPONSORS: Rep. Cushing, Rock 15

COMMITTEE: Criminal Justice and Public Safety

AMENDED ANALYSIS

This bill:

I. Makes victim services available, upon request, to a victim of the crime being reinvestigated while the court is considering post-conviction DNA testing.

II. Amends the post-conviction DNA testing statute provisions concerning the designation of the testing laboratory and victim services.

III. Permits any person who was a victim of a crime for which the person convicted of the crime has filed a petition for post-conviction DNA testing to be eligible for victim's compensation regardless of the date of the crime.

.....

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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.

CHAPTER 299
HB 1318 - FINAL VERSION

03Mar2010... 0731h
05/12/10 1934s
02Jun2010... 2340eba

10-2154
04/03

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Ten

AN ACT relative to post-conviction DNA testing, eligibility for victim's compensation for a victim of a crime in which a petition for post-conviction DNA testing was filed, and victim services while the court is considering post-conviction DNA testing.

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

1 299:1 New Section; Victim Services. Amend RSA 651-D by inserting after section 4 the
2 following new section:

3 651-D:5 Victim Services. When post-conviction DNA testing is being considered by the court,
4 the state shall, upon request, reactivate victim services for the victim of the crime being
5 reinvestigated during the reinvestigation of the case, during the pendency of the proceedings, and, as
6 determined by the court after consultation with the victim and/or victim advocate, following final
7 adjudication of the case.

8 299:2 Post-Conviction DNA Testing of Biological Material. Amend RSA 651-D:2, I(a) to read as
9 follows:

10 (a) Explain why the identity of the petitioner was or should have been a significant issue
11 during court proceedings ***notwithstanding the fact that the petitioner may have pled guilty or***
12 ***nolo contendere, or made or is alleged to have made an incriminating statement or***
13 ***admission as to identity.***

14 299:3 Post-Conviction DNA Testing of Biological Material. Amend RSA 651-D:2, IV(c) to read as
15 follows:

16 (c) Designate the New Hampshire state police forensic laboratory to conduct the test.
17 ***However, the court, upon a showing of good cause, may order testing by another laboratory***
18 ***or agency accredited by the American Society of Crime Laboratory Directors/Laboratory***
19 ***Accreditation Board (ASCLD/LAB) or the National Forensic Science Training Center, if***
20 ***requested by the petitioner.***

21 299:4 New Subparagraph; Rights of Crime Victims. Amend RSA 21-M:8-k, II by inserting after
22 subparagraph (v) the following new subparagraph:

23 (w) The right to be informed of the filing of a petition for post-conviction DNA testing
24 under RSA 651-D.

25 299:5 New Paragraph; Claimant Eligibility and Compensation. Amend RSA 21-M:8-h by
26 inserting after paragraph VII the following new paragraph:

27 VIII. Notwithstanding paragraph II, any person who was a victim of a crime for which the

CHAPTER 299
HB 1318 – FINAL VERSION
- Page 2 -

1 person convicted of the crime has filed a petition for post-conviction DNA testing under RSA 651-D
2 shall be eligible for victim's compensation regardless of the date of the crime. Compensation under
3 this paragraph shall be limited to qualified expenses incurred after the post-conviction DNA testing
4 petition is filed.

5 299:6 Repeal. RSA 651-D:2, IV(d), relative to designation of an alternate laboratory for DNA
6 testing, is repealed.

7 299:7 Contingency. If HB 1441 of the 2010 regular legislative session becomes law, RSA 21-M:8-
8 h, VIII as inserted by section 5 of this act shall be renumbered as RSA 21-M:8-h, IX.

9 299:8 Effective Date. This act shall take effect 60 days after its passage.

10 Approved: July 13, 2010

11 Effective Date: September 11, 2010

Amendments

Amendment to HB 1318

1 Amend the title of the bill by replacing it with the following:

2

3 AN ACT relative to post-conviction DNA testing, eligibility for victim's compensation for a
4 victim of a crime in which a petition for post-conviction DNA testing was filed, and
5 relative to victim services while the court is considering post-conviction DNA
6 testing.
7

8 Amend the bill by inserting after section 1 the following and renumbering the original section 2 to
9 read as 7:

10

11 2 Post-Conviction DNA Testing of Biological Material. Amend RSA 651-D:2, I(a) to read as
12 follows:

13 (a) Explain why the identity of the petitioner was or should have been a significant issue
14 during court proceedings *notwithstanding the fact that the petitioner may have pled guilty or*
15 *nolo contendere, or made or is alleged to have made an incriminating statement or*
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25 subparagraph (v) the following new subparagraph:

26 (w) The right to be informed of the filing of a petition for post-conviction DNA testing
27 under RSA 651-D.

28 5 New Paragraph; Claimant Eligibility and Compensation. Amend RSA 21-M:8-h by inserting
29 after paragraph VII the following new paragraph:

30 VIII. Notwithstanding paragraph II, any person who was a victim of a crime for which the
31 person convicted of the crime has filed a petition for post-conviction DNA testing under RSA 651-D
32 shall be eligible for victim's compensation regardless of the date of the crime. Compensation under
33 this paragraph shall be limited to qualified expenses incurred after the post-conviction DNA testing

Amendment to HB 1318

- Page 2 -

1 petition is filed.

2 6 Repeal. RSA 651-D:2, IV(d), relative to designation of an alternate laboratory for DNA

3 testing, is repealed.

Amendment to HB 1318

- Page 3 -

2010-1934s

AMENDED ANALYSIS

This bill:

I. Makes victim services available, upon request, to a victim of the crime being reinvestigated while the court is considering post-conviction DNA testing.

II. Amends the post-conviction DNA testing statute provisions concerning the designation of the testing laboratory and victim services.

III. Permits any person who was a victim of a crime for which the person convicted of the crime has filed a petition for post-conviction DNA testing to be eligible for victim's compensation regardless of the date of the crime.

Committee Minutes

**AMENDED
SENATE CALENDAR NOTICE
JUDICIARY**

Printed: 04/28/2010 at 8:30 am

- ✓ Senator Deborah Reynolds Chairman
- ✓ Senator Bette Lasky V Chairman
- ✓ Senator Matthew Houde
- ✓ Senator Sheila Roberge
- ✓ Senator Robert Letourneau

For Use by Senate Clerk's Office ONLY	
<input type="checkbox"/>	Bill Status
<input type="checkbox"/>	Docket
<input type="checkbox"/>	Calendar
Proof: <input type="checkbox"/>	Calendar <input type="checkbox"/> Bill Status

Date: April 28, 2010

HEARINGS

Wednesday

5/5/2010

JUDICIARY

SH 103

1:00 PM

(Name of Committee)

(Place)

(Time)

EXECUTIVE SESSION MAY FOLLOW

Comments: THE PURPOSE OF THIS AMENDED NOTICE IS TO ADD HB 1306 WHICH WAS
ORIGINALLY SCHEDULED FOR 5/4/10

- | | | |
|-------------------------|---------------|------------------------------------------------------------------------------------------------------------------------------------|
| <p>2:55
4:00 PM</p> | <p>HB1318</p> | <p>(New Title) relative to victim services while the court is considering post-conviction DNA testing.</p> |
| <p>1:15 PM</p> | <p>HB1398</p> | <p>allowing a surviving spouse to have access to the deceased spouse's medical records when there is no estate administration.</p> |
| <p>1:30 PM</p> | <p>HB1436</p> | <p>requiring a report to the general court on New Hampshire's participation in the National Violent Death Reporting System.</p> |
| <p>1:45 PM</p> | <p>HB1543</p> | <p>relative to the annual rate of interest on judgments.</p> |
| <p>2:00 PM</p> | <p>HB1306</p> | <p>relative to approval of recommendations of marital masters and judicial referees.</p> |

Sponsors:

HB1318

✓ Rep. Robert Cushing

HB1398

Rep. Susan Emerson
Sen. Sheila Roberge

Rep. William Smith
Sen. Jacalyn Cilley

Rep. Frank Kotowski

Sen. John Barnes, Jr.

HB1436

Rep. Roger Wells

HB1543

Rep. David Nixon

Rep. Robert Rowe

Rep. Paul McEachern

Rep. James Craig

HB1306

Rep. Robert Rowe
Rep. Frank Emiro

Rep. William O'Brien
Sen. Peter Bragdon

Rep. Mary Gorman
Sen. Robert Letourneau

Rep. David Nixon

Gail Brown 271-3076

Sen. Deborah Reynolds

Chairman

Judiciary Committee

Hearing Report

TO: Members of the Senate

FROM: Susan Duncan, *Senior Legislative Aide*

RE: Hearing report on **HB 1318** – *AN ACT (New Title) relative to victim services while the court is considering post-conviction DNA testing.*

HEARING DATE: May 5, 2010

MEMBERS OF THE COMMITTEE PRESENT: Senators Reynolds, Lasky, Roberge, Letourneau and Houde

MEMBERS OF THE COMMITTEE ABSENT: No one

Sponsor(s): Representative Cushing

What the bill does: This bill makes victim services available, upon request, to a victim of the crime being reinvestigated while the court is considering post-conviction DNA testing.

Who supports the bill: Representative Cushing; Representative Emerson; Nicole Harris from the Innocence Project; Representative Chandley; Sandy Matheson from the Department of Justice;

Who opposes the bill: No one

Summary of testimony received:

- Representative Cushing introduced the bill and presented amendment #1871h. He explained that the legislation is to deal with provision of victim services when testing is being done. He said that if biological evidence is available, we need to recognize the impact such tests might have on the victim, thus the need to reactivate victim services.
- He said that the amendment provides that an individual be notified on a post-DNA process in order to access the victim compensation law.
- He said that when individuals who have been sentenced and subsequently found to have been wrongfully convicted, the victim relives the crime and trial, thus needing services.
- The bill provides that the victim can seek counseling if needed.
- Senator Reynolds, in addressing the underlying bill, asked if there is statutory authority to victim services. Representative Cushing

responded that he wasn't sure and said that these are accomplished through the initial process.

- Nicole Harris testified in support and said that they have been involved with 254 cases in which the individual was subsequently found innocent – and from these cases, in 109 instances, the real perpetrator was identified and prosecuted.
- Ms. Harris commented that working with the victims of these crimes is incredibly important and distributed relevant materials for the members to consider.
- Ms. Matheson appeared in support but did not testify. She clarified that she also supports the requested amendment to the bill.

Fiscal Impact: Not applicable.

Action: Senator Lasky moved “Ought to Pass with Amendment.” Senator Letourneau seconded the motion. The Committee voted 5 – 0 in support of the motion. Senator Lasky will report the bill out of Committee.

sfd

[file: HB 1318]

Date: May 6, 2010

243

Date: May 5, 2010
Time: 2:55 p.m.
Room: State House Room 103

The Senate Committee on Judiciary held a hearing on the following:

HB 1318 (3rd New Title) relative to post-conviction DNA testing, eligibility for victim's compensation for a victim of a crime in which a petition for post-conviction DNA testing was filed, and victim services while the court is considering post-conviction DNA testing.

Members of Committee present: Senator Reynolds
Senator Lasky
Senator Houde
Senator Roberge
Senator Letourneau

The Chair, Senator Deborah R. Reynolds, opened the hearing on HB 1318 and invited the prime sponsor, Representative Robert Cushing, to introduce the legislation.

Representative Cushing: That's okay, Madam Speaker. Members of the Committee. For the record, I'm Representative Robert Renny Cushing and I'm the sponsor of HB 1318 and I shall speak in support of the bill.

As the Senator knows, five years ago, under the leadership of then Representative Lasky, the State of New Hampshire enacted a post-conviction DNA testing law in this state that provides a process whereby, in instances where there is biological evidence available that may indicate that a person has been wrongfully convicted of a crime, there is a process by which that incrimination can be tested. What that legislation did not include was a recognition of the impact that such a test might have upon an individual who was the victim of the crime for which the person who is serving time is seeking post-DNA testing and what this legislation is intended to do is to recognize that and so what this does, in the version passed by the House, it provides for reactivation of victim services for the victim.

JRB

I have a small amendment that I have submitted to you that would do two additional things. One, it would amend our state's victim rights statute so that the individual who was the victim would be notified that post-DNA testing process had been initiated so that they would have that. And, also, on a going forward basis, they would be eligible to access our state's victim compensation law.

I have met individuals who have been victims of crimes wherein an individual was convicted of that crime, sent to prison, and subsequently that person was found through DNA to have been wrongfully convicted. For the victim in that instance, in one case, they had misidentified the person. In those instances, it is as though the revictimization and the whole retraumatization starts all over again. It is just as though the facts of the original crime took place and they relive all that experience.

But, on top of that, it is further compounded by the fact that they have now gone through an experience of being victimized by crime and then having the failure of the criminal justice system. For those individuals who have had that experience, thankfully it is relatively unique. But, what this legislation would do is to provide that individual access under our victims' compensation statute, with the proposed amendment, so that they could seek counseling if they needed to.

I recognize that you have had a long day and I'm not going to belabor this. I will be glad to answer any questions.

My colleagues on the House Criminal Justice Committee, Representatives Chandley and Shurtleff and Rodd were going to be here in support of the amendment, but I would be willing to answer any questions. If you have any questions, I would hope that you would pick up on the amendment and that you would pass the bill. I'm sure that should the Committee recommend that that amended version pass, I'm sure, if the Senate passes it, it will be concurred with by the House Criminal Justice Committee.

Please see Attachment #1 – Amendment 1871.

Senator Deborah R. Reynolds, D. 2: Thank you, Representative. My question, I guess is, the underlying bill is just sort of giving statutory authority for allowing renewing, I guess, victim services. I guess my question is, is there an actual need for specific statutory authority to do that, do you think?

Representative Cushing: I don't know whether there is an absolute need for it. I know that in some jurisdictions, because this is relatively new, what

JHB

often takes place is that there is an accompaniment to an initial criminal justice process by a victim witness assistance person. I know that when it reaches the conviction stage, it gets passed off to the liaison between the state, the Department of Corrections. What this would simply do is kind include in the statute notification that yes, victims are important.

The state prosecutes homicide convictions and I know that they are on top of it, I also would like to ensure this kind of uniformity of recognition so that it is also applicable in the county attorneys' offices or the offices of victim services is there in the statute and the state recognizes it and it reminds them that there are victims that are impacted by this proceeding.

Senator Deborah R. Reynolds, D. 2: And, because my esteemed colleague, Senator Letourneau, has just joined us, I guess, can you maybe just paraphrase and summarize the amendment so he has some idea what this is?

Representative Cushing: The amendment. The bill that passed the House provides that, in a case where there has been a post-conviction DNA request filed with the court, that victim services be activated and what the amendment would so is add to the state's victims rights laws that when a post-conviction DNA testing request has been filed, that the victim of the original crime be notified of that and that on a going forward basis, that should there be a need for victim compensation, that they would be eligible for that.

Senator Robert J. Letourneau, D. 19: Okay.

Senator Deborah R. Reynolds, D. 2: All set?

Senator Robert J. Letourneau, D. 19: Yes.

Representative Cushing: I believe I provided the original amendment to you. I'm not sure.

Senator Deborah R. Reynolds, D. 2: Okay. Thank you very much, Representative Cushing. We appreciate your testimony. Does anybody have any further questions for Representative Cushing at this time about HB 1318? Seeing none, thank you for your testimony.

Are there any other members of the House who wish to testify relative to HB 1318 who are here? I note that Representative Chandley has signed in in support, does not wish to speak. Susan Emerson, Representative Emerson is here, does not wish to speak, in support. And, is it Nick Harris from the Innocence Project. Did you want to speak?

JMB

Nicole Harris: Sure.

Senator Deborah R. Reynolds, D. 2: Okay. Come on forward. Thank you. Nice to meet you. Please state your name for the record. Is it Nicole?

Ms. Harris: Yes.

Senator Deborah R. Reynolds, D. 2: Okay. Thank you.

Ms. Harris: Good afternoon, Chairman Reynolds, Vice Chair Lasky, members of the Committee. Thank you for the opportunity to appear before you today. My name is Nicole Harris. I'm with the Innocence Project. I am a policy analyst.

The Innocence Project uses DNA technology to settle claims of innocence. Private DNA testing has cleared 254, it was 253 yesterday, 254 today, people around the country who are wrongfully convicted of serious crimes. 109 of those cases through claims of innocence, the actual perpetrator was identified. Our policy is working with them in exonerating and identifying the truly guilty. Today, I would like to offer testimony in support of HB 1318. We see it as a way of achieving these two-fold goals of exonerating the innocent and identifying the truly guilty.

Now, as it was originally introduced, I understand some of the provisions have been removed. Two of the three I would like to talk about actually were in the original bill, but are not... If it ever were to be relevant to what you're looking at or if there is any way that we can assuage any concerns that you have about these provisions.

First, the proposal would... HB 1318 as original introduced, would have expanded ...testing...(inaudible)...

Senator Deborah R. Reynolds, D. 2: I'm sorry to interrupt you, but we don't have that bill. So, I really understand the amendment. Your kind of advocacy is very admiral, but this Committee doesn't have time to revisit what the prior bill was. Thank you.

Ms. Harris: Okay. I guess I will skip to the last point. We believe that it is incredibly important to work with the victims' rights groups of the communities around the country. We have worked very closely with them and we want to make sure that victims get the respect and dignity and services that they deserve. To that end, we work closely with them and we

have created a statement for use in these situations. I brought a copy of that to hand out to everyone here.

Along with that on-line material, I've got a letter from an actual crime victim who will explain the issue much better than I ever could. So, if there is anything that I can add or any questions you have.

Please see Attachment #2.

Senator Deborah R. Reynolds, D. 2: Thank you, Nicole. And, thank you for all your work on behalf of the Project. Just for the record, are you a New Hampshire resident yourself or are you coming in from out of state?

Mr. Nicole: I'm coming in from out of state.

Senator Deborah R. Reynolds, D. 2: Where do you live?

Ms. Harris: New York City.

Senator Deborah R. Reynolds, D. 2: Okay. And, is there anybody in New Hampshire involved in the Innocence Project?

Ms. Harris: No, not that I know of, but I could be wrong on that.

Senator Deborah R. Reynolds, D. 2: Well, we appreciate you coming and your testimony. Does anybody have any questions? Seeing none, thank you very much for your testimony.

Ms. Harris: Thank you.

Senator Deborah R. Reynolds, D. 2: Is there anyone else where to wanted to testify relative to HB 1318? You didn't sign in.

Sandra Matheson: I signed in over there.

Senator Deborah R. Reynolds, D. 2: Okay. Could you just tell us your name?

Ms. Matheson: My name is Sandy Matheson. I am the Director of the state office of victim assistance at the Attorney General's Office. I just wanted to tell the Committee that the Attorney General's Office does support this bill and believe that it is a good extension of the victims' Bill of Rights.

Senator Deborah R. Reynolds, D. 2: Thank you, Sandy. That is helpful to know. Senator Letourneau has a question for you.

Senator Robert J. Letourneau, D. 19: Just a quick question. Are you aware of the amendment?

Ms. Matheson: Yes.

Senator Robert J. Letourneau, D. 19: And you're also in support of the amendment?

Ms. Matheson: Yes.

Senator Robert J. Letourneau, D. 19: Thank you.

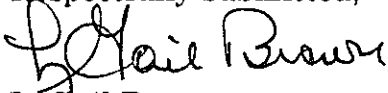
Senator Deborah R. Reynolds, D. 2: Anybody else here to testify relative to HB 1318? Yes, Representative?

Representative Cushing: You asked a question. Could I answer your question about New Hampshire? Just quickly. There is a case that I became aware of where the Innocence Project was working in collaboration with the Office of the Attorney General.

Senator Deborah R. Reynolds, D. 2: Okay. Thank you for letting us know. Okay. So, I am going to close the hearing on 1318 and thank you all for coming.

Hearing concluded at 3:05 p.m.

Respectfully submitted,



L. Gail Brown
Senate Secretarial Supervisor

9/21/10

2 Attachments



Rep. Cushing, Rock. 15
Rep. Chandley, Hills. 6
Rep. Rodd, Merr. 5
Rep. Shurtleff, Merr. 10
May 4, 2010
2010-1871h
04/09

Amendment to HB 1318

1 Amend the title of the bill by replacing it with the following:

2

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9 read as 7:

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31 person convicted of the crime has filed a petition for post-conviction DNA testing under RSA 651-D



2010-1871h

AMENDED ANALYSIS

This bill:

I. Makes victim services available, upon request, to a victim of the crime being reinvestigated while the court is considering post-conviction DNA testing.

II. Amends the post-conviction DNA testing statute provisions concerning the designation of the testing laboratory and victim services.

III. Permits any person who was a victim of a crime for which the person convicted of the crime has filed a petition for post-conviction DNA testing to be eligible for victim's compensation regardless of the date of the crime.



1 shall be eligible for victim's compensation regardless of the date of the crime. Compensation under
2 this paragraph shall be limited to qualified expenses incurred after the post-conviction DNA testing
3 petition is filed.

4 6 Repeal. RSA 651-D:2, IV(d), relative to designation of an alternate laboratory for DNA
5 testing, is repealed.

INNOCENCE PROJECT

Benjamin N. Cardozo School of Law, Yeshiva University

**TESTIMONY OF NICOLE HARRIS, POLICY ANALYST, INNOCENCE PROJECT,
BEFORE THE NEW HAMPSHIRE SENATE JUDICIARY COMMITTEE**

RE: HB 1318

MAY 5, 2010

On behalf of the Innocence Project, thank you for allowing me to testify today before the New Hampshire Senate Judiciary Committee. The Innocence Project assists persons in proving their innocence through post-conviction DNA testing. To date, 254 men and women have been exonerated by post-conviction DNA testing nationwide. Our policy agenda is a pro-law enforcement agenda: win-win reforms that protect the innocent and help identify the guilty. In 109 of the nation's DNA exonerations, the process of settling these claims of innocence also resulted in the detection of the true perpetrator, in many cases through a "hit" to the CODIS database. After these 109 innocents were wrongfully convicted, the true perpetrators went on to commit – and be convicted of – at least 20 murders, 56 rapes and 15 other violent crimes. As such, our work can also be seen as that of crime prevention. For many reasons, then, we are trying to "beat the clock," in order to free the innocent, but also to detect the true perpetrators before they commit additional heinous crimes.

We find that the more barriers there are to expeditious post-conviction DNA testing, the more public safety is put at risk and the longer period of time our innocent clients languish behind bars. There are several critical provisions of HB 1318, which were removed in the House but we hope you will consider, that would accomplish the acceleration of post-conviction DNA testing.

Allowing Flexibility with Respect to Where DNA Testing is Performed

The existing post-conviction DNA testing law requires, for all intents and purposes, that post-conviction DNA testing be conducted at the New Hampshire state police forensic laboratory.¹ HB 1318, as introduced the House, however, would have allowed the court to order testing by another laboratory or agency certified by the American Society of Crime Laboratory Directors or the National Forensic Science Training Center, upon a showing of good cause. This amendment is critical, as the state lab does not perform all DNA testing methods. Some of the newer testing methods that cannot be performed at the state lab, including miniFiler-STR testing, are the only testing methods that work on badly degraded evidence.

Consider the case of **Rickey Johnson**. Rickey was convicted in 1983 of aggravated rape and was sentenced to life without parole in Louisiana. His conviction was secured based upon the strength of conventional serological testing and an eyewitness identification made by the victim. The case went to trial years before DNA tests were to become a common law-enforcement tool, so no DNA tests were performed on the evidence. Throughout his ordeal, Mr. Johnson maintained his innocence and held out hope that the truth would one day be discovered. In 2006, after the Innocence Project took on Mr. Johnson's case, the DA agreed to test swabs from the rape kit using conventional STR testing. The tests produced just three markers--enough to potentially exculpate Mr. Johnson, but not a sufficient number to help identify the perpetrator. In 2007, a new form of DNA testing, miniFiler-STR, was performed. MiniFiler-STR makes the examination of badly degraded evidence possible. Through the use of this new technology, eight additional markers were found, yielding a full profile. That profile not only definitively proved Mr. Johnson's innocence, thereby leading to his exoneration, but also enabled the evidence to be run through CODIS, the national DNA database. The process resulted in a CODIS hit

¹ The statute provides one narrow exception.

and the true perpetrator, a man who was housed in the same prison as Mr. Johnson, himself, was identified.

Under the existing New Hampshire law, and since the state lab does not perform miniFiler-STR testing, Mr. Johnson might not have been exonerated. **The true perpetrator of the crime, however, would definitely not have been identified.** New Hampshire should make this simple fix to allow the court to have some degree of flexibility with regard to where DNA testing can be performed.

Another reason this update to the existing law is needed relates to timeliness and efficiency. State lab testing backlogs frequently present a significant obstacle to quick testing. Although the New Hampshire state lab may be up-to-date today, there is currently a bill pending in New Hampshire that may substantially increase the lab's workload, making it difficult to accomplish post-conviction DNA testing in a timely manner² Indeed, there are many instances in which state authorities use private labs, themselves. Sometimes, the private lab can do the testing more quickly. Other times, the private lab offers testing that is not available at the state lab. Simply put, allowing for some flexibility on where testing is performed will not only allow New Hampshire to settle innocence claims more quickly; it may result in DNA exonerations and the identification of perpetrators of serious crimes that would otherwise be impossible.

Allowing Individuals Who Pled Guilty to Seek Post-Conviction DNA Testing

Of the 254 individuals who have been proven innocent through DNA testing, 19 pled guilty of the crimes for which they were convicted. Potentially innocent people should not be denied justice because they previously faced what they thought was an impossible choice. Consider the following case studies to illustrate this point against the backdrop of DNA exonerations:

Texan **Chris Ochoa** was facing the death penalty, but was offered a lesser sentence if he took a plea agreement. Under the threat of receiving the death penalty, and at the advice of his attorney, Chris pled guilty. He went on to serve nearly a dozen years for a murder he did not commit.³

The charges **James Ochoa** faced were less dire than those that confronted Chris Ochoa, but the result was no less a miscarriage of justice. Prosecutors took 20-year-old James Ochoa to trial on carjacking charges even after they knew that DNA found on the sweatband of a cap found in the stolen car was not his, and after his fingerprints did not match those found in the car. They based their case on the strength of two eyewitnesses, who turned out to be wrong. Three days into the trial, Ochoa was offered a plea deal, which he accepted over his own attorney's objections, thinking that he would face even more prison time for a crime he did not commit. He went on to spend 10 months in prison. Eventually, the DNA collected at the crime scene was linked to another man, James McCollum, who was serving time in an LA County jail on different carjacking charges.

It is worth noting that individuals like James Ochoa, who are facing less time than men like Chris Ochoa, by virtue of the charges they are confronting, are even more likely to take plea deals. HB 1318 as previously amended would allow individuals who pled guilty to seek post-conviction DNA testing. While there are sometimes concerns that expanding the universe of individuals who may seek testing will lead to a flood of litigation, this has not come to pass in any state. I have included a memo to allay concerns about such a "flood of litigation." New Hampshire, with a particularly small prison population, should have no apprehensions about passing this provision.

² The Innocence Project drafted a letter of support for this bill, HB 523, which provides for the DNA testing of all convicted felons.

³ Mr. Ochoa was released in 2001 and is now an attorney.

Reactivation of Victim Services

The Innocence Project also does all we can to assist victims of crime to ensure that they are treated with the dignity and respect they deserve. Our network of Innocence Projects around the country spent the last couple of years drafting a Statement Concerning Victims, which we have posted on the Network's website (www.innocencenetwork.org) and which I have included in the materials. Part of the work of this committee led our organization to call for the reactivation of victim services in state post-conviction DNA testing laws. Indeed, we have added this clause to our model legislation. Much of our work with victims was informed by meetings with various crime victims' groups and our attendance at the National Center for Victims of Crime's last two annual conferences. At last year's conference in Washington, DC, an entire panel was dedicated to the needs of victims in the post-conviction setting in the face of an exoneration. Our call for the reactivation of victim services is in line with what many crime victims' advocates voiced that day. Only now, for the first time, are states beginning to consider these needs, which are included in this legislation.

Once again, the Innocence Project urges the passage of these critical updates to your post-conviction DNA access statute. If there is any additional information that would be useful to the Committee, please do not hesitate to contact me at (212) 364-5973.

Speakers

Voting Sheets

Senate Judiciary Committee

EXECUTIVE SESSION

Bill # HB 1318

Hearing date: 5/5/10

Executive session date: 5/5/10

Motion of: OTP amendment
1871

VOTE: 5-0

<u>Made by</u> Reynolds <input type="checkbox"/>	<u>Seconded</u> Reynolds <input type="checkbox"/>	<u>Reported</u> Reynolds <input type="checkbox"/>	
<u>Senator:</u> Lasky <input checked="" type="checkbox"/>	<u>by Senator:</u> Lasky <input checked="" type="checkbox"/>	<u>by Senator:</u> Lasky <input type="checkbox"/>	
Houde <input type="checkbox"/>	Houde <input type="checkbox"/>	Houde <input type="checkbox"/>	
Letourneau <input checked="" type="checkbox"/>	Letourneau <input type="checkbox"/>	Letourneau <input type="checkbox"/>	
Roberge <input type="checkbox"/>	Roberge <input type="checkbox"/>	Roberge <input type="checkbox"/>	

Motion of: OTP/A

VOTE: 5-0

<u>Made by</u> Reynolds <input type="checkbox"/>	<u>Seconded</u> Reynolds <input type="checkbox"/>	<u>Reported</u> Reynolds <input type="checkbox"/>	
<u>Senator:</u> Lasky <input checked="" type="checkbox"/>	<u>by Senator:</u> Lasky <input type="checkbox"/>	<u>by Senator:</u> Lasky <input checked="" type="checkbox"/>	
Houde <input type="checkbox"/>	Houde <input type="checkbox"/>	Houde <input type="checkbox"/>	
Letourneau <input type="checkbox"/>	Letourneau <input checked="" type="checkbox"/>	Letourneau <input type="checkbox"/>	
Roberge <input type="checkbox"/>	Roberge <input type="checkbox"/>	Roberge <input type="checkbox"/>	

<u>Committee Member</u>	<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Reported out by</u>
Senator Reynolds, Chairman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Lasky, Vice-Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Houde	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Letourneau	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Roberge	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

*Amendments: 1934

Notes: _____

Committee Report

STATE OF NEW HAMPSHIRE
SENATE
REPORT OF THE COMMITTEE

Date: May 6, 2010

THE COMMITTEE ON Judiciary

to which was referred House Bill 1318

AN ACT (New Title) relative to victim services while the court is
considering post-conviction DNA testing.

Having considered the same, the committee recommends that the Bill:

OUGHT TO PASS WITH AMENDMENT

BY A VOTE OF: 5-0

AMENDMENT # 1934s

Senator Bette R. Lasky
For the Committee

L. Gail Brown 271-3076

New Hampshire General Court - Bill Status System

Docket of HB1318

Docket Abbreviations

Bill Title: (3rd New Title) relative to post-conviction DNA testing, eligibility for victim's compensation for a victim of a crime in which a petition for post-conviction DNA testing was filed, and victim services while the court is considering post-conviction DNA testing.

Official Docket of HB1318:

Date	Body	Description
12/10/2009	H	Introduced 1/6/2010 and Referred to Criminal Justice and Public Safety; HJ 6 , PG.236
01/12/2010	H	Public Hearing: 1/28/2010 1:00 PM LOB 204
02/03/2010	H	Executive Session: 2/11/2010 10:00 AM LOB 204 ==RECESSED==
02/11/2010	H	Subcommittee Work Session: 2/16/2010 8:30 AM LOB 204
02/11/2010	H	Continued Executive Session: 2/16/2010 10:00 AM LOB 204
02/16/2010	H	Committee Report: Ought to Pass with Amendment #0731h (NT) for Mar 3 CC (Vote 15-1); HC 17 , PG.797
02/16/2010	H	Proposed Committee Amendment #0731h (New Title); HC 17 , PG.849-850
03/03/2010	H	Amendment #0731h (New Title) Adopted, VV; HJ 20 , PG.1129-1130
03/03/2010	H	Ought to Pass with Amendment #0731h (New Title): MA VV; HJ 20 , PG.1129-1130
03/24/2010	S	Introduced and Referred to Judiciary; SJ 11 , Pg.262
04/19/2010	S	Hearing: May 5, 2010, Room 103, State House, 1:00 p.m.; SC17
05/06/2010	S	Committee Report: Ought to Pass with Amendment 1934s, NT, 5/12/10; SC19
05/12/2010	S	Committee Amendment 1934s, NT, AA, VV; SJ 18 , Pg.476
05/12/2010	S	Ought to Pass with Amendment 1934s, NT, MA, VV; OT3rdg; SJ 18 , Pg.476
05/12/2010	S	Passed by Third Reading Resolution; SJ 18 , Pg.497
05/19/2010	H	House Concurs with Senate AM #1934s(NT) (Rep Shurtleff): MA VV; HJ 46 , PG.2225
06/02/2010	H	Enrolled Bill Amendment #2340 (New Title) Adopted; HJ 51 , PG.2323
06/02/2010	S	Enrolled Bill Amendment #2340, NT, Adopted; SJ 21 , Pg.761
06/02/2010	H	Enrolled; HJ 51 , PG.2327
06/02/2010	S	Enrolled; SJ 21 , Pg.777
07/15/2010	H	Signed by the Governor 07/13/2010; Effective 09/11/2010; Chapter 0299

NH House

NH Senate

Contact Us

New Hampshire General Court Information Systems
107 North Main Street - State House Room 31, Concord NH 03301

Other Referrals

COMMITTEE REPORT FILE INVENTORY

HB 1318 ORIGINAL REFERRAL _____ RE-REFERRAL

1. THIS INVENTORY IS TO BE SIGNED AND DATED BY THE COMMITTEE SECRETARY AND PLACED INSIDE THE FOLDER AS THE FIRST ITEM IN THE COMMITTEE FILE.
2. PLACE ALL DOCUMENTS IN THE FOLDER FOLLOWING THE INVENTORY IN THE ORDER LISTED.
3. THE DOCUMENTS WHICH HAVE AN "X" BESIDE THEM ARE CONFIRMED AS BEING IN THE FOLDER.
4. THE COMPLETED FILE IS THEN DELIVERED TO THE CALENDAR CLERK.

DOCKET (Submit only the latest docket found in Bill Status)

COMMITTEE REPORT

CALENDAR NOTICE on which you have taken attendance

HEARING REPORT (written summary of hearing testimony)

HEARING TRANSCRIPT (verbatim transcript of hearing)

List attachments (testimony and submissions which are part of the transcript) by number [1 thru 4 or 1, 2, 3, 4] here: 1-2

SIGN-UP SHEET

ALL AMENDMENTS (passed or not) CONSIDERED BY COMMITTEE:

- AMENDMENT # 1934 _____ - AMENDMENT # _____
_____ - AMENDMENT # _____ _____ - AMENDMENT # _____

ALL AVAILABLE VERSIONS OF THE BILL:

AS INTRODUCED AS AMENDED BY THE HOUSE
 FINAL VERSION _____ AS AMENDED BY THE SENATE

_____ PREPARED TESTIMONY AND OTHER SUBMISSIONS (Which are not part of the transcript)

List by letter [a thru g or a, b, c, d] here: _____

EXECUTIVE SESSION REPORT

_____ OTHER (Anything else deemed important but not listed above, such as amended fiscal notes):

IF YOU HAVE A RE-REFERRED BILL, YOU ARE GOING TO MAKE UP A DUPLICATE FILE FOLDER

DATE DELIVERED TO SENATE CLERK

9/23/10

[Signature]
COMMITTEE SECRETARY